

vised that Delegate Adkins desires to move for reconsideration.

DELEGATE ADKINS: Mr. Chairman, I should like to move that the action by which Amendment No. 20 to Committee Recommendation R&P-1 was rejected be reconsidered.

This is the vote that relates to the deletion of the word "damage" from the condemnation provision.

THE CHAIRMAN: Is there a second?

*(The motion was duly seconded.)*

THE CHAIRMAN: It having been moved and seconded that the vote by which Amendment No. 20 was rejected be reconsidered, the Chair recognizes Delegate Adkins to speak to the motion.

DELEGATE ADKINS: Mr. Chairman and ladies and gentlemen of the Convention: It seems to me that the action of this body in rejecting the amendment offered by Delegate Gilchrist to eliminate the words relating to damages in the condemnation section will turn out to have been a serious mistake in terms of enforcement of the provisions of this article. I do not desire to rehash the argument that was presented in favor of the amendment and also in its opposition, except to say this.

The word "damage", per se, in Maryland, has not been defined by the courts in this context. Now, I am quite aware as the Majority Report argues that there are some twenty-odd states which have used this language in their constitution. I am also aware that these twenty states have to some extent built up a judicial history or judicial definition of the term, but I am equally aware that the Court of Appeals is by no means bound by the judicial meaning of that language in any other State.

The net result, it seems to me, if this language is continued in the constitution or is for the first time implemented in the constitution of Maryland, would be that substantially every case involving condemnation of the real estate in Maryland would have to be finally adjudicated by the Court of Appeals.

In addition to being an extremely expensive situation for the litigants involved, this will also mean delay in the implementation, if necessary, of public improvements. It will ultimately mean great additional expense primarily to the property owner.

I have for a good many years been reasonably active in the field of condemnation

as have most lawyers. In general my representations have been for the property owners so I am interested in seeing everything done to protect the rights of the property owners that can be done.

I suggest to you that this does not do it. The language if eliminated still leaves open the right to the General Assembly to describe the term "property." In the last five years they have seen fit to broaden considerably the terms by permitting the allocation of additional items of damage in condemnation cases in addition to the actual value of the property taken.

The unstabilizing effect of this language is, it seems to me, greatly to be regretted. I would therefore urge this Convention to reconsider its position and to adopt the Gilchrist amendment eliminating this questionable language from the constitution.

THE CHAIRMAN: Delegate Kiefer.

DELEGATE KIEFER: Mr. Chairman and ladies and gentlemen of the Committee, I rise to oppose the motion to reconsider. I note that Delegate Adkins did not vote. I do not know whether he was not here to hear all the arguments.

There were many misleading statements. One person said this amendment would affect property for miles around and hordes of people could collect damages. I am not at all impressed with his argument that this will create new problems and that new laws will be required. This concept has been adopted in many other states. It has been orderly and properly developed.

One other point that I think Delegate Adkins has missed is that under the present rulings of our court, there are only damages allowed when the property is physically taken. This new language enlarges the right of the property owners to collect for damage when their property is not actually taken by the sovereign State.

Consequently, I say to you, all we are doing is restating a right of the individual, a personal right, and we are enlarging it to the extent of permitting damages in a situation where modern times demand damages under certain peculiar circumstances.

This is not running wild with the public's money in certain circumstances where a taking damages property without a physical taking. The Court of Appeals now may award damages, but only when property is actually taken. There are many instances where a property is not taken but is dam-