

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 ejectment 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.

For the law on the subject of this section prior to its adoption, see *Alexander v. Baltimore*, 5 G. 392; *Tidewater Canal Co. v. Archer*, 9 G. & J. 479; *Hamilton v. Annapolis, etc., Co.*, 1 Md. Ch. 109; *Harness v. C. & O. Canal Co.*, 1 Md. Ch. 248; *Hepburn's case*, 3 Bl. 95.

For a note on "Condemnation of Land by Corporations," see *Hamilton v. Annapolis, etc.*, R. Co., 1 Md. 553.

Cited but not construed in *State v. Baltimore County*, 29 Md. 521.

The workmen's compensation act of Maryland does not violate this section—see notes to art. 101, sec. 14. *Solvuca v. Ryan & Reilly Co.*, 131 Md. 281.

See art. 33A, An. Code, and notes to secs. 30, 32 and 40A (this article), and to art. 23 of Declaration of Rights and to art. 72, sec. 93, An. Code.

Sec. 40A. The General Assembly shall enact no law authorizing private property to be taken for public use without just compensation, to be agreed upon between the parties or awarded by a jury, being first paid or tendered to the party entitled to such compensation, but where such property is situated in Baltimore City and is desired by this State or by the Mayor and City Council of Baltimore, the General Assembly may provide for the appointment of appraisers by a Court of Record to value such property, and that, upon payment of the amount of such valuation to the party entitled to compensation, or into Court and securing the payment of any further sum that may be awarded by a jury, such property may be taken.¹

Certain ordinances being valid, the plaintiff was not entitled to the aid of a court of equity unless the city of Baltimore undertakes to take his property before paying or tendering compensation, or paying the money into court under sec. 1054 of the city charter. *Bouis v. Baltimore*, 138 Md. 297.

Right to use private property without limitation save that public safety, health or morals must not be imperiled, is a tangible property right within protection of this article. *Construction Co. v. Jackson*, 152 Md. 686 (dissenting opinion).

The elimination of a grade crossing over a railroad which increases the distance from plaintiff's store property and the village on which it depends for trade does not involve a taking of property under this section. *Krebs v. State Roads Commission*, 160 Md. 584.

This section is not mandatory and exclusive, but optional. *Hubbard v. Baltimore*, 158 Md. 47.

Cited in *Baltimore v. Himmelfarb*, 172 Md. 630.

Sec. 41. Any Citizen of this State who shall, after the adoption of this Constitution, either in or out of this State, fight a duel with deadly weapons, or send or accept a challenge so to do, or who shall act as a second, or knowingly aid or assist in any manner those offending, shall ever thereafter be incapable of holding any office of profit or trust under this State, unless relieved from the disability by an Act of the Legislature.

Sec. 42. The General Assembly shall pass laws necessary for the preservation of the purity of elections.

The power to enact a primary election law lies back of and beyond this section, and is not derived from it. This section does not confer the power to enact a primary election law, but is a mandate to execute a power implicitly assumed to exist independently of the mandate. *Kenneweg v. Allegany County*, 102 Md. 123.

This section referred to in construing art. 4, sec. 11, and art. 5, sec. 2—see notes thereto. *Groome v. Gwinn*, 43 Md. 631 (concurring opinion).

The registry act of 1865, ch. 174, passed in pursuance of art. 3, sec. 41, and of art. 1, sec. 2, of the Constitution of 1864, upheld—see notes to art. 1, sec. 5. *Anderson v. Baker*, 23 Md. 618, 572, 594, 586.

¹ This section was added to art. 3 by act of 1912, ch. 402, ratified November 4, 1913.