

An. Code, sec. 405. 1904, sec. 366. 1888, sec. 254. 1886, ch. 161. 1908, ch. 240, sec. 366. 1910, ch. 55, sec. 366 (p. 74).

**337.** Any of the corporations formed under class thirteen, section 28 of this article, as codified by the Code of 1904, shall have the power which is conferred upon telegraph companies incorporated under this article by section 295, and may construct and lay any part of its line or lines underground or any route for which it is authorized to construct such lines in whole or in part, above ground, and such corporation may acquire by condemnation any property or right whatsoever necessary for its purposes in its discretion, either in fee simple or the use thereof in fee simple, or for a less estate, either in the manner set forth in sections 203 and 160,<sup>1</sup> or sections 331 and 336 of this article; provided, however, that all corporations incorporated, or to be incorporated by virtue of said section 28, class thirteen, and all corporations heretofore or hereafter incorporated under the provisions of the corporation law of 1908, shall obtain the assent and approval of the mayor and city council of Baltimore city, before using the streets or highways of Baltimore city, either the surface or the ground beneath the same. The provisions of this proviso, however, not to apply to such corporations as are now in practical operation and have laid or constructed their lines, pipes, mains or other structures, or any part thereof in the city of Baltimore, except as to the use and occupancy by them of new and additional streets and highways in the city of Baltimore by their lines, pipes, mains or other structures.

The supplying of electric power or energy to the public generally on equal terms is a public use, and a corporation which supplies such power may be vested with right of condemnation. A corporation held under its charter to be a public service one, and authorized under this section to acquire property by condemnation. Fact that some of purposes for which a corporation is chartered are public and some are private, does not prevent it from exercising right of condemnation unless the two purposes are so combined that they cannot be separated. A corporation may condemn property in fee simple and also an easement upon other land facilitating the use of the fee simple. A public service corporation which has condemned land for a public use, cannot by an amendment of its charter, divest itself of such public use, and hold the land for private purposes—see sec. 88. The question of whether a corporation has power of condemnation, may be raised by bill for injunction. *Webster v. Susquehanna Pole Line Co.*, 112 Md. 419 (decided prior to act, 1910, ch. 55).

A turnpike road partly in Baltimore city owned by a private corporation, and streets owned by individuals but used by public as highways, are "streets or highways of Baltimore city" within the meaning of this section. The city of Baltimore has the right to enjoin a corporation from using its streets for the transmission of electric light and power where the corporation has not received authority so to do. *Patapsco Co. v. Baltimore City*, 110 Md. 309 (decided prior to the act of 1910, ch. 55). And see *Edison, etc., Co. v. Hooper*, 85 Md. 112; *Chesapeake, etc., Telephone Co. v. Baltimore City*, 89 Md. 702.

Where a special act of the legislature authorizes a corporation to transact any business in which electricity is used, and confers upon it in Baltimore city all the rights and privileges mentioned in this section, the successor of such corporation is empowered to conduct an electric light business in Baltimore city, the city having given its assent to the use of its streets. *Brown v. Md. Telephone Co.*, 101 Md. 577.

For a case involving the validity of a municipal ordinance, *ultra vires* when made but subsequently ratified by the legislature; the effect of a compliance by a telephone company with the conditions of such ordinance; and the proper remedy to enforce the rights of the telephone company thereunder; see *Chesapeake, etc., Telephone Co. v. Baltimore City*, 89 Md. 689.

See art. 33A and sec. 293, *et seq.*, and notes to secs. 295 and 334 (this article).

<sup>1</sup> The reference to sec. 160 is evidently clerical error, sec. 270 of the An. Code of 1912 being no doubt intended. Sec. 270 of the 1912 Code is sec. 204 in this edition.