

The fact that Mr. Macdonald and I could get together on this indicates that this is a common meetingplace for us on this debatable question.

THE CHAIRMAN: Delegate Weidemeyer.

DELEGATE WEIDEMEYER: Mr. President and members of the Convention, I hope that Delegate Macdonald or Delegate Kiefer have not fallen into a trap on this thing because there are different types of damages in condemnation cases. As has been pointed out, there is a resulting or consequential damage to property, some part of which has been taken.

Now, when there has been some taking of your property, you have the consequential damages which the courts have already defined and which are allowed. Then in addition to that, there is a type of damage that occurs when no part of your property has been taken. That is what the amendment or the Committee's recommendation intends, that it refer and include those properties really damaged and in fact damaged when there has been nothing taken.

Now, when we use the words in this present amendment, we may be taking away all the construction already in existence, and known to us of consequential damages. It puts that matter wholly in the hands of the legislature and says, go to the legislature, in the field of damages, whether consequential damages or damages not as a result of the taking; you have the sole authority to legislate, and define, and the legislature if it wanted to could restrict inconsequential damages under this amendment.

I, therefore, think this amendment is very bad and should be defeated, even if it did have some good intent by the sponsor.

THE CHAIRMAN: Delegate Gleason.

DELEGATE GLEASON: Mr. Chairman, let me say, despite the clouds that have arisen over this amendment, that I think this amendment offers the best possible solution to a very difficult problem and a problem really that in my judgment ought to be handled in a legislative arena rather than in a Constitutional Convention.

I disagree with the intention of the sponsor of the amendment, and I have to disagree in this fashion. I think the Committee Report is clear, that where property is physically taken, compensation has to be given for that physical taking. I think the Committee Recommendation is also clear, that when there is not a physical taking,

but there is actual damage to property, because of the taking, that those damages have to be compensated for. However, the extent of those damages is, under this amendment, going to be defined by the legislature. That is the way I interpret the amendment. That is the intent that will be in my vote when I vote for it.

THE CHAIRMAN: Does any other delegate desire to speak in opposition?

Delegate Kiefer.

DELEGATE KIEFER: Mr. Chairman, ladies and gentlemen of the Committee, I do not want there to be any misunderstanding. If there is then, maybe we will have to reconsider this position. What I meant to say, and what I thought I had made clear, was that the Committee stated on page 28 of this Memorandum: "The measure and nature of compensable damages are matters properly left to the legislature and the Courts."

Now, in my ready acceptance of this language, as the latter term shall be defined by law, I had stated previously that this is what we meant. I interpret that the proposed amendment does exactly what we had said here, or means, in effect, the same thing. If it does, we are for it. If not, then I will have to withdraw my support of the amendment.

THE CHAIRMAN: For what purpose does Delegate Weidemeyer rise?

DELEGATE WEIDEMEYER: I want to ask Delegate Kiefer a question.

THE CHAIRMAN: Delegate Kiefer, do you yield to a question?

DELEGATE KIEFER: Yes.

THE CHAIRMAN: Delegate Weidemeyer.

DELEGATE WEIDEMEYER: I thought our report said the term "damages" would be left to the legislature and the court and as I interpret this amendment, and I am asking you to look at it in the same light, does not this amendment then take away our intent to have court interpretation and leave it exclusively in the hands of the legislature?

THE CHAIRMAN: Delegate Kiefer.

DELEGATE KIEFER: The answer is no, because it does not say anything in the amendment about General Assembly. It says "by law", which can be by court action or action of the General Assembly. That is the point I want to make clear.