

1904, art. 23, sec. 366. 1888, art. 23, sec. 254. 1886, ch. 161. 1908, ch. 240, sec. 366. 1910, ch. 55, sec. 366 (p. 74).

**405.** Any of the corporations formed under class thirteen, section 28 of this article, as codified by the Code of 1904, shall have the power which is conferred upon telegraph companies incorporated under this article by section 359, and may construct and lay any part of its line or lines underground or any route for which it is authorized to construct such lines in whole or in part, above ground, and such corporation may acquire by condemnation any property or right whatsoever necessary for its purposes in its discretion, either in fee simple or the use thereof in fee simple, or for a less estate, either in the manner set forth in sections 269 and 160,\* or sections 399 and 404 of this article; provided, however, that all corporations incorporated, or to be incorporated by virtue of said section 28, class thirteen, and all corporations heretofore or hereafter incorporated under the provisions of the corporation law of 1908, shall obtain the assent and approval of the mayor and city council of Baltimore city, before using the streets or highways of Baltimore city, either the surface or the ground beneath the same. The provisions of this proviso, however, not to apply to such corporations as are now in practical operation and have laid or constructed their lines, pipes, mains or other structures, or any part thereof in the city of Baltimore, except as to the use and occupancy by them of new and additional streets and highways in the city of Baltimore by their lines, pipes, mains or other structures.

The supplying of electric power or energy to the public generally on equal terms is a public use, and a corporation which supplies such power may be vested with the right of condemnation. A corporation held under its charter to be a public service one, and authorized under this section to acquire property by condemnation. The fact that some of the purposes for which a corporation is chartered are public and some are private, does not prevent it from exercising the right of condemnation unless the two purposes are so combined that they can not be separated. A corporation may condemn property in fee simple and also an easement upon other land facilitating the use of the fee simple. A public service corporation which has condemned land for a public use, can not by an amendment of its charter, divest itself of such public use, and hold the land for private purposes—see section 76. The question of whether a corporation has the power of condemnation, may be raised by a bill for injunction. *Webster v. Susquehanna Pole Line Co.*, 112 Md. 419 (decided prior to the act of 1910, ch. 55)

A turnpike road partly in Baltimore city owned by a private corporation, and streets owned by individuals but used by the public as highways, are "streets or highways of Baltimore city" within the meaning of this section. The city of Baltimore has the right to enjoin a corporation from using its streets for the transmission of electric light and power where the corporation has not received authority so to do. *Patapsco Co. v. Baltimore City*, 110 Md. 309 (decided prior to the act of 1910, ch. 55). And see *Edison, etc., Co. v. Hooper*, 85 Md. 112; *Chesapeake, etc., Telephone Co. v. Baltimore City*, 89 Md. 702.

Where a special act of the legislature authorizes a corporation to transact any business in which electricity is used, and confers upon it in Baltimore city all the rights and privileges mentioned in this section, the successor of such corporation is empowered to conduct an electric light business in

\*The reference here to section 160 is evidently a clerical error, section 270 being no doubt intended.