

DEBATES
of the
Missouri Constitutional
Convention *of* 1875



Edited by
ISIDOR LOEB, PH. D., LL. B.
and
FLOYD C. SHOEMAKER, A. M.

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[24, 157] The President: The question is on the adoption of the amendment just offered.

The question was put and on division the amendment was lost. Ayes 15; Nays 21.

The President: The question is now on the adoption of the section as it now stands.

Mr. Fyan: I ask to have it read.

The Secretary read as follows:

That no person shall for a felony be proceeded against criminally otherwise than by indictment except in cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger; in all other cases offences shall be prosecuted criminally by indictment or information as concurrent remedies.

The question was put and the section as amended was adopted.

[24, 158] The President: The Secretary will read the *Twenty Second* Section.

The Secretary read as follows:

Sec. *Twenty Second*. That no private property can be taken for private use with or without compensation, unless by consent of the owner, except for private ways of necessity, as may be prescribed by law, and that whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question and as such judicially determined without regard to any legislative assertion that the use is public.

Mr. Lackland: I desire to offer an amendment:

By inserting after the word "necessity" in the second line the following words "and except for drains and ditches for agricultural and sanitary purposes across the lands of others."

I wish to remark the reason [24, 159] for offering that amendment is this. That there are thousands of acres of land in the bottom of the Missouri and Mississippi rivers and other parts of the State that are swamp lands and that are totally unfit for agricultural purposes and are injurious to health, and that these lands can be of no use unless drained and they cannot be drained unless ditches and drains are made across the lands of others. Now the present section as it stands it seems to me would prohibit

by law that the Legislature would be prohibited from passing any law authorizing the construction of such drains and ditches across the lands of others, for the purpose of reclaiming those lands. I think it is an important amendment and ought to be adopted, and for that reason I would suggest this to the minds of the members [24, 160] without further indulging in remark.

The President: The question is on the adoption of the amendment.

The question was put and the amendment was adopted and the section as then amended was adopted.

The President: If no objection is made the section will not be numbered "Twenty." The Secretary will now proceed to read Section Twenty Three.

Twenty Third. That private property shall not be taken or damaged for public use without just compensation, and the compensation shall be the fair value in money of the property taken. Such compensation shall be ascertained by a jury in such manner as may be prescribed by law, and until the same shall be paid to the owners the property shall not be disturbed or the proprietary rights therein be divested.

Mr. Ross (of Polk): Mr. President, I [24, 161] have a substitute I wish to offer for that section:

That private property shall not be taken or damaged for public use without just compensation to the owner thereof first paid or secured and no benefits of a general character shall be deducted in assessing damages.

I have no speech to make, the point I make is this, if I understand it as amended and reported from the Committee of the Whole on the amendment offered, I believe by the member from St. Louis (Mr. Gantt), this would cut out the consideration of special benefits. That is the point I wish to make.

Mr. Gottschalk: Mr. President, I offer an amendment to the original proposition:

By striking out in the second and third line of the section the words "and the compensation [24, 162] shall be the fair value in money of the property taken."

I suppose the friends of the section have a right to perfect it and therefore the amendment is in order. As the section now reads it prevents the jury who are charged with the matter from deducting any benefits which the property of the owner [,] the balance of the property which is not taken for public use [,] may derive by the opening of a road or the making of that improvement. As the section stands it reads "The compensation shall be the fair value in money of the property taken, and such compensation or the fair value thereof shall be ascertained by a jury." Now a jury would have the right to make this inquiry "How much is that property worth?" and then they would be bound in their verdict to give the owner of the [24, 163] property just the value of the property taken, and would have no right to deduct any benefits from the value of that property taken. In other words it is simply ignoring the theory of benefits. Now by opening a street sixty feet wide where a man owns four acres, the laying a road through that the owner is not damaged at all by the opening of that road, but he is benefited. Notwithstanding that to be a fact well known to every one, notwithstanding it is known to the jury they are bound under this Constitution to leave that out of view, and simply calculate that if one foot is worth \$100, 60 feet is worth \$6000, and they have got to give \$6000, to the property owner notwithstanding by the very opening of that street they benefit the balance of the property of that very person and as I said before it will prevent persons in [24, 164] the neighborhood of large cities from making any addition—laying out any additions to any city or town for the very reason that they can afford to wait until public necessities require it, and when public necessities arise the public will pay them for their property, and will improve their property at the same time. Will pay them the fair value of the land taken and in addition to that give them benefits for any other property they may have. I say it is all wrong, and I say, "that private property shall not be taken or damaged for public use without just compensation, and such compensation shall be ascertained by a jury in

such manner as may be prescribed by law." That is the way the section will read if my amendment is adopted. I ask if that is not the best way to get over this difficulty? I hope the amend- [24, 165] ment will be adopted.

