

Jury trial; notice; damages.

If the law under which the condemnation is had, provides for an original assessment or award and for a jury trial on appeal therefrom, this section and art. 5 of the Declaration of Rights have been complied with; and if no appeal is entered within the time prescribed, and the compensation assessed is paid or tendered, the property may be taken for a public use. The compensation need not be paid or tendered before a survey is made or other preparatory steps taken, but a street cannot be opened or used, or the land entered to grade or to prepare the ground for that purpose, until the compensation is tendered or paid. *Stewart v. Baltimore*, 7 Md. 511. And see *Knee v. City Passenger Ry. Co.*, 87 Md. 625; *Howard v. First Church*, 18 Md. 455. *Cf. Danner v. State*, 89 Md. 226.

This section referred to in deciding that in a proceeding to condemn property under art. 23, sec. 331, of the An Code, the owner is entitled to notice before the property is condemned and notice of the pendency of the inquisition in the court for confirmation is not sufficient. The jury meant by this section is either a common law jury or a jury summoned by warrant. *Baltimore Belt Co. v. Baltzell*, 75 Md. 105. And see *Pitznogle v. Western Md. R. R. Co.*, 119 Md. 682.

The method for ascertaining compensation by three appraisers, provided by the act of 1912, ch. 117, their award to be subject to exception, and the exceptions to be tried before a jury unless a jury trial is waived, held not to violate this section. The measure of damages in condemnation cases, as in all other cases, is a question of law, and the act of 1912 did not attempt to establish such a measure. *Ridgely v. Baltimore*, 119 Md. 572; *Pitznogle v. Western Md. R. R. Co.*, 119 Md. 677.

The legislature cannot fix the compensation to be paid in condemnation cases, as that must be passed on by a jury. *Pa. R. R. Co. v. B & O. R. R. Co.*, 60 Md. 269.

On appeal from the award of the commissioners for opening streets of the city of Baltimore, the city, as well as the property owner, is entitled to a jury trial; this is true though the appeal is taken by the property owner. History of this section. *Patterson v. Baltimore*, 127 Md. 235.

An award of damages for the opening of a street which did not include compensation for the resulting injury to the land not taken, would not constitute just compensation within the meaning of this section. *Baltimore v. Megary*, 122 Md. 28.

Sec 175C of the Baltimore city charter (act of 1914, ch. 125) making the return of the commissioners for opening streets *prima facie* evidence of the correctness of the amount of damages awarded, does not violate this section. *Bonaparte v. Baltimore*, 131 Md. 86.

Generally.

This section referred to in justifying an injunction upon a bill alleging acts without legal authority, done and threatened, which will cause irreparable damage and that no compensation had been paid or tendered for the use of certain land. *Western Md. R. R. v. Owings*, 15 Md. 204. And see *American Telegraph Co. v. Pearce*, 71 Md. 539.

Title does not vest until the amount assessed is paid or tendered; the mere assessment of damages does not constitute a taking, and the corporation may renounce the inquisition and abandon its enterprise at any time before actual payment. *Norris v. Baltimore*, 44 Md. 604; *Merrick v. Baltimore*, 43 Md. 231; *State v. Graves*, 19 Md. 370.

Both an assessment by commissioners with a right of appeal and the assessment of benefits on the owners benefited, are established as constitutional modes of providing compensation to owners of land taken for public use. *State v. Graves*, 19 Md. 369.

The portion of the act of 1817, ch. 148, providing that no one should be entitled to damages for improvements unless the same were erected before a certain street was laid out, held unconstitutional; where property is taken for the bed of a street, the owner is entitled to compensation as if no street was opened over it. *Moale v. Balto.*, 5 Md. 321. And see *Stewart v. Baltimore*, 7 Md. 510.

The act of 1860, ch. 265 (incorporating the Consolidation Coal Company and giving it all the rights of eminent domain in the construction, etc., of railroads which had been conferred upon the Baltimore & Ohio Railroad), as well as the charter of the Baltimore & Ohio Railroad itself, must be construed in connection with and as subordinate to this section. *State v. Consolidation Coal Co.*, 46 Md. 6.

This section referred to in holding that the warden of the Maryland Penitentiary might be made a defendant in an ejection suit; the immunity of the state from suit does not prevent an action against a state official wrongfully withholding property for state uses. *Weyler v. Gibson*, 110 Md. 653.