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146 Md. 513, 126 A. 884

Court of Appeals of Maryland.  
 MARCHANT ET AL.  
 v.  
 MAYOR AND CITY COUNCIL OF  
 BALTIMORE ET AL.  
 No. 32.

Dec. 4, 1924.

Appeal from Baltimore City Court; Duke Bond, Judge.

“To be officially reported.”

Condemnation proceeding by the Mayor and City Council of Baltimore and others against Roland R. Marchant and others. From judgment for petitioners, defendants appeal. Affirmed.

West Headnotes

**Eminent Domain 148 ↪191(6)**

[148k191\(6\) Most Cited Cases](#)

Petition to condemn, for development of Baltimore harbor, particularly described shore lands, together with “all riparian and aquatic rights of \* \* \* defendant \* \* \* as the owner of said property,” held to sufficiently indicate such rights, without a description of the underwater acreage over which the appurtenant riparian rights could be exercised.

**Eminent Domain 148 ↪134**

[148k134 Most Cited Cases](#)

While as bearing on value, relative to compensation of property taken by city for harbor improvement, adaptability of the land for wharves and piers may be shown, there is no right to prove, for that purpose, any utility depending on execution by the city of its extensive plan of harbor improvement.

**Eminent Domain 148 ↪169**

[148k169 Most Cited Cases](#)

In view of authority under statutes, as well as ordinances, of port development commission, created under terms of Acts 1920, c. 560, and public improvement commission, appointed pursuant to chapter 373, commissions' resolutions of necessity are sufficient authority for proceeding to condemn for development of harbor of Baltimore, without a city ordinance directed to the particular condemnation.

**Eminent Domain 148 ↪169**

[148k169 Most Cited Cases](#)

Though original petition to condemn for Baltimore harbor development was in the name of the city alone, and before port development commission's resolution of necessity was passed, its subsequent joinder and amendment of petition made the resolution effective; the proceeding originating for it when it was made a party.

**Eminent Domain 148 ↪169**

[148k169 Most Cited Cases](#)

Ability of petitioner, in condemnation to pay for the property at the time it determined to acquire it, is immaterial, though title cannot be divested till payment or tender.

**Eminent Domain 148 ↪176**

[148k176 Most Cited Cases](#)

Joinder of city and two commissions as petitioners for condemnation for Baltimore harbor development, even if unnecessary, could not prejudice defendants or invalidate the proceeding.

**Eminent Domain 148 ↪191(5)**

[148k191\(5\) Most Cited Cases](#)

Under requirement in general condemnation law of averment that petitioner is unable to agree with the owner, or that there is a legal disability of some of them to contract, the alternative, that some of them are infants, is enough.

**Eminent Domain 148 ↪222(1)**

[148k222\(1\) Most Cited Cases](#)

Instructions in proceeding to condemn, for harbor development, lands and rights of riparian owners on navigable river, held to duly recognize and reasonably define defendant's rights with respect to award of damages, and the considerations by which it could be properly governed, and to correctly state the limitations on defendant's rights to make improvements in the river.

**Eminent Domain 148** ↪222(1)

[148k222\(1\) Most Cited Cases](#)

There being no evidence to support the theory of a prayer, its rejection was proper.

**Eminent Domain 148** ↪222(5)

[148k222\(5\) Most Cited Cases](#)

Prayer of defendants in condemnation, in its reference to the independent availability of the land "for the very purpose or utility" for which it was being condemned, as reflecting on the amount of damages to be awarded, held defective as not sufficiently clear, since adaptability of the property to pier uses was a proper consideration, but not its utility for the particular improvement project which was the occasion for its appropriation.

**Eminent Domain 148** ↪262(3)

[148k262\(3\) Most Cited Cases](#)

Though the statute, 3 Code Pub.Gen.Laws, art. 33a, § 7, provided for view by the jury of the property sought to be condemned, and any "adjacent property of the owners," refusal of view of land separated by a street from that sought to be condemned cannot be considered error, in the absence of anything in the record to indicate that any impairment of its value or utility would result from condemnation of the separated and independently used property sought to be taken.

