

[*Harron v. The Mayor and City Council of Baltimore.*]

state; the corporation appealing to the legislative acts of Maryland for the discretionary power which it has exercised.

3. That this exercise of authority was repugnant to the constitution of the United States, contravening the fifth article of the amendments to the constitution, which declares that "private property shall not be taken for public use without just compensation;" the plaintiff contending that this article declares principles which regulate the legislation of the states; for the protection of the people in each and all of the states regarded as citizens of the United States, or as inhabitants subject to the laws of the union.

4. That under the evidence, prayers, and pleadings in the case, the constitutionality of this authority exercised under the state must have been drawn in question, and that this court has appellate jurisdiction of the point, from the judgment of the court of appeals of Maryland, the highest court of that state; that point being the essential ground of the plaintiff's pretension in opposition to the power and discretion of the corporation.

5. That this court in such appellate cognizance is not confined to the establishment of an abstract point of construction, but is empowered to pass upon the right or title of either party; and may, therefore, determine all points incidental or preliminary to the question of title, and necessarily in the course to that inquiry; that consequently the question is for this court's determination whether the declaration avers actionable matter, or whether the complaint is only of a public nuisance; and on that head the plaintiff will contend that special damage is fully shown here within the principle of the cases where an individual injury resulting from a public nuisance is deemed actionable; the wrong being merely public only so long as the loss suffered in the particular case is no more than all members of the community suffer.

Upon these views the plaintiff contends that the judgment of the court of appeals ought to be reversed.

The counsel for the plaintiff in error, Mr Mayer, on the suggestion of the court, confined the argument to the question whether, under the amendment to the constitution, the court had jurisdiction of the case.