

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 section has no application; hence such ordinance need not contain provisions for notice for a hearing or for a jury trial on appeal. *Baltimore v. Johns Hopkins Hospital*, 56 Md. 30 (*cf.* dissenting opinion).

Jury trial; notice; damages.

If the law under which the condemnation is had, provides for an original assessment or award and for a jury trial on appeal therefrom, this section and article 5 of the declaration of rights have been complied with; and if no appeal is entered within the time prescribed, and the compensation assessed is paid or tendered, the property may be taken for a public use. The compensation need not be paid or tendered before a survey is made or other preparatory steps taken, but a street cannot be opened or used, or the land entered to grade or to prepare the ground for that purpose, until the compensation is tendered or paid. *Stewart v. Baltimore*, 7 Md. 511. And see *Knee v. City Passenger Ry. Co.*, 87 Md. 625; *Howard v. First Church*, 18 Md. 455; *cf. Danner v. State*, 89 Md. 226.

This section referred to in deciding that in a proceeding to condemn property under article 23, section 399, of the Annotated Code, the owner is entitled to notice before the property is condemned and notice of the pendency of the inquisition in the court for confirmation is not sufficient. The jury meant by this section is either a common law jury or a jury summoned by warrant. *Baltimore Belt Co. v. Baltzell*, 75 Md. 105. And see *Pitznogle v. Western Md. R. R. Co.*, 119 Md. 682.

The method for ascertaining compensation by three appraisers, provided by the act of 1912, chapter 117, their award to be subject to exception, and the exceptions to be tried before a jury unless a jury trial is waived, held not to violate this section. The measure of damages in condemnation cases, as in all other cases, is a question of law, and the act of 1912 did not attempt to establish such a measure. *Ridgely v. Baltimore*, 119 Md. 572; *Pitznogle v. Western Md. R. R. Co.*, 119 Md. 677.

The legislature cannot fix the compensation to be paid in condemnation cases, as that must be passed on by a jury. *Pa. R. R. Co. v. B. & O. R. Co.*, 60 Md. 269.

Generally.

This section referred to in justifying an injunction upon a bill alleging acts without legal authority, done and threatened, which will cause irreparable damage and that no compensation had been paid or tendered for the use of certain land. *Western Md. R. R. v. Owings*, 15 Md. 204. And see *American Telegraph Co. v. Pearce*, 71 Md. 539.

Title does not vest until the amount assessed is paid or tendered; the mere assessment of damages does not constitute a taking, and the corporation may renounce the inquisition and abandon its enterprise at any time before actual payment. *Norris v. Baltimore*, 44 Md. 604; *Merrick v. Baltimore*, 43 Md. 231; *State v. Graves*, 19 Md. 370.

Both an assessment by commissioners with a right of appeal and the assessment of benefits on the owners benefited, are established as constitutional modes of providing compensation to owners of land taken for public use. *State v. Graves*, 19 Md. 369.

The portion of the act of 1817, chapter 148, providing that no one should be entitled to damages for improvements unless the same were erected before a certain street was laid out, held unconstitutional; where property is taken for the bed of a street, the owner is entitled to compensation as if no street was opened over it. *Moale v. Balto.*, 5 Md. 321. And see *Stewart v. Baltimore*, 7 Md. 510.

The act of 1860, chapter 265 (incorporating the Consolidation Coal Company and giving it all the rights of eminent domain in the construction, etc., of railroads which had been conferred upon the Baltimore & Ohio Railroad), as well as the charter of the Baltimore & Ohio Railroad itself, must be construed in connection with and as subordinate to this section. *State v. Consolidation Coal Co.*, 46 Md. 6.