Mr. Brockmeyer: Mr. President, I call the attention of the Convention to another side of the question and it is this. If the Secretary will read the section as reported from the Committee of the Whole it will assist me in making my point.

The section was read.

Mr. Brockmeyer: I will call attention to the fact that under the section as it stands now if a railroad runs diagonally through a mans farm through 80 acres, then the nature of the damage would be the value of the land taken. I leave it to the judgement of the gentlemen of the Convention whether that would be the fair measure of the damage done to that 80 acres. That is, a measure of the value of damage which, no member will vote for. Still, under that reading it seems to me that is the inevitable conclusion. [24, 166] It is the measure of damage. I might prove that you shall pay the damage, you give the measure of damage and pay the value of the property actually taken in money. Well, I take 600 feet diagonally through your 80 acre lot, and you have a triangular piece each side of the road and I pay you \$100 a foot. That is the actual property taken and that is the fair money value for the measure of damage that I have done to you under the section as it stands.

Mr. Black: Mr. President, I see a great deal of difficulty in this section as reported, and I do not believe there is any doubt about it and for that reason I feel called on to say something. Now the evident object of this section or in other words the evident effect is to cut out all benefits. It will do that beyond all doubt. I have [24, 167] examined the statutes where it calls for the fair value in money and that is the evident operation of it. There is no escape from it and I say it is improper. We discussed this question fully the other day, and now the question is whether we intend to allow advantages or disadvantages or not. I do

not propose to go into a further consideration of that. It is sufficient to say there are many cases in which it is not only just and proper but right, that benefits should be assessed as against the value of property taken, not only that, but in addition to that, the objection made by the gentleman from St. Louis (Mr. Gottschalk) is correct, and it will be seen at once that this section will operate injudiciously. I say it is unjust on both sides. First it is unjust [24, 168] to the public—next it is unjust as to the property holders, it is unjust in both ways. It says “the compensation shall be the fair value in money of the property taken.” Now it is true, as the member from St. Louis said you have either to confine the damages to the value of the property taken—I assert that is not the measure of damages as heretofore understood. We have a statute here about public roads which says, “in determining that the jury or commissioners shall take into consideration the advantages or disadvantages.” Now pass this section and you cannot take into consideration the damages to anything, all you are confined to is exactly the value of the property taken, and I say in many instances the actual value of the property taken is by no means a fair compensation. Oftentimes the other property which is not [24, 169] taken is damaged more than the value of the property actually taken. There are many cases also where the actual benefits resulting from taking property would by far exceed the value of the property taken or any damages thereto. I insist that we ought to adopt the old provision of our Constitution as it is, and then let it stand, and let the Legislature regulate the modes of making assessments in different matters. It requires assessments sometimes, in cases of railroads it should be one way and in the case of corporations sometimes another, and in the case of a large district of country where they undertake to make drains for public benefits it requires it in another way. Now it seems as I said the other day that sometimes there have been great outrages committed but we have already adopted a [24, 170] section which completely overturns the law I take it, as heretofore understood—when the Legis-

lature has declared heretofore that it was necessary for the public benefit and that the property was taken for the public benefit we have generally conceded that it was, and that was the end of it, and then proceeded to the condemnation. Now as we have adopted the 22d section the question as to whether it is for public use or not is left open—to be adjudicated and determined. Now that has been the difficulty heretofore; property has been taken for purposes which many times was really not public. There is where the difficulty has occurred and I say when we have adopted that section we have avoided all these supposed difficulties that have occurred heretofore, and if we proceed further to adopt this section I say we have almost absolutely destroyed [24, 171] the whole right of eminent domain.

Mr. Adams: Mr. President, I will offer an amendment, to strike out in the second and third lines the words “and the compensation shall be the fair value of the property taken.”

Mr. Gottschalk: That is the same as mine?

Mr. Crews: Mr. President is a substitute in order?

The President: There is a substitute pending, the question now will be on the adoption of the amendment offered by the member from St. Louis (Mr. Gottschalk).

Mr. Crews: That is not a substitute.

The President: That is an amendment to the original section.

Mr. Crews: I propose to offer a substitute.

The President: There is also one substitute pending.

Mr. Crews: I will read mine for information, I offered it a few days ago:

That no property shall be taken or damaged or applied to public use without just compensation.

[24, 172] The President: The question is on the amendment of the gentleman from St. Louis (Mr. Gottschalk) to the 23d section as it now stands.

The question was put and the amendment was agreed to on division.

Ayes 42. Nays none.

Mr. Crews: I will offer mine as an amendment:

Strike out all after the word "that" in the first line and insert:

That no property shall be taken, damaged or applied to public use without just compensation.

