

thereof, if the defendant shall at any time within six months, to be accounted from the return of said attachment, appear to the said original action, and make it appear that the claim of the said plaintiff, or some part thereof, is not due to the said plaintiff.

**Striking out judgments of condemnation.**

A judgment of condemnation rendered several terms anterior to the motion to strike out, will not be disturbed in the absence of clear and convincing proof of fraud, surprise or irregularity. *Sarlouis v. Firemen's etc., Co.*, 45 Md. 235. See also *Abell v. Simon*, 49 Md. 318; *Sherwood v. Mohler*, 14 Md. 564.

If the garnishee fails to appear and plead, and judgment of condemnation is duly entered, on motion to strike out the judgment, a lack of funds in the hands of the garnishee will not be inquired into. *Sarlouis v. Firemen's etc., Co.*, 45 Md. 243; *Lawrence Bank v. Raney*, 77 Md. 321. See also *Northern Central, etc., Co. v. Rider*, 45 Md. 24; *Groome v. Lewis*, 23 Md. 137; *Post v. Bowen*, 35 Md. 232; *Anderson v. Graff*, 41 Md. 601; *Windwart v. Allen*, 13 Md. 202.

There is no appeal from an order striking out a judgment of condemnation during the term at which it was entered. *Sloan v. Locust Point Co.*, 71 Md. 336.

**Generally.**

Judgment of condemnation *nisi* of specific property attached becomes final at the expiration of the term, without further proof. Plaintiff can only have execution within a year and a day by giving bond. *Western Bank v. Union Bank*, 91 Md. 623.

The running of the statute of limitations against execution on the judgment of condemnation *nisi* is not suspended during the year and a day. *Johnson v. Foran*, 59 Md. 462.

A judgment of condemnation cannot be entered by the clerk without an order of court. *Lee v. Carrollton S. & L. Assn.*, 58 Md. 304; *Carrollton S. & L. Assn. v. Kerngood*, 51 Md. 417.

Where the requirements of the statute have been complied with the plaintiff is entitled to his judgment of condemnation as a matter of right, and an appeal lies from the refusal of the court to enter such judgment. *Dawson v. Contee*, 22 Md. 27.

A judgment of condemnation does not give a right to the specific property attached, but condemns it and makes it liable to execution and sale. *Davidson v. Beatty*, 3 H. & McH. 594. See also *Owings v. Norwood*, 2 H. & J. 96.

No judgment of condