

some of the purposes for which a corporation is formed are public and some private, does not prevent it from condemning property for its public uses unless its public and private purposes are so combined that the two cannot be separated. The Susquehanna Pole Line Company held to have the right of condemnation. How to determine what is a "public use." Cases reviewed. *Webster v. Susquehanna Pole Line Co.*, 112 Md. 416. *Cf. Arnspurger v. Crawford*, 101 Md. 251. And see *American Telegraph Co. v. Pearce*, 71 Md. 539.

This section impliedly prohibits the taking of private property for private use. The legislature cannot make a particular use, either public or private, merely by so declaring it; whether a use is public or private, within the meaning of this section is a judicial question. The use of a part of land condemned by a railroad company for the location of a private road in substitution for an existing private road which was to be closed and used by the company for railroad purposes, held to be a public use within the meaning of this section. *Pitznogle v. Western Md. R. R. Co.*, 119 Md. 677. And see *Arnspurger v. Crawford*, 101 Md. 251.

Where by a municipal ordinance an alley is directed to be closed, the result being that certain abutting owners lose their easement in the closed portion and the appellee is enabled to erect a building upon it, this is a taking of private property for private use, the public service being in no wise promoted. This section only permits the taking of private property for a public use, and whether the use is a public one is a judicial question. Ordinance held invalid. *Van Witsen v. Gutman*, 79 Md. 411.

While the legislature cannot confer on the city of Baltimore the power to take private property for any use but a public one, since the conveyance of water to a city is a public use, a right of condemnation by the city under the act of 1853, ch. 376, for the purpose aforementioned, was upheld. *Kane v. Baltimore*, 15 Md. 249.

The act of 1910, ch. 110, providing for the condemnation of property for the establishment of a public highway over Jones Falls, etc., and authorizing the acquisition of property adjacent to the highway incident to, and for the purposes of, the construction of the highway and its connections, and the ordinance of the mayor and city council of Baltimore passed in pursuance of said act, held not to violate this section, since the property was to be taken for a public use. *Bond v. Baltimore*, 116 Md. 685.

The condemnation of private property for a railroad reasonably necessary for the successful operation of coal mines, held to be for a public use. The question of whether a particular use is public or private, is a judicial one. *New Central Coal Co. v. George's Creek Co.*, 37 Md. 559.

The taking of lands in Maryland for supplying Washington city with water, is a public use; this section embraces within its scope a use of the government of the United States. *Reddall v. Bryan*, 14 Md. 477.

Act 1927, ch. 119, adopting plan for conservation of oysters, does not violate this section, or art. 23 of Declaration of Rights. Powers of Legislature not derived from grants in Constitution. Interest of State and individual in oysters. License fees. Discretion in Conservation Department. *Leonard v. Earle*, 155 Md. 260 (affirmed by U. S. Supreme Court—decision filed May 13, 1929).

This section plainly implies a prohibition against taking private property for private use. What is "public use". *Construction Co. v. Jackson*, 152 Md. 686 (dissenting opinion).

See notes to art. 89B, sec. 4 (art. 91, sec. 28 of 1924 Code).

This section referred to in construing art. 101, sec. 70. *Branch v. Indemnity Ins. Co.*, 156 Md. 483.

This section referred to in construing sec. 40A. *Hubbard v. Baltimore*, 158 Md. 47.

City ordinance for acquisition of property for City Library and for condemnation proceedings not invalid because funds had not actually been provided for payment, since title to property remains unchanged until the award has been paid or money actually tendered. *Johnson v. Baltimore*, 158 Md. 93.

State Roads Commission can only acquire property for highways in one of the modes prescribed by statute which meets the requirements of this section; the taking of property by the Commission in any other manner is not the act of the State, but the unlawful usurpation by the individual taking the property. Remedies of property owner. *Dunn v. State*, 162 Md. 287, 291.

Cited but not construed in *Murphy v. State Roads Commission*, 159 Md. 12, 19.

What amounts to a "taking"? Change of grade.

Closing of grade crossing, thereby increasing the distance landowner must travel, does not constitute a taking of property for public use and so require compensation for the taking. *Brehm v. State Roads Comm.*, 176 Md. 414.

The "just compensation" required by this section includes not only the value of property condemned, but a due allowance for injury to the remainder; measure of damages; when cost of grading and repaving may be allowed. Cases reviewed and distinguished. *Baltimore v. Garrett*, 120 Md. 611.

The erection of an abutment or structure along a city street which cuts off access to property and its light and air, held to be a "taking of property" within the meaning of this section; rights of abutting owners; change of grade. Cases reviewed. *Walters v. B. & O. R. R.*, 120 Md. 653.