I will offer the last part of that section:

That such compensation shall be ascertained by a jury as may be prescribed by law, and until the same shall be paid to the owner or into court for such owner the property shall not be disturbed or the proprietary rights therein be divested.

Mr. Spaunhorst: The substitute lies over until all that is on [24, 173] the table is out of the way except the adoption of the section—the substitute can then be taken up and acted on as an amendment; if that is voted down we come back to the original question again.

The President: The gentleman from Franklin has prepared an amendment.

Mr. Crews: I want to add this to it.

Mr. Todd: I have an amendment I wish to propose.

The President: It can be read for information.

Mr. Todd: I propose to add:

Or court of commissioners of not less than three, and in such manner as may be prescribed by law.

Mr. Fyan: What is before the House.

The President: We are waiting for Mr. Crews to prepare his amendment.

Mr. Priest: What has become of Mr. Ross' substitute?

The President: That is before the house waiting for Mr. Crews.

Mr. Ross: I ask that my substitute be read.

The substitute was read.

[24, 174] Mr. Crews: My substitute is as follows:

That private property shall not be taken or damaged or applied to public use without just compensation. Such compensation shall be ascertained by a jury in such manner as may be prescribed by law, and until the same shall be paid to the owner or into court for such owner the property shall not be disturbed nor the proprietary rights therein divested.

The President: Does the gentleman offer that as an amendment or a substitute?

Mr. Crews: No sir it is simply an amendment, and in looking over it the only word changed in it as it now stands after striking out the second line is the term "applied." I intended to follow as nearly as possible the language in the old Constitution.

The President: This is regarded as an amendment to the proposition as it now stands. The question will be on the adoption [24, 175] of this amendment.

The question was put and the amendment was lost.

The President: The question now is, on the adoption of the substitute offered by the gentleman from Polk.

Mr. Priest: I do not think the Convention understands the question, I do not myself.

Mr. Spaunhorst: The proposition offered by the gentleman from Polk (Mr. Ross) is now in the shape of a substitute. It seems to me with the little familiarity I have with the subject of the condemnation of private property for public use, that the section as amended by my colleague from St. Louis as it now stands will cover the whole case, and having worked on the section for a long time and as it has taken considerable time & we have now come to a final proposition if I understand the gentleman's substitute aright, the one proposing that damages outside of the actual property [24, 176] taken shall be considered and benefits as well on the other hand, the other gentleman proposed by substitute that benefits shall not be assessed.

Mr. Ross: "Of a general character"—allowing special benefits to be considered in the assessment of damages.

Mr. Spaunhorst: I think from the debate that has sprung up on this question in regard to this section that it has been fully demonstrated that it would be wrong to bind the General Assembly and prevent them from passing any law by which benefits may be assessed. For instance, I will cite an example of a street opening which very frequently becomes a matter of necessity. I think the jury should have the right to consider the benefits that are derived in

many cases from opening streets. The illustration given by the gentleman from Platte [24, 177] (Mr. Norton) the other day in reclaiming lands where railroads were built through them. Such lands may be benefitted very materially in the digging of ditches & the like of that, and that ought to be considered as benefits, in the damages awarded to a man for taking his land. I believe the section as it now stands is about the right thing, and I trust that the substitute as now pending will be voted down.

The President: The question is on the substitute offered by the member from Polk.

The question was put and the substitute was lost.

Mr. Hardin: I wish to offer an amendment:

Amend, by adding to the section:

The fee of the land taken for Railroad tracks without the consent of the owners thereof shall remain in such owners subject to the use for which it is taken.

Mr. McCabe: Mr. President, I had [24, 178] prepared a similar amendment and I trust the amendment will be adopted. If it is in order to speak to it I will do so. The object is to destroy the anomaly which now exists in regard to land taken for railroad tracks. The law as it stands now and has stood for a number of years does not allow the owner in case of a voluntary grant to get anything for the use of the land and presents the strange anomaly on the other hand where it takes it against the will of the owner that it condemns the fee: hence, when persons have conveyed voluntarily and where the use fails they may take the title back, but where the title is divested by commissioners and the enterprise fails the Company is supposed to own it. I might mention a case I have in my mind now. A railroad traversing the North Eastern portion of this State which I believe [24, 179] will never be run, but which is partly graded from the Mississippi River to Memphis and runs through valuable fields and farms, some person having bought in the franchise but still no part of the road running these persons who have had their land condemned cannot get it back again. I trust this amendment will prevail.

The President: The question is on the adoption of the amendment.

The question was put and the amendment was agreed to.

Mr. Todd: I propose now to offer the following amendment which I will read for information:

Amend by inserting the words "Board of Commissioners of not less than three" after the word "two" in line three.

