

this section. Cases reviewed. An injury to, and a taking of property, are distinct things. This section does not apply where land is not actually taken, but only indirectly or consequentially injured. *Poole v. Falls Road Ry. Co.*, 88 Md. 536. And see *Garrett v. Lake Roland Ry. Co.*, 79 Md. 279; *O'Brien v. Baltimore Belt R. R. Co.*, 74 Md. 370.

Distinction between property merely injured and property actually taken. Municipal corporations changing the grade, etc., of the streets under legislative authority, are not responsible for consequential damages if they exercise reasonable care in the performance of the work. *Cumberland v. Willson*, 50 Md. 138.

#### **Property rights. Additional servitude.**

Telegraph or telephone companies in constructing lines over private property are subject to this section; every additional burden cast upon land outside the purpose and scope of an original easement, gives the owner a new claim for compensation. Sufficient allegations justify an injunction. Meaning of the term "public use." If sections 357 to 361 of article 23 of the Annotated Code contain provisions authorizing the construction of telegraph lines on property before paying compensation therefor, the owners being left to seek damages at law, such provisions are in conflict with this section. *American Telegraph Co. v. Pearce*, 71 Md. 539.

Planting telephone poles upon the right of way acquired by a railroad company, when the telephones are used for purposes other than the operation of the road, imposes an additional servitude upon the soil which requires the payment of compensation under this section. *C. & P. Telephone Co. v. Mackenzie*, 74 Md. 47.

The crossing of a railroad by another road subsequently chartered and the use of the former's tracks for the distance of five miles, could only be lawfully effected, against its assent, by an exercise by the legislature of eminent domain, subject to this section. In exercising the right of eminent domain, the legislature cannot in the law fix the compensation to be paid as that must be passed on by a jury under this section. *Pa. R. R. Co. v. B. & O. R. R. Co.*, 60 Md. 269.

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 this section. *Helfrich v. Catonsville Water Co.*, 74 Md. 277.

#### **Distinct interests in property.**

Where nearly three-fourths of a lot subject to one ground-rent is condemned, is private property which can not be taken for public use without just compensation, etc.; this is true although the remainder of the lot is sufficient to secure the ground rent. As a general rule, the sum of the values of distinct interests in a piece of property must be the full value of the property taken. How the reversioner should be compensated where a substantial portion of the lot out of which the ground-rent is payable is condemned. *Baltimore v. Latrobe*, 101 Md. 628. And see *Hagerstown v. Groh*, 101 Md. 563; *Gluck v. Baltimore*, 81 Md. 321.

Where a part only of leased property is condemned, no portion of the rent is abated, and hence the tenant is entitled to compensation. *Gluck v. Baltimore*, 81 Md. 321.

Under this section a mortgagee of condemned land must be compensated to the extent of his interest. *Hagerstown v. Groh*, 101 Md. 563.

#### **Eminent domain and taxing power distinguished.**

This section has no reference whatever to the taxing power. The right of eminent domain and the taxing power distinguished. The act of 1870, chapter 314, extending the corporate limits of the city of Frederick, held not to violate this section. *Graff v. Frederick City*, 44 Md. 77. And see *Moale v. Baltimore*, 5 Md. 320.