**Eminent Domain 148** ↪262(5)

[148k262\(5\) Most Cited Cases](#)

Refusal of defendants' prayer was harmless; it being in accord with other full and explicit instructions given.

**Eminent Domain 148** ↪262(5)

[148k262\(5\) Most Cited Cases](#)

Prayer, as modified and given, being the same in practical effect as when offered, error cannot be attributed to the modification.

**Evidence 157** ↪142(1)

[157k142\(1\) Most Cited Cases](#)

In condemnation proceedings, evidence of prices paid by petitioner for property in the same vicinity was inadmissible.

**Evidence 157** ↪142(1)

[157k142\(1\) Most Cited Cases](#)

Relative to admission of sales of other property as evidence of value of the property sought to be condemned, the question as to the degree of similarity in nature and utility of the properties, and the nearness in respect of time and place of the sales and properties, is largely in the trial court's discretion.

**Eminent Domain 148** ↪24

[148k24 Most Cited Cases](#)

Condemnation for development of Baltimore harbor is for a public purpose, though Acts 1920, c. 560, authorizes leasing by city of certain docks, so they will not be available for indiscriminate use of public; it being intended that their use shall be in harmony with the intent to increase the capacity and improve the convenience of the port as a public utility.

Argued before URNER, ADKINS, OFFUTT, DIGGES, BOND, and PARKE, JJ.

Walter C. Mylander and John L. Sanford, both of Baltimore (Marchant & Kraus and Charles M. Armstrong, all of Baltimore, on the brief), for appellants.

Allen A. Davis, Asst. City Sol., of Baltimore (Philip B. Perlman, City Sol., of Baltimore, on the brief), for appellees.

URNER, J.

In a condemnation proceeding by the mayor and city council of Baltimore, the port development commission, and the public improvement commission of that city, the appellants were awarded \$64,120 for approximately 5 3/4 acres of land, with appurtenant riparian rights, situated on the southwest shore of the Patapsco river, within the city limits. The land was condemned for the purposes of a comprehensive plan of harbor development, for which provision has been made by the General Assembly.

[\[1\]](#) The first of the questions to be considered is whether this proceeding for the condemnation of the property was duly authorized. A motion to quash asserted the contrary. The contention is that no ordinance was passed for the acquisition of the land by the direct exercise of the city's general charter power of eminent domain, and that neither of the commissions uniting in the petition to condemn was empowered to take such action.

The city of Baltimore has the power, under its charter, to acquire, by purchase or condemnation, any land which it may need for "any public or municipal purpose." Charter (1915) § 6 (4). One of its most important purposes is the care and improvement of its harbor, including the erection and maintenance of wharves and piers. Charter, § 6 (8).

The port development commission was created under the terms of chapter 560 of the Acts of 1920, which authorized the city, with the approval of its voters, to borrow \$50,000,000 for "developing, extending and improving the harbor of Baltimore and its facilities," and which provided that the funds so obtained should be administered and expended, and its "entire disposition" supervised, by a commission appointed by ordinance of the mayor and city council. The commission was invested by the act with the right and power, on behalf of the municipality, "to acquire from time to time, by gift, purchase, lease, or other method of

acquisition, or by condemnation, any lands or property \* \* \* which may be proper or desirable in connection with the objects" which the act specified. Ordinance No. 377 of the mayor and city council, approved July 2, 1920, appointed the commission and defined its powers in conformity with the provisions of the statute. A resolution of the commission, passed April 8, 1924, declared the acquisition of the property involved in this proceeding to be desirable and necessary for the accomplishment of the harbor development objects mentioned in Ordinance No. 377 and in chapter 560 of the Acts of 1920.

The public improvement commission was appointed in pursuance of chapter 373 of the Acts of 1920, which provided for a loan of \$26,000,000 for various municipal improvements. It was directed that \$2,500,000 of the fund should be used for developing and improving the harbor of Baltimore, including the acquisition of sites and the construction of wharves, docks, piers, and warehouses.

