

franchise or right be valid or of any force or effect whatsoever, unless the assignment, transfer, lease, contract or agreement shall have been approved by the commission. The permission and approval of the commission to the exercise of a franchise under this section, or to the assignment, transfer or lease of a franchise under this section, shall not be construed to revive or validate any lapsed or invalid franchise, or to enlarge or add to the powers and privileges contained in the grant of any franchise or to waive any forfeiture.

No railroad or street railroad corporation, domestic or foreign, shall hereafter purchase or acquire, take or hold, any part of the capital stock of any railroad corporation or street railroad corporation, or other common carrier organized or existing under or by virtue of the laws of this State, unless authorized so to do by the commission, and save where stock shall be transferred or held for the purpose of collateral security only with the consent of the commission, no stock corporation of any description, domestic or foreign, other than a railroad corporation, or street railroad corporation, shall purchase or acquire, take or hold, more than ten per centum of the total capital stock issued by any railroad corporation, or street railroad corporation, or other common carrier organized or existing under or by virtue of the laws of this State. Nothing herein contained shall be construed to prevent the holding of stock heretofore lawfully acquired. Every contract, assignment, transfer or agreement for transfer of any stock by or through any person or corporation to any corporation, in violation of any provision of this sub-title, shall be void and of no effect, and no such transfer or assignment shall be made upon the books of any such railroad corporation or street railroad corporation, or shall be recognized as effective for any purpose.

Meaning of phrase "is necessary or convenient for the public service." The only safe criterion is the ability of the road from its earnings to meet its operating expenses and fixed charges, to say nothing of a return to stockholders. Physical deterioration of the road. See notes to sec. 380. *Benson v. Public Service Commission*, 141 Md. 400.

It is for the court and not for a jury to determine whether it is necessary to condemn particular property except in so far as public service commission may pass on that question under this section; there may, however, be cases in which certain questions of fact in connection with the subject should be submitted to a jury. A year after the commission has passed an order authorizing construction and operation of a railroad, it may not by suspending that order stop condemnation proceedings actually pending; order of commission held not intended to interfere with such proceedings. The commission has the power, subject to a review by the courts, under this section to determine whether a railroad shall cross a public highway at, above or under grade. It is better to secure approval of commission under this section before the court passes an order authorizing condemnation, and it should at least be inquired into before appraisers are appointed under act of 1912, ch. 117—see art. 33A. *Hyattsville v. W., W. & G. R. R. Co.*, 122 Md. 671. And see *Hyattsville v. W., W. & G. R. R. Co.*, 124 Md. 578.

This section is very broad and it is necessary to obtain the approval of the commission in order to exercise the right given by sec. 243, the action of the commission being subject to the provisions of sec. 359 (see secs. 404 and 405). *City & Sub. R. R. Co. v. W., W. & G. R. R. Co.*, 122 Md. 656.

This section referred to in construing act of 1912, ch. 117—see notes to art. 33A, sec. 1. *Hyattsville v. W., W. & G. R. R. Co.*, 124 Md. 578.