

Since an ordinance imposing an assessment upon adjacent property for the repaving of a street, is the exercise of the taxing power and not of the right of eminent domain, this article is not violated, although such ordinance contains no provisions for notice, for a hearing or for a jury trial on appeal. *Baltimore v. Johns Hopkins Hospital*, 56 Md. 30 (*cf.* dissenting opinion).

Although the court of appeals has decided that a certain ordinance and tax assessment thereunder were void, and in pursuance thereof, the lower court has enjoined the collection of the assessment, an act may subsequently be passed providing for the collection of an assessment to be paid to the extent that the property was specially benefited—not the original assessment, but a new one and not necessarily the same amount. The act of 1892, chapter 284, held valid. Cases distinguished. *Baltimore v. Ulman*, 79 Md. 482 (affirmed in 165 U. S. 719). And see *Leser v. Wagner*, 120 Md. 678.

The act of 1843, chapter 289, requiring the president of corporations to pay certain taxes on corporate stock, held not to violate this article; mandamus is the appropriate remedy. The legislature may not only impose taxes, but may provide the means and details for their collection. Contemporaneous construction of the constitution. *State v. Mayhew*, 2 G. 496. And see *Faust v. Twenty-third Bldg. Assn.*, 84 Md. 192; *Harrison v. State*, 22 Md. 487.

#### **Condemnation.**

This article, taken in connection with article 3, section 40, of the Maryland constitution, means that private property can only be taken for *public* use; what is a public use is a question for the judiciary. *Arnsperger v. Crawford*, 101 Md. 251.

The question of whether the taking of property is necessary for the public purposes of a corporation is one to be determined by the court to which the inquisition is returned and can not properly arise in an injunction suit to restrain the condemnation proceedings. *Webster v. Susquehanna Pole Line Co.*, 112 Md. 422.

When neither an act nor an ordinance under which certain grading, paving, etc., are done and which directs an assessment of the cost of such work upon the abutting property, same to be collected as other taxes are collected, provides for notice to the parties to be charged of the doing of the work or of the assessment therefor, an assessment under such ordinance is void, since it is a taking of property without due process of law. Due process of law is not confined to judicial proceedings; this article is a restraint on the legislative and executive powers of the government also. *Ulman v. Baltimore*, 72 Md. 589.

The right to use one's lot for pasturing cows in a reasonable way, although a stream of water which flows through said property may be polluted, is a right of property, and a corporation doing business lower down the stream may only acquire the adjacent owner's water right by making due compensation under article 3, section 40, of the Maryland constitution. *Helfrich v. Catonsville Water Co.*, 74 Md. 277.

#### **Generally.**

Private rights are amply secured by this article and article 19. This article referred to in discussing the liability of a street railway company for the erection, by authority, of an elevated railway in the street. *Garrett v. Lake Roland R. R. Co.*, 79 Md. 290 (dissenting opinion).

This article referred to in holding that the warden of the Maryland penitentiary might be made a defendant in an ejectment suit; the immunity of the state from suit does not prevent an action against a state official wrongfully withholding property for state uses. *Weyler v. Gibson*, 110 Md. 653.

This article referred to in construing article 4, section 37, of the Maryland constitution—see notes thereto. *Dowling v. Smith*, 9 Md. 268.

See article 19 of the declaration of rights, article 15, section 6, and article 3, section 40, of the Maryland constitution, and notes thereto.

See notes to articles 5 and 21 of the declaration of rights.