

An. Code, sec. 273. 1904, sec. 255. 1888, sec. 169. 1876, ch. 242, sec. 13.

208. If it shall be necessary, in the location of any part of any railroad, to occupy any road, street, alley or public way, or ground of any kind, or any part thereof, it shall be competent for the municipal or other corporation, or public officer, or public authorities, owning or having charge thereof, and the railroad company to agree upon the manner and upon the terms and conditions upon which the same may be used or occupied; and if said parties shall be unable to agree thereon, and it shall be necessary, in the judgment of the directors of such railroad company, to use or occupy such road, street, alley or other public way or ground, such company may appropriate so much of the same as may be necessary for the purposes of such road, in the same manner and upon the same terms as provided for the appropriation of the property of individuals by sections 203 and 204; provided, that every railroad company laying down any such track or tracks upon any such public street, road, alley or other public ground, shall be responsible for injuries done to private property by such location, lying upon or near to such public ground, which may be recovered by civil action brought by the owner or owners at any time within two years from the completion of such track or tracks, before the proper court; and provided further, that no railroad company shall be allowed to pass through the city of Baltimore without the consent of the municipal authorities.

This and the following section held to afford the city of Baltimore ample protection if a new street railway company (not provided for by the act of 1906, ch. 566, dealing with the United Railways and Electric Company) should come into the annexed portion of said city. *Baltimore v. U. Rwys. & E. Co.*, 126 Md. 49.

In the light of this section, of sec. 213 and of art. 33A, sec. 6 (as it stood prior to the act of 1914, ch. 463), a railroad company may construct, if necessary, a crossing over a public highway. See notes to sec. 195, and to art. 33A, sec. 1. *Hyattsville v. Washington, etc., R. Co.*, 120 Md. 140.

Since this section affords an adequate remedy for the depreciation of the property of an abutting owner in consequence of the construction of a railroad, equity will not enjoin the construction of the railroad at the instance of such owner. This section provides the remedy for injuries to property not amounting to a "taking" thereof within the meaning of art. 3, sec. 40, of the state Constitution. *O'Brien v. Baltimore, etc., R. R. Co.*, 74 Md. 376. And see *Poole v. Falls Road Ry. Co.*, 88 Md. 533.

This section compared with sec. 203. Under this section, the corporation is responsible for injuries to private property lying *upon or near* the street occupied; hence the right to redress depends upon whether damage was done, and not upon the proximity or distance of the operative cause of the injury. *Lake Roland Co. v. Webster*, 81 Md. 535.

This section held to provide the remedy for injuries to private property incident to the construction and operation of a street railway. *Poole v. Falls Road Ry. Co.*, 88 Md. 541. *Cf. Hodges v. Baltimore, etc., Ry. Co.*, 58 Md. 622.

Where a city ordinance assenting to the construction of a tunnel by a railroad company, provided that if any final judgment recovered under this section was not paid within sixty days, the holder thereof should have the right to enjoin the operation of the railroad, such provision was held to have no application to a judgment growing out of an injury to the plaintiff's private rights for which the railroad company was liable at common law and not under the ordinance, and hence the injunction was refused. *McColgan v. Baltimore Belt R. R. Co.*, 86 Md. 326.

City ordinances when duly passed and duly accepted by the railway company, held to constitute the best evidence obtainable of the agreement provided for by the first portion of this section, and of the terms and conditions upon which the city streets were to be used by the railway. The city of Annapolis held to be authorized by this and the following section, to pass ordinances granting the use of its streets to an electric street railway company. *Jeffers v. Annapolis*, 107 Md. 271.