Provision was made by the act for the creation by ordinance of a commission with full power to administer the improvement fund, to provide for its expenditure, and to supervise its entire disposition. Ordinance No. 376, approved July 2, 1920, appointed the commission in compliance with the statutory direction. By a subsequent ordinance, No. 576, approved April 14, 1921, it was enacted that the commission should have power to acquire by condemnation any property needed in its judgment for any of the purposes contemplated by Ordinance No. 376. The necessity for the acquisition of the land now in process of condemnation was formally stated in a resolution of the commission passed February 12, 1923.

By the General Condemnation Law (3 Code Pub. Gen. Laws, art. 33A, § 14), under \*886 which the present case has been conducted, it is provided that:

“Any municipal or other corporation, commission, board, body or person, which under the laws of this state, has the right to acquire property by condemnation, shall acquire such property, if condemnation proceedings be resorted to, in pursuance of, and under the provisions of this article, anything in any other public general law or public local law or private or special statute to the contrary notwithstanding. \* \* \*”

While the mayor and city council of Baltimore apparently passed no ordinance providing specifically for the condemnation of the property with which this case is concerned, there are duly enacted ordinances effectuating the intention of the Legislature that full power to administer the funds appropriated under the statutes to which we have referred, for harbor improvement purposes, should be vested in the two commissions which they require to be created, and each of those commissions has passed a resolution declaring the necessity for the acquisition of the land embraced in the pending condemnation. The authority of the commissions does not rest upon a mere delegation of right and duty from the municipality, but is supported by specific statutory provisions. The resolutions passed by the commissions, in the exercise of the powers conferred by statute and ordinance, are sufficiently authoritative to obviate any occasion, which might otherwise exist, for an ordinance directed to the particular condemnation now being considered.

[2] [3] It appears that the resolution of the port development commission was passed after the institution of this proceeding, and we are therefore asked to disregard that resolution, in deciding whether the condemnation is valid. The original petition in the case was filed only in the name of the mayor and city council of Baltimore, but it was later amended by the joinder of the two commissions, with the city as petitioners. Before this amendment was made, the port development

commission passed its resolution as to the necessity for condemning the land which the petition describes. It was upon the basis of the amended petition, and of the answers thereto, that the issues in the case were tried and determined. The proceeding originated for the port development commission when it was made a party, and its prior resolution should be considered as reflecting upon the validity of its action in participating in the suit. It is not essential to decide whether the petitioners would have had an equal right to maintain the proceeding separately under the conditions shown by the record. There can be no doubt that they collectively represent all of the ample power conferred by the General Assembly for the acquisition of property to improve and enlarge the port facilities upon which the prosperity of Baltimore is vitally dependent. While it may have been unnecessary for all of the petitioners to unite in the action, yet, as their joinder could not prejudice the defendants, and as the effect of any condemnation for the objects therein contemplated is to vest in the municipality itself the title to the property condemned, we see no reason to hold the proceeding invalid on the ground of a misjoinder of parties.

[4] The motion to quash further asserts that the petition for the condemnation does not sufficiently indicate the riparian rights to be acquired as appurtenant to the land area which it mentions. As stated in the petition, it is the purpose of the proceeding to condemn the river shore land particularly described, together with “all riparian and aquatic rights of the party or parties defendant hereto, and each of them, as the owner or owners of said property.” There is said to be a large expanse of shallow water between the land mentioned in the petition and the present deep water channel of the river, and it is contended that this area should have been defined in the petition, because the defendants' right to utilize the submerged ground for the erection of

piers, and for other suitable uses, which may not interfere with navigation, is a property interest of great value. There was no question in the case as to the right of the defendants to have the nature and scope of their riparian privileges and interests considered upon the question as to the amount of the damages to which they were entitled. The area of the underwater ground to which the riparian rights could extend was the subject of inquiry in the course of the trial. The precise limits of that area did not appear to be definable by the proof. It was the designated purpose of the condemnation to appropriate the land of the defendants for harbor development uses, and its water frontage was an obviously important element of its value and utility. No misapprehension upon that subject could have been caused by the omission to include in the petition a description of the underwater acreage over which the appurtenant riparian rights could be exercised. The general description of those rights contained in the petition was adequate, in our judgment, for the purposes of the present proceeding.

[5] It is urged that the condemnation is invalid because it depends in part upon chapter 560 of the Acts of 1920, which provides for the administration of a \$50,000,000 fund by the port development commission, in developing, extending, and improving the harbor of Baltimore and its facilities, and includes a provision for the leasing of the property acquired or improved under its terms. The argument is that the act, in thus proposing to authorize the condemnation of property to be used by prospective lessees from the \*887 city, violates the constitutional limitation of the power of eminent domain to the taking of private property solely for a public use. In view of the objects to which the act is directed, and of the important public service which it was designed to promote, we are of the opinion that the objection to its validity should not prevail. The development of the harbor of Baltimore, according to a comprehensive plan by which the commerce of

the port will be most advantageously served, and its future growth encouraged, is a project of distinctively public interest and purpose. It is concerned with the improvement and extension of a harbor service which constitutes an essential part of a system of water transportation connecting the port of Baltimore with the markets of the world. The public character of the use to which the harbor structures are devoted is not affected by the fact that they may not all be made available for the indiscriminate use of the public. By the allocation or lease of certain docks for the separate use of persons or corporations having a regular or continuous need of such conveniences, the city does not convert into a private use the public port service which is thus in part provided. The municipal ownership is not thereby surrendered, and the use remains consistent with the public purpose for which the port accommodations as a whole are maintained. In 1 Dillon on Municipal Corporations (5th Ed.) § 269, it is said:

“The construction of docks and wharves by a municipality for general public use is a public purpose which justifies the exercise of the power of eminent domain. To minister to the necessities of commerce, by providing fit and proper places in a seaport where ships can be loaded and unloaded with all proper facilities, is a public duty owing by the state, and through it by the municipality which governs and controls the port. \* \* \* If a permanent pier and an exclusive right to its use be a necessity of large steamship lines, without which business cannot properly be transacted, and in the absence of which steamers will resort to other ports, then the duty rests upon the state or municipality to furnish such quarters for a fair compensation, or else the state is bound to permit the steamship companies to obtain such accommodations from private owners. Having undertaken the duty imposed upon it by the state to provide such accommodations as the interests of commerce fairly require, all appropriate acts of a city done

in the performance of that duty are for a public purpose. Hence land taken for wharves is taken for a public purpose, although some portions of the land actually used may be thereafter, in the discretion of the city, divided off and placed in the exclusive possession of a lessee for the sole purpose of using it in the transaction of the necessary business connected with the loading and unloading of passengers and cargoes of ships and steamers.”

It is said in 20 C. J. 576:

“A grant of power to a city to condemn for piers is not invalid because it vests the city with power to lease or to give the exclusive use of some of the piers to private persons or to devote them to specific kinds of commerce. \* \* \*”

The statements just quoted were based on the decisions in [Matter of Mayor, etc., of N. Y., 135 N. Y. 253, 31 N. E. 1043, 31 Am. St. Rep. 825,](#) and [Dyer v. Baltimore \(C. C.\) 140 F. 880.](#) In the first of those cases Judge Peckham, speaking for the court, said, in reference to the right of the city of New York to condemn land for use in the construction of piers under a statute which permitted them to be leased:

“When used by lessees under the facts already stated, the use is a public one. The use is public while the property is thus leased, because it fills an undisputed necessity existing in regard to these common carriers by water, who are themselves engaged in fulfilling their obligations to the general public; obligations which could not otherwise be properly or effectually performed.”

In *Dyer v. Baltimore*, a contention that the city could not validly condemn property for the construction of piers which were intended to be leased to private persons or corporations was overruled by Judge Morris, who supported that conclusion by referring to the New York case already cited, and said:

“Regard must be had to the methods by which

the public wharves of a city are availed of in modern commerce. Public landings on a river bank open to every vessel that chooses to make fast to it are not suitable to every kind of modern transportation by water.”

The provision in the Port Development Act for the leasing of the piers to be included in the enlarged facilities of Baltimore harbor should not be construed as authorizing their use for purposes unrelated to the general and appropriate port service to which they would normally contribute. The act should be given a construction in harmony with its evident intent to increase the capacity and improve the convenience of the port as a public utility.

[6] It is further objected that there was no effort to obviate the condemnation by agreement with the owners of the land to be appropriated. There is an allegation in the petition of an inability to agree with the owners, and of the legal disability of several of the defendants by reason of infancy. In a motion to quash, filed before the amendment of the petition, it was alleged that the title to the land sought to be condemned was partly vested in infant children who were named in the motion, and who were afterwards made parties to the proceeding. The general condemnation law requires an averment that the petitioner is unable to agree with the owners, or that there is a legal disability on the part of one or more of them to contract. According to the admission in the motion to quash, one of those alternative conditions appeared to exist.

The questions we have discussed were \*888 raised by motions and prayers, on which the trial court made the rulings opposed by 6 of the 50 exceptions in the record. They are the first, twenty-seventh, twenty-eighth, twenty-ninth, forty-seventh, and forty-eighth. The basis of the second, third, and twenty-fifth exceptions was removed by a subsequent ruling.

[7] The property condemned is separated by Hanover street from other land, on the west side of the street, which the defendants own. Prior to the visit of the jury to the premises, to make the inspection authorized by law, the counsel for the defendants requested that the jury be shown the property on the west side of Hanover street. The court declined to give the instruction. To this ruling the fourth exception was reserved. It does not appear that there were any common or related uses to which the two areas were subjected. No proffer was made to show that the value of the defendants' land to the west of the street would be diminished by the city's appropriation of the property now in litigation. It was for the purpose of aiding the jury in estimating the damages to be awarded for the property taken, and for consequential injury to the owners' remaining land, that the statute provided for a view by the jury of the property sought to be condemned, and "adjacent property of the owners." 3 Code Pub. Gen. Laws, art. 33A, § 7. In the absence of anything in the record to indicate that any impairment of the value or utility of the defendants' land west of Hanover street would result from the condemnation of the separated and independently used property which is sought to be acquired in this proceeding, we could not rightfully vacate the inquisition, for the reason assigned in the fourth exception. This view is supported by 2 Lewis on Eminent Domain (3d Ed.) § 697; 10 R. C. L. 157; 20 C. J 735-738 ; [Wellington v. Boston & Maine Railroad](#), 164 Mass. 380, 41 N. E. 652; [Sharpe v. U. S.](#), 112 F. 893, 50 C. C. A. 597, 57 L. R. A. 932, affirmed in 191 U. S. 341, 24 S. Ct. 114, 48 L. Ed. 211; and [White v. Metrop. W. S. E. R. Co.](#), 154 Ill. 620, 39 N. E. 270. In the case of [Baker v. P. R. Co.](#), 236 Pa. 479, 84 A. 959, cited by the appellants, it appeared that the land, of which a part separated by a turnpike was being condemned for railroad purposes, had been cultivated as a single tract.

[8] An inquiry, on cross-examination, as to

whether the port development commission had available funds to pay for the property in question, at the time of the passage of its resolution of April 8, 1924, was disallowed, and this ruling is questioned by the fifth exception. The title of the defendants could not be divested until the payment or tender of duly adjudged compensation, but the ability of the port development commission to provide the necessary funds at the time it determined upon the acquisition of the property was immaterial.

No reversible error has been found in the rulings disputed by the sixth, thirteenth, fourteenth, and sixteenth exceptions.

[9] The seventh to eleventh, seventeenth, nineteenth, twentieth, twenty-third, thirty-fourth, thirty-eighth, thirty-ninth, fortieth, and forty-first exceptions relate to admitted or proffered evidence as to sales of property as possibly reflecting upon the value of the defendants' land desired by the city. In its rulings upon the inquiries to which these exceptions refer, we think the lower court recognized the proper scope and restrictions of such an investigation. Proof was admitted as to recent sales of property sufficiently similar in nature and utility, and not too remote in location, to afford a reasonable basis for a comparative valuation. The question as to "the degree of similarity which must exist, and the nearness in respect of time and place," is largely left to the discretion of the trial court. [Patterson v. Baltimore](#), 127 Md. 241, 96 A. 458. There was no abuse of such discretion in the rulings now being reviewed. The twelfth and forty-fourth exceptions were taken to the disallowance of questions which were repeated in a different form and answered.

[10] On cross-examination, Mr. Gilbert, one of the city's real estate experts, was asked:

"Don't you think that this land, in itself, apart from the land on either side of it, is admirably situated for the very purpose for which the city is seeking to condemn it in this case?"

An objection to the question was sustained. The same witness was further asked, on cross-examination:

“Did you consider this utility when you said the boat club utility was the highest utility?”

Such a statement had been made by the witness in reference to the boat club use to which the land was then applied. The first utility mentioned in the question was the project of the port development commission, to which a prior interrogatory had referred. The court sustained objections to both of the questions we have quoted. These rulings are the subject of exceptions 14 1/2 and 18. Without objection, the witness had previously answered, on cross-examination, a question as to whether the land was not admirably situated for piers and wharves larger than could be located elsewhere in the harbor. Immediately after the refusal to permit the question covered by the eighteenth exception, the witness was asked, while still under cross-examination, whether he considered the utility of the property for dock purposes, when he stated that its highest utility was that for which it was now occupied by a boat club, and he answered in the affirmative. It is thus apparent that the defendants were not \*889 refused permission to show the utility of their land for the construction and maintenance of wharves and piers. They undoubtedly had the right, which they afterwards freely exercised, to prove such an adaptability as tending to enhance the value upon which the jury's award would be predicated. [Brack v. Baltimore, 125 Md. 378, 93 A. 994, Ann. Cas. 1916E, 880.](#) But the right to prove, for that purpose, any utility which may depend upon the execution of the city's extensive plan of harbor improvement could not be conceded. [Brack v. Baltimore, 128 Md. 430-439, 97 A. 548; Bonaparte v. Baltimore, 131 Md. 80, 101 A. 594.](#) This appears to have been the object of the cross-interrogatories which were disallowed, and only to that extent was the inquiry as to the utility of the property restricted.

[11] By questions to which the fifteenth and twenty-sixth exceptions refer, the defendants proposed to ascertain the amounts which the city had paid for lands in the vicinity of the tract now in course of condemnation. Such inquiries were not permissible, as the price paid by the condemning party for other properties is not regarded as a satisfactory standard of value. *Bonaparte v. Baltimore, supra.*

The twenty-first and twenty-second exceptions refer to inquiries which were pertinent to the subject of the uses for which the land was available, and objections to the questions were properly overruled.

The twenty-fourth exception challenged the qualification of a witness who testified for the petitioners as a real estate expert. There was no error in the ruling that he was qualified.

The statement of which the thirtieth exception complains had been stricken out as the result of an earlier objection.

The hearsay rule would have been violated by the admission of testimony to which the questions mentioned in the thirty-first, thirty-second, and thirty-third exceptions relate.

A harbor map, which had been excluded as against the thirty-fifth, thirty-sixth, and thirty-seventh exceptions, was afterwards admitted.

Over the defendants' objection, as shown by exception 42, the answer of one of their witnesses to a cross-interrogatory was excluded as not responsive. This ruling shows no error.

The forty-third and forty-fifth exceptions involved inquiries as to the purpose of the condemning authorities to lease the property, acquired from the defendants, after it shall have been improved. We have stated our views upon this question.



The subject of the forty-sixth exception was the refusal to allow a question beyond the proper scope of the cross-examination in which it was propounded.

By the only remaining exception, we are required to review the lower court's action in granting 5 prayers of the petitioners, rejecting 10, and modifying 1, of the defendants' prayers, and giving an instruction which the court itself prepared.

[12] The granted prayers of the petitioners instructed the jury that one of the issues in the case was the market value of the property condemned; that such value was to be determined as of the time of the trial, but without reference to any effect which might be produced by the improvements for which it is being taken; that market value is the price which a purchaser willing, but not compelled, to buy would pay, and which an owner willing, but not compelled, to sell would accept, for the property; that the jury had a right to disregard the estimate of any witness as to the value of the property, if in their judgment such estimate was not based upon sales of similar property or other sufficient reasons; that the jury should not consider any evidence which the court had excluded, or any information which the jury might have received from any source, other than their view of the property and the admitted evidence, and should not be influenced by any knowledge they might have as to payments by the city for other property acquired for public purposes; that, in their determination as to the market value of the land taken, the riparian rights could be considered; that among these was "the exclusive right to make improvements out into the water in front of said 5.74 acres of fast land, provided such improvements do not interfere with the navigation of the stream, but that this right to improve out into the river, until actually availed of, is subject to the right of the United States government to use the land under the water in aid

of navigation, without the consent of the owner and without compensation, and this right to improve or wharf out into the river is subject also to the right of the mayor and city council of Baltimore and the United States government to establish, alter, or extend the lines beyond which no piers, bulkheads, wharves, pilings, or other structures of any character may be built or extended."

These instructions were unobjectionable, as they duly recognized and reasonably defined the defendants' rights with respect to the award of damages, and the considerations by which it could be properly governed. The limitations upon the right of the defendants to make improvements in the bed of the river were correctly stated. Code, art. 54, § 48 ; Charter of Baltimore City 1915, § 6 (8); [Lewis Blue Point Oyster Cultivation Co. v. Briggs](#), 229 U. S. 82, 33 S. Ct. 679, 57 L. Ed. 1083, Ann. Cas. 1915A, 232; [Chandler-Dunbar Water Power Co. v. United States](#), 229 U. S. 53, 33 S. Ct. 667, 57 L. Ed. 1063; [Scranton v. Wheeler](#), 179 U. S. 141, 21 S. Ct. 48, 45 L. Ed. 126; \*890 [Gibson v. United States](#), 166 U. S. 269, 17 S. Ct. 578, 41 L. Ed. 996; [B. & O. R. Co. v. Chase](#), 43 Md. 23; 27 R. C. L. 1335, 1338.

Prayers 1, 2, 1A, 2A, 3, 4, and 5 of the defendants challenged the right of the petitioners to maintain the condemnation proceeding, and they were properly refused.

[13] The defendants' sixth prayer was defective in its reference to the independent availability of the land "for the very purpose or utility" for which it is being condemned, as reflecting upon the amount of damages to be awarded. Its adaptability to pier uses was a proper consideration, but not its utility for the particular improvement project, which was the occasion for its appropriation. The prayer was not sufficiently clear upon that point.

[14] The seventh prayer of the defendants was granted. Their eighth prayer, if given a legitimate

interpretation, defined their riparian rights in substantial agreement with the statement we have quoted from the full and explicit instruction on the subject granted at the petitioners' request. As the jury were actually and clearly advised as to the defendants' rights in that respect, the refusal of their eighth prayer was not reversible error.

[15] There was no evidence supporting the theory of the defendants' ninth prayer, and its rejection was proper.

[16] As modified and granted, the defendants' tenth prayer was the same in practical effect as when offered. No error can be attributed to the modification.

The court's own instruction was concerned solely with the question as to the right to condemn, and it is in harmony with the views we have expressed as to the existence of that right.

Judgment affirmed, with costs.

Md. 1924.  
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