It will be observed that this compensation as it now stands shall be estimated by a jury. This provides that it shall be left to the Legislature to provide either a jury or [24, 180] Commission.

Mr. Brockmeyer: Mr. President, I would suggest to the member from St. Louis an additional safeguard in the law "*provided*, that they must be freeholders," so that the jury cannot be packed as it is sometimes done. I do not know whether it is appropriate because my attention has been diverted, whether a property qualification of the amendment could be inserted there so as to make commissioners have the same qualifications. The mere appointment of commissioners might be abused as well as the method of appointing jurors. I do not know whether it would be appropriate or not.

Mr. Todd: I am very happy to accept the amendment. I will insert "Board of Commissioners of free holders."

The President: The question is on the adoption of the amendment.

The question was put and the amendment was adopted on division.

Ayes 28—Nays 19.

[24, 181] Mr. Wallace: Is it in order to offer a substitute for the whole section?

The President: It is.

Mr. Wallace: I offer this:

No private property can be taken or damaged or applied to public use without just compensation to be ascertained in a manner that may be provided by law, and the fee of the land for railroad tracks taken without the consent of the owner thereof shall remain in such owner subject to the use for which it was taken.

The object of that amendment is, to get clear of what I conceive to be the objection to the amendment of the gentleman from St. Louis—by legislation that is prescribed to assess damages, and also to get clear of the provision in the section as reported from the Committee of the Whole requiring a jury. Now Mr. President anybody who is familiar with the condemnation of land for rail- [24, 182] road purposes or telegraph lines turnpikes and other purposes is aware that it will not do to adopt a method requiring a jury all the time, it is an expensive and cumbersome proceeding to take through a series of counties a jury to go along to assess damages. It would be exceedingly inconvenient and expensive. Our statute has fixed a method in reference to this matter page 336, Volume I, in regard to the value of lands taken for telegraph, macadamizing or railroad purposes. It will be perceived the Legislature has provided under the Constitution as it now stands, that private property cannot be taken for public use without just compensation, and the method by which it shall be taken and paid for. It is not necessary to say in the first place that the compensation shall be paid in money, because the words [24, 183] employed are, that the property shall not be taken without just compensation, and as a matter of course that implies that the compensation shall be paid, and the Supreme Court has passed on that formula of words over and over. I suppose there is no section in the Constitution, in this or any other state that has been more frequently before the court, nor one that is so well settled as this.

These words have been well construed in the case of the Hannibal and St. Joe Railroad against Platte County in 35 Mo. The courts decided there that the compensation must be ascertained and either paid or tendered. It will not do to say however that it must be actually paid because you may send out commissioners. [24, 184] The law requires when there has been an assessment by commissioners and a petition is filed in the circuit court asking the facts in the case of the land sought to be appropriated by the railroad or private corporation under the laws of this State

belonging to a private person and such corporation and owners cannot agree, on a proper compensation, that in case one is incapable of contracting, or a non-resident—such corporation may apply to the circuit court of the county where such lands lie.

[24, 185] Now after these commissioners are appointed they go along the line of the road and examine the land and identify it—the owners identify it and they know which they have to assess and what they have to do, and they report, and that report is returned to the court and remains there. If it is not excepted to in ten days it remains as an assessment, if excepted to, then the court may appoint jurors. The court may hear the evidence and determine what shall be the damage. Now to say that a jury has to go on, and do this thing would be exceedingly cumbersome, and unwieldy. Hence, I say we ought not to go into legislation.

When we say that private property cannot be taken for public use without compensation, we assert all that the Bill of Rights ought to assert. I propose to add [24, 186] to satisfy the members “in such manner as may be ascertained by law,” but not to assert it ourselves. Not to provide that it shall be by jury, and that no other method can be adopted. In all county roads you would have to have a jury. Now we do not have to have such things under our law now. We send out our road commissioner and he assesses the damages and they are returned into court and if no objections are filed they remain as assessments. If objections are filed the party can have a jury on exceptions, and if he fails to get any more damages he pays the costs. In this case we are entering virtually the domain of legislation. We are attempting to make a fundamental enunciation of principles. If we go into legislation we may conflict with the statute. This doctrine has been passed upon over and over again by the courts. [24, 187] It has been amended by the Legislature as the exigencies of cases have required, and I hold it is improper for us to go into it. Hence, I want to get clear of all that kind of thing, “that such compensation shall be ascertained by a jury in such manner as may be

prescribed by law, and until the same shall be paid to the owner or into court for such owner, the property shall not be disturbed nor the proprietary rights therein be divested."

