

The proprietor's right to improve out into a river, *until actually availed of*, is subject to the right of the United States to use the soil under the water in aid of navigation without such proprietor's consent and without compensation. The privilege conferred by this section must be exercised subject to the public right of navigation and the usual necessary aids thereto. *Hawkins Point Light-House Case*, 39 Fed. 87.

When waters are "navigable." No State can restrict the jurisdiction which the admiralty would otherwise have. *Maryland v. Miller*, 180 Fed. 804.

What kind of improvements can be made? Until the improvements are made, the adjacent owner has no interest in the land under the water, except a right to make the improvements. *Western Maryland T. R. Co. v. Baltimore*, 106 Md. 565; *Hess v. Muir*, 65 Md. 596 (involving the bedding of oysters); *Maryland v. Miller*, 180 Fed. 804.

The rights secured by this section and sections 47 and 49, are valuable, and if invaded or their enjoyment obstructed, the owner is entitled to the usual redress. *Garitee v. Baltimore*, 53 Md. 432; *Goodsell v. Lawson*, 42 Md. 371. See also, *B. & O. R. R. Co. v. Chase*, 43 Md. 23.

Where improvements are extended beyond the original city limits, the latter are also extended and such improvements are taxable. *Western Maryland T. R. Co. v. Baltimore*, 106 Md. 565.

The power of the legislature to pass this and the preceding section, referred to by way of example. *Phipps v. State*, 22 Md. 389.

In a case where the ownership of a wharf was in question, this section was held to have no application. *Albert v. State*, use of Ryan, 66 Md. 336.

The rights conferred by this section are in no sense analagous to the privilege granted by article 72, section 47 (dealing with private oyster beds). *Handy v. Maddox*, 85 Md. 552.

For cases dealing with the subject of this section prior to its adoption, see *Baltimore v. McKim*, 3 Bl. 453; *Casey v. Inloes*, 1 Gill, 432; *Hammond v. Inloes*, 4 Md. 173; *Wilson v. Inloes*, 11 G. & J. 359; *Giraud v. Hughes*, 1 G. & J. 265; *B. & O. R. R. Co. v. Chase*, 43 Md. 23.

Cited but not construed in *Spencer v. Patten*, 84 Md. 426; *Hill v. United States*, 149 U. S. 593; *Ranstead v. The William H. Brinsfield*, 39 Fed. 215.

See art. 98, sections 21 and 22.

1904, art. 54, sec. 49. 1888, art. 54, sec. 46. 1862, ch. 129, sec. 39.

**49.** No patent hereafter issued out of the land office shall impair or affect the rights of riparian proprietors, as explained and declared in the two preceding sections; and no patent shall hereafter issue for land covered by navigable waters.

A patent was refused on appeal by virtue of this section, although all the proceedings were had and the patent granted below, prior to its adoption. This section is of public interest, and the courts will act on it whether the parties rely upon it or not. The last clause of this section applies to all lands below high-water mark. *Day v. Day*, 22 Md. 539; *Patterson v. Gelston*, 23 Md. 445. See also, *Garitee v. Baltimore*, 53 Md. 433.

In view of the last clause of this section, adverse possession for twenty years—prior to 1890—of land covered by navigable water, confers no title as against the State. *Sollers v. Sollers*, 77 Md. 151.

The only effect of the last clause of this section is to restrict the powers of the commissioner of the land office; it is not inconsistent with a license to plant oysters. *Hess v. Muir*, 65 Md. 597; *Phipps v. State*, 22 Md. 380.

For cases dealing with the subject of this section prior to its adoption, see *Patterson v. Gelston*, 23 Md. 447; *Baltimore v. McKim*, 3 Bl. 453; *Chapman v. Hoskins*, 2 Md. Ch. 485; *Ridgely v. Johnson*, 1 Bl. 316, note (f).

Cited but not construed in *Spencer v. Patten*, 84 Md. 426; *Hill v. United States*, 149 U. S. 593; *Ranstead v. The William H. Brinsfield*, 39 Fed. 215.

See notes to sec. 48.