

How to determine what is a "public use." Cases reviewed. *Webster v. Susquehanna Pole Line Co.*, 112 Md. 416. *Cf. Arnsperger v. Crawford*, 101 Md. 251. And see *American Telegraph Co. v. Pearce*, 71 Md. 539.

This section impliedly prohibits the taking of private property for private use. The legislature cannot make a particular use, either public or private, merely by so declaring it; whether a use is public or private, within the meaning of this section is a judicial question. The use of a part of land condemned by a railroad company for the location of a private road in substitution for an existing private road which was to be closed and used by the company for railroad purposes, held to be a public use within the meaning of this section. *Pitznogle v. Western Md. R. R. Co.*, 119 Md. 677. And see *Arnsperger v. Crawford*, 101 Md. 251.

Where by a municipal ordinance an alley is directed to be closed, the result being that certain abutting owners lose their easement in the closed portion and the appellee is enabled to erect a building upon it, this is a taking of private property for private use, the public service being in no wise promoted. This section only permits the taking of private property for a public use, and whether the use is a public one is a judicial question. Ordinance held invalid. *Van Witsen v. Gutman*, 79 Md. 411.

While the legislature cannot confer on the city of Baltimore the power to take private property for any use but a public one, since the conveyance of water to a city is a public use, a right of condemnation by the city under the act of 1853, ch. 376, for the purpose aforementioned, was upheld. *Kane v. Baltimore*, 15 Md. 249.

The act of 1910, ch. 110, providing for the condemnation of property for the establishment of a public highway over Jones Falls, etc., and authorizing the acquisition of property adjacent to the highway incident to, and for the purposes of, the construction of the highway and its connections, and the ordinance of the mayor and city council of Baltimore passed in pursuance of said act, held not to violate this section, since the property was to be taken for a public use. *Bond v. Baltimore*, 116 Md. 685.

The condemnation of private property for a railroad reasonably necessary for the successful operation of coal mines, held to be for a public use. The question of whether a particular use is public or private, is a judicial one. *New Central Coal Co. v. George's Creek Co.*, 37 Md. 559.

The taking of lands in Maryland for supplying Washington city with water, is a public use; this section embraces within its scope a use of the government of the United States. *Reddall v. Bryan*, 14 Md. 477.

What amounts to a "taking"? Change of grade.

The "just compensation" required by this section includes not only the value of property condemned, but a due allowance for injury to the remainder; measure of damages; when cost of grading and repaving may be allowed. Cases reviewed and distinguished. *Baltimore v. Garrett*, 120 Md. 611.

The erection of an abutment or structure along a city street which cuts off access to property and its light and air, held to be a "taking of property" within the meaning of this section; rights of abutting owners; change of grade. Cases reviewed. *Walters v. B. & O. R. R.*, 120 Md. 653.

Where the construction of a street railway is duly authorized and there is no invasion of or physical interference with, the property of an abutting owner, there is no taking of such property within the meaning of 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. Wilson*, 50 Md. 138; *Baltimore v. Dobler*, 140 Md. 641 (reviewing and distinguishing prior cases).

Where a plaintiff's access to her property has been practically destroyed by a city in grading streets, her property is "taken" and she is entitled to compensation under this section. *Prayers. Sanderson v. Balto. City*, 135 Md. 522.

Where property does not abut on the portion of a street which is closed, and ingress and egress to and from the property has not been affected, but the direct approach to it by way of the closed street is cut off, a more circuitous route being required, an appeal from the refusal of the commissioners for opening streets to allow damages, is properly dismissed; the property is not "taken" in the constitu-