Now suppose a man is sent out and makes an assessment and that assessment is returned into court, if the corporation then tenders to the owner the amount, and deposits it in court under the statute for the use of the owner, if he files exceptions, he cannot delay the public work, and it proceeds notwithstanding his exceptions. This requires that it shall be actually paid, and until it is paid the work [24, 188] cannot go on at all, it is delayed by the exceptions. A commissioner is appointed or say a jury is appointed and finds out the damages and the owner is not satisfied. Is he to be allowed to appeal and yet stop the public work by his appeal and prevent the payment of money and the progress of the public work? The corporation may have hundreds of hands employed ready to go on with the enterprise. Is that to be stopped because the owner will not take the amount the jury has found or awarded to him? Not at all, let the amount then be tendered to him and if he don't take it, it remains in court subject to his call if he wants it, and if he does not, let him make exceptions and let the work go on, and let the assessments be made. In St. Louis where it is important to open streets, if they attempt to widen [24, 189] a street or to cut ten feet off a man's land the jury will assess damages, & the city is ready to go on and macadamize the road and open it. But, under this proposed amendment were a jury to assess damages and they were appealed from by the owner the whole thing is to be stopped and the public work of the city is to be stopped under that appeal, and it has to be taken to the circuit court and maybe to the Supreme Court; it will not do. We must allow these works to go on; if they are worth being prosecuted at all they are worth being prosecuted without interruption. The statute has already a provision clear and explicit. The corporation or city must tender the money or assessment, and then though there be a subsequent proceeding the work still goes on. But this requires that it shall be paid absolutely before

[24, 190] the property shall be disturbed at all. Why sir that will cripple public enterprises in our cities, and the building of roads and telegraph lines, macadamizing roads, and county roads, and everything else by such a provision. Let us take the enunciation of a fundamental principle, I am willing to add, according to the suggestion of the gentleman from Pike "that the fee shall remain in the owner, subject to the use of the public or corporation," I am willing to add that, to meet this idea on that subject, but I do not think it necessary.

("Question," "Question.")

The President: The question is on the adoption of the substitute of the gentleman from LaFayette (Mr. Wallace).

Mr. Massey: I have been listening so long I do not know what it is.

(Laughter).

Mr. Wallace: I am willing to add "the fee of the land taken [24, 191] for railroad tracks and other purposes."

Mr. McCabe: I hope the gentleman will not make that addition to it. There are cases where the fee ought not to go back.

Mr. Shanklin: I propose to amend by striking out all after the word "law," so that it will read:

When land is taken for public use the fee shall remain in the owner subject to the use for which it is taken.

Mr. Wallace: I accept it.

Mr. Shanklin: So, that it will read:

That no private property can be taken or damaged or applied to public use without just compensation, to be ascertained in a manner that may be prescribed by law. When land is taken for public use the fee shall remain in the owner subject to the use for which it was taken.

Mr. Gottschalk: I understand that this covers all cases of con- [24, 192] demnation of private property, for public use, and that the fee of the land shall remain in the owner subject to the use of such public improvements. Now the principle is correct, but I do not think it applies to all cases; therefore we ought to be a little careful in this matter. For instance we have a very large corporation in

St. Louis which is called the Union Depot Company which condemns all that property about 200 feet in width and 100 feet in length between 7th and 12th streets, two or three thousand feet in length, and which uses the property to erect a great mammoth depot there. They too proceeded by condemning the property and as a matter of course in as much as the owners do not except [expect] ever to get it back the jury in every case gives full compensation for the value of the property taken [24, 193] for the business and improvement. I had something to do with the condemnation and I know about it. It is just that they should. Now as they paid the full value, and paid for the business the question is, shall they in 500 years from now, when this Union Depot Company happens to move to some other place, shall they come back through their heirs and institute a lawsuit for this property, which could be done under this provision, and demand that the title of the property shall be returned to them? Now I say all this is going a little too far. Cases may arise in the future of this sort, and there is no question but that it is like all these donations. A donation is made for a certain purpose, and if it is not complied with, then it shall revert to the owner, that may be a thousand years from this time, and then [24, 194] these parties heirs, these parties whose ancestors received full compensation for this property can actually come in and claim this property. Now in reference to the case of this Sacred Heart Convent there was a provision something like that I think and with reference to the Lucas Market. I am opposed to it and hope if anything is put in the Constitution, that it will be restrained like the Constitution of Illinois & as the gentleman from Pike (Mr. Hardin) offers an amendment, let it be restrained to the fee of the land taken for railroad purposes, that it shall remain in the railroad, subject to the use of the railroad, so that when the railroad changes the route—there is no question but what it will return to the owner from whom it was taken, but as to other purposes it is going too far. It can be regulated by law, but ought not to be in the Constitution.

[24, 195] Mr. Shanklin: Mr. President, I do not wish to discuss the question but only to make this observation. The same principle is involved in 100 feet right of way as in the Depot in St. Louis, when it is used for purposes for which it has been condemned. Of course the right of the owner is silenced. It is subject to that use, no difference whether it is a depot or a railroad track; it reverts in the case of a railroad track without this provision although it may be 500 years or ten hundred years as the gentleman puts it. If that railroad company occupied 100 feet of ground and then abandoned the track and it is laid somewhere else, there is no question but what the title of the ground reverts to the owner. The same principle runs through all condemnations.

Mr. Gottschalk: In one case you condemn the right of way [24, 196] and in the other the property itself.

Mr. Shanklin: Suppose 100 feet takes a man's entire lot. Suppose it happens to be 100 feet and the whole is taken?

Mr. Brockmeyer: I believe the law is well settled in regard to this matter. There was a case in St. Louis in relation to what was known as the Arsenal sewer, where the City undertook to steal a lot, and it was quarried out for a public highway; in building the sewer they had quarried out through the rockbed and the owner brought suit & recovered. The courts have commenced to wobble on the subject. Let me give an instance well known to every citizen in St. Louis. It will be remembered that the line of street cars to Grand Avenue in the northern part of the City, there is a heavy grade to Broadway & from there to the Water-works. Now there is a broad street dedicated by the [24, 197] citizens of territory condemned for a public highway; the city goes and lays a water main through that street up this heavy grade; a water main 40 inches in diameter, and the result is, that they have from five to six springs pouring forth; beautiful streams of crystal water the whole year round on that street, and two or three squads of laborers digging up the street from years end to years end, and the whole use to which that property was bought and acquired by the city is simply

wiped out. Now I believe the remedy lies under the law as it stands. At the same time I think under the decision of the court as has been well observed, there is quavering in these decisions, and I do not think that ought to be allowed. I am in favor of restraining the party who used this right of eminent domain [24, 198] of restraining him to the use for which he invokes that power. Whenever that use ceases, I think that the power ought not to be exercised and be transferred to some other use. When a party invokes that power for a specific public use or benefit, he ought not to have the right to substitute some other use for it subsequently. Now I presume that he is prevented from so doing from the reading of the amendment, and I shall favor the amendment.

Mr. Shackelford: I suggest that we are proceeding too fast in this matter; now suppose a street is opened in a town and it is dedicated to public use, and suppose persons build on that street, and the street is afterwards abolished. The gentleman will see what evil it brings [24, 199]—there are other public instances. For instance we might have water-works and large enterprises where the land itself is taken and the value of it is paid in to the owner. It certainly would produce confusion that would be interminable in law-suits.

Mr. Black: As the gentleman has said if we go to the extent this amendment proposes to go, we are certainly upsetting everything; for instance go to the City where they acquire property by condemnation for market houses and pay the absolute value of the property. Now circumstances may arise which are not necessary to define, and which render it necessary to put that market house in another place. Now the proposition is, the City in the first place goes and pays the absolute value of the property and puts a market house on it. But finally it comes to the conclusion [24, 200] that it would be better for the people in that vicinity to remove that market house and put it in another place. What is the result? It loses everything that it has put there. I say it is not proper. As far as railroads are concerned there is no objection to them because that is simply what the courts

have held to be the law anyhow, that they only acquire the right of way and not the fee, and that too, notwithstanding their charters give them the right to acquire the property. There are many cases where it is different; plenty of cases where if the corporations acquire the property and pay its absolute value they ought to have the right to dispose of it and transfer the proceeds to some other place and not let it revert to the original parties.

Mr. Wallace: I believe I prefer the substitute as I offered it. I was [24, 201] at one time disposed to accept the amendment of the gentleman from Grundy (Mr. Shanklin) but I believe there is a serious objection applying to cases of condemnation. I think I prefer that the exception should remain to "property for railroad tracks and other ways."

Mr. Shanklin: Mr. President, I have not been able to see the force of the argument of the member from Howard (Mr. Shackelford) or the member from Jackson (Mr. Black). The member from Jackson says that if they condemn a man's land for a market they propose to exercise the right of eminent domain and force a man out of his house and home—take his ground from him and devote it to public use; next you take away that public use and devote it to private use without a man's consent. I deny any such right of eminent domain known to the law. Again, the gentleman from Howard [24, 202] says "land may be condemned for a street, and persons may build on that street and afterwards the authorities may move the street somewhere else."

Mr. Shackelford: Abolish the street.

