

I am of opinion that I ought not to interfere in the manner asked for, and therefore the application is disallowed, and the petition will be dismissed.

[No appeal was taken from either of the orders in this case.]

JOHN HAMILTON
 vs.
 THE ANNAPOLIS AND ELK RIDGE
 RAIL ROAD COMPANY ET AL. } DECEMBER TERM, 1847.

[RIGHT OF EMINENT DOMAIN—FORFEITURE OF CHARTER—VENDOR'S LIEN.]

Nothing can be clearer than that private property cannot be taken for public use, without making just compensation to the owner.

The right of eminent domain gives to legislative authority the control of private property for public uses, subject to the condition, that a reasonable and just compensation shall be made to the owner.

Any attempt to exact this power, without complying with the condition, would be at war with the great principles of natural justice, and in direct conflict with the constitution of the United States.

The land in question, having been condemned for the use of the Annapolis and Elk Ridge Rail Road, under the act of 1826, ch. 123, sec. 15, and the inquiry returned to, and duly confined by, the proper county court, the propriety of the condemnation and use of the property, cannot be drawn in question in an accidental or collateral proceeding.

A cause of a forfeiture of a charter of incorporation cannot be taken advantage of, collaterally or incidentally; but it must be enforced by *scire facias* or *quo warranto* at the instance of the government, and until the government so interferes, the franchise continues.

So long as the charter of a company continues in existence, their property cannot be taken from them, upon the allegation that it was acquired by an abuse of their chartered privileges.

Whether the vendor's lien exists or not, in a case where the property of an individual is taken for the public use in virtue of the right of eminent domain, is a question of no easy solution.

[The bill filed in this cause, alleged, that on the 30th May, 1838, proceedings having been previously instituted by the Annapolis and Elk Ridge Rail Road Company, for condemning a