

tional sense, and the owner is not entitled to damages. Cases reviewed. *German Lutheran Church v. Baltimore*, 123 Md. 145.

If property is not "taken," but mere inconvenience of access or diminution of light and air is caused, this section is not violated, and equity will not interfere; recovery at law. Cases reviewed and distinguished. *Baltimore v. Bregenzer*, 125 Md. 82; *Taylor v. Baltimore*, 130 Md. 142.

For a railroad to allow steam or hot water from its round-house to flow over adjoining land so as to make a deep ditch or ravine, and by undermining the soil wash away a bridge, is a "taking" of property within the meaning of this section; hence, relief may be granted in equity. When the plaintiff will be limited to damages at law. Cases reviewed. *N. C. Ry. Co. v. Oldenburg*, 122 Md. 248.

The discharge of sewage from a disposal plant near plaintiff's property so as to cause odors thereon and thus depreciate its value, held not to be a "taking" within the meaning of this section; recovery of damages at law. Cases reviewed. *Taylor v. Baltimore*, 130 Md. 137.

Property rights. Additional servitude.

Telegraph or telephone companies in constructing lines over private property are subject to this section; every additional burden cast upon land outside the purpose and scope of an original easement, gives the owner a new claim for compensation. Sufficient allegations justify an injunction. Meaning of the term "public use." If secs. 293 to 297 of art. 23 of the An. Code contain provisions authorizing the construction of telegraph lines on property before paying compensation therefor, the owners being left to seek damages at law, such provisions are in conflict with this section. *American Telegraph Co. v. Pearce*, 71 Md. 539.

Planting telephone poles upon the right of way acquired by a railroad company, when the telephones are used for purposes other than the operation of the road, imposes an additional servitude upon the soil which requires the payment of compensation under this section. *C. & P. Telephone Co. v. Mackenzie*, 74 Md. 47.

The crossing of a railroad by another road subsequently chartered and the use of the former's tracks for the distance of five miles, could only be lawfully effected, against its assent, by an exercise by the legislature of eminent domain, subject to this section. In exercising the right of eminent domain, the legislature cannot in the law fix the compensation to be paid as that must be passed on by a jury under this section. *Pa. R. R. Co. v. B. & O. R. R. Co.*, 60 Md. 269.

The right to use one's lot for pasturing cows in a reasonable way, although a stream of water which flows through said property may be polluted, is a right of property, and a corporation doing business lower down the stream may only acquire the adjacent owner's water right by making due compensation under this section. *Helfrich v. Catonsville Water Co.*, 74 Md. 277.

Distinct interests in property.

Where nearly three-fourths of a lot subject to one ground-rent is condemned, is private property which cannot be taken for public use without just compensation, etc.; this is true although the remainder of the lot is sufficient to secure the ground-rent. As a general rule, the sum of the values of distinct interests in a piece of property must be the full value of the property taken. How the reversioner should be compensated where a substantial portion of the lot out of which the ground-rent is payable is condemned. *Baltimore v. Latrobe*, 101 Md. 628. And see *Hagerstown v. Groh*, 101 Md. 563; *Gluck v. Baltimore*, 81 Md. 321.

Where a part only of leased property is condemned, no portion of the rent is abated, and hence the tenant is entitled to compensation. *Gluck v. Baltimore*, 81 Md. 321.

Under this section a mortgagee of condemned land must be compensated to the extent of his interest. *Hagerstown v. Groh*, 101 Md. 563.

Eminent domain and taxing power distinguished.

This section has no reference whatever to the taxing power. The right of eminent domain and the taxing power distinguished. The act of 1870, ch. 314, extending the corporate limits of the city of Frederick, held not to violate this section. *Graff v. Frederick City*, 44 Md. 77. And see *Moale v. Baltimore*, 5 Md. 320.

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).