Mr. Shanklin: I take the position of the gentleman from St. Louis (Mr. Brockmeyer). I am opposed to singling out under the exercise of this eminent domain a single interest and making the Constitution applicable to that interest, when the same principle runs through all condemnations for public use. That is the objection I have; hence, I would make it universal. The law is universal. This right of eminent domain is universal. You cannot today condemn a man's land for public use and tomorrow change that use. As I understand the law as to railroad tracks notwithstand-

ing the charter says in the condemnation the fee simple passes to the railroad company; yet, [24, 203] I do not understand that conveys the fee. I do not understand that to be, but I understand the law, on the contrary it is simply the use that is condemn[ed], and the fee remains in the individual owner. The case the gentleman puts in regard to the depot building in St. Louis, no difference how large it is, no difference about its length and breadth—I am just as much entitled to my ten feet square as any other person would be to 500 feet, or the Company would be in the construction of the depot, they condemned it for that depot purpose, and when they abandon it for that purpose the fee returns as a matter of law to the original proprietor—the objection I have is to singling out a single class of condemnations and stating that the fee shall not pass in those and leaving out the others. As the gentleman from St. Louis (Mr. Brockmeyer) says the courts are wobbling a little and I am in favor of preventing [24, 204] it in the future.

Mr. Hardin: Mr. President, I do not desire to discuss this question but I agree entirely with the gentleman from St. Louis Mr. Gottschalk. I think there is a difference, a great difference between the proposition which I have offered—that the right which the railroads acquire in running their roads through the State after such use shall have ceased, that the right reverts to the property owners, and the case that Mr. Gottschalk has spoken of. Now in the case of the depot in St. Louis and in all similar cases I believe it is well known and understood from the very beginning that the corporation or company which condemns such ground absolutely pays the actual value in cash for that property; in the other instance when you run a railroad through the State [24, 205] 150 miles or one hundred miles as the case may be, you run it through farming lands, you acquire the right of way. You may change the track, and in assessing the value there, that the company or corporation pays, it has been customary in this and other states to take into consideration also the benefits that accrue to the land as well as the damages; in the other instances they frequently

take all the property that a man has, and pay him the cash value for it. That is one very essential difference; a very great difference. This case of a railroad is only intended to meet the case where railroads for certain reasons change their tracks, and the farming lands and all such lands as they use revert to the owner, but the other case is entirely different from that put by Mr. Gottschalk and [24, 206] there should be no reversion in such cases.

The President: The question now is on the adoption of the amendment of the gentleman from Grundy to the substitute offered by the gentleman from LaFayette.

The question was put and the substitute was lost.

The President: The question now is, on the adoption of the substitute of the member from LaFayette.

Mr. Wallace: With the consent of the Convention I will add after the words "railroad tracks" "and other rights of way."

The President: It will be made if there is no objection.

Mr. McCabe: I object.

The President: The question is on the adoption of the substitute offered by the member from LaFayette.

The question was put and the amendment was lost.

The President: The question now is, on the adoption of the section as amended.

Mr. Hardin: I desire to offer [24, 207] another amendment:

Strike out the words "until the same shall be paid to the owner or into court for such owner, the proper [property?] shall not be disturbed or the proprietary rights therein be divested."

I offer this amendment because it seems to me those words are superfluous, and I hold a matter of legislation. I agree with the member from LaFayette in his remarks on the subject. I think it well for the Convention to adopt that amendment.

Mr. Gantt: Mr. President, that provision was found in the section as reported by the Committee, and I will simply state one instance in which the existence of such a provision would be most salutary. Measures are being taken in

St. Louis at this time or were being taken when I left there for taking [24, 208] property for public use and proceedings were being instituted for taking this property for public use without the consent of the owner, and the report of the commissioners was had, and the County Court called upon the owners to make a warranty deed for the property; they in the meantime had taken possession of it and had been in possession ever since the first of January. They called upon the owners to make them a Warranty Deed, for the property & when they demurred they told them they might wait for their money a good while before they would get it, unless they would make them a warranty deed. Now that kind of outrageous and scandalous conduct perpetrated by those who are thus unworthily clothed with authority, was practiced towards persons [24, 209] whose property was taken, to a large amount for public use in St. Louis, and it is for the purpose of putting an effectual check upon abuses of that nature that a provision of this kind was added to the section. I say that since January the County Court has been in possession of that property and that they only talk of making compensation as of the first of May, and that they threaten the owner that unless the property that has thus been taken from them is conveyed to the County with a Warranty that they may whistle for their money a long time before they can get it. It is a monstrous thing that the rights of the owner should have been invaded in this manner except for the answering of a public use. It is a monstrous thing that the public agents should attempt this tyranny. It is [24, 210] for the purpose of preventing not only giving to the owner a remedy at law by which he may go into court and ask for a mandamus against the County Court to pay that money but in order to discountenance it and to let these minions of authority know that they are violating the law & public right and violating the fundamental law of the land in attempting this tyranny that this provision was added to the section by the Committee on the subject of the Bill of Rights, and I think when the member hears of the abuses which follow the absence of

such a provision he will be inclined to withdraw his amendment.

Mr. Adams: If we adopt the amendment proposed it does away with compensation entirely straight out. If a man's property is taken for public use by a railroad and that turns [24, 211] out to be insolvent, and it appropriates it and uses it for other purposes, then he has to whistle for his money. Now the construction of this has always been by the courts of this State, at least, that his rights were not disturbed until the money was paid over to him. Now they propose to give the property away and allow him to whistle for his money.

Mr. Hardin: My only object in offering the amendment was because I thought it was a proper subject for legislation, but as other members object to it I will withdraw the amendment with the consent of the Convention.

Mr. Wallace: I offer the following:

Amend by striking out the words "by jury" in the third line.

Mr. Adams: That has been acted on two or three times.

The President: I will rule it out of order.

[24, 212] Mr. Gantt: Is it in order to move a substitute for the section?

The President: It is.

Mr. Gantt: Then I move this substitute:

That whenever private property is taken or damaged for public use just compensation shall be made to the owner therefor and the measure of such compensation shall be the fair value of the property taken or a sum sufficient to balance the injury done thereto by the public use or improvement; in all cases the owner of the property taken or injured may require the compensation to be assessed by a jury, and until the compensation awarded shall be paid to the owner or into court for the use of the owner, the proprietary rights of the owner shall not be divested.

Mr. President, The substitute which is offered obviates the objection made by my colleague from St. Louis that when a railroad [24, 213] track crosses a field diagonally the value of the land taken would not be a just measure

of damage inflicted on the land. The section which was reported by the Committee of the Whole was undoubtedly in a somewhat fragmentary condition. The substitute as now offered obviates these objections and steers clear I think of the objections taken by other gentlemen in the course of the debate. The language of the last clause of the section obviates the error which is to be found in the seventh line of the section as it now stands "that property shall not be disturbed nor the proprietary rights therein be divested." Proprietary rights of whom? Mr. President, that ought to be stated, so that the substitute I have offered is one which I think comes up to the intention and the [24, 214] Committee of the Whole acting upon the report of the Committee on Preamble and Bill of Rights, and obviating some errors which crept into the section as amended by the Committee in consequence of the fragmentary manner in which the amendments were adopted.

Mr. Hyer: Ayes and Nays.

The President: The question is on the adoption of the substitute offered by the member from St. Louis to the 23d section as reported by the Committee of the Whole.

The question was put and the substitute was lost.

Ayes 20, Nays 40 as follows:

(Insert)¹

Mr. Dysart: I have an amendment to the section:

Strike out all after the word "that" in the first line and insert as follows:

Private property shall not be taken, appropriated or damaged for public use without just compensation to be ascertained in such manner as may be provided [24, 215] by law; and in all cases the owner of the property taken or injured may require that the compensation be assessed by a jury, and until that compensation shall be tendered or paid into court for the use of the owner the proprietary rights shall not be divested.

The President: The question is on the adoption of the amendment.

Lost.

The President: The question is on the adoption of the section as amended.

¹From *Journal*, I, 282-283.—Ayes, 20; Noes, 40; absent with leave, 3; absent, 5.

The question was put, and the section was adopted.

The President: The number of the section will be corrected by the Secretary. The Secretary will now read the twentyfourth section.

The Secretary read as follows:

Twentyfourth. That in all criminal prosecutions the accused shall have the right to appear and defend, in person and by counsel, to demand the nature and cause of the accusation, to meet the witnesses against him [24, 216] face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy, public trial by an impartial jury of the county.

Mr. Todd: I desire to offer the following:

Amend by adding after the words "face to face" in the third line the following:

In cases not capital if the witnesses be beyond the jurisdiction of the State or dead at the time of trial, the depositions of such witnesses taken in the presence of the accused and with notice to him, in such manner as shall be provided for by law, may be read in evidence on the trial.

It is admitted on all hands that the administration of our criminal law needs some change there is something about it that is inefficient in the Committee of the Whole I proposed that proposition, but it did not except capital cases. Now it does except capital [24, 217] cases and I propose to accomplish two objects. One is, a speedy trial which we have resolved should always take place in public trial and the other is to prevent the incarceration of innocent witnesses. It will tend to bring about a speedy trial because it will prevent what is called chinanigan, I believe in criminal courts, which means a system of delay whereby witnesses are to be got rid of either by getting them out of the State or otherwise. A great many of them are of that class that have no particular homes or change their homes for a consideration. I have heard of such cases; now it is manifest to me that there never can be justice under such a practice as this. I believe the general fact [24, 218] is that delays in trial are owing chiefly to the applications of the accused. If he wants a speedy trial he can generally have it. Certainly if a witness is beyond the jurisdiction of the State