

Arnsperger v. Crawford, 61 A. 413 (Md. 1905)

FACTS:

- Arnsperger applied to the county commissioners of Frederick County, under article 25, §§100-121, of the Code of Public General Laws, for a private road to run from his land, which was completely bound by privately-owned land, through the lands of Crawford and others, to the public road from Waynesboro to Sabillasville.
- Over the objections of Crawford and others, the county commissioners approved Arnsperger's application and granted the private road to Arnsperger.

PROCEDURAL HISTORY:

- Crawford and others appealed the county commissioners' decision in the circuit court for Frederick County, under section 121 of article 25.
- The circuit court quashed the proceedings in the case, upon the ground that §§100 to 117 of article 25 were in conflict with the Maryland Constitution and thus void, and therefore the county commissioners had no jurisdiction to grant a private road to Arnsperger.
- Arnsperger appealed the circuit court's decision. Crawford and others moved to dismiss Arnsperger's appeal.

ISSUE:

- Whether Arnsperger's appeal should be dismissed?

HOLDING:

- Arnsperger's appeal was dismissed.

REASONING:

- The circuit court in this case was sitting as an appellate court under statutory authority, so its decision could not be appealed to Court of Appeals of Maryland, unless expressly given by statute.

DICTA:

- The Court of Appeals of Maryland would have affirmed had it been authorized to review the circuit court's decision.
- There is an implied prohibition against taking private property for private use under section 40 of article 3 of the Maryland Constitution and article 23 of the Declaration of Rights.
- Private property may only be taken, without the owner's consent, for public use and upon just compensation.
- The legislature cannot make a particular use public or private merely by declaring it so.
- 'Public use' can mean either that there is a use or right of use by the public or some limited portion of the public, or that public use is equivalent to public utility or advantage. The Court of Appeals of Maryland rejects the latter view of 'public use.'
- "[P]rivate roads laid out under the exercise of eminent domain . . . cannot be justified."
- "When the road, after being laid out, becomes the property of the applicant, from which he may lawfully exclude the public, the use is strictly private, and the law authorizing the condemnation of property therefore is void. (*Internal citation omitted*) . . . . As long as any are excluded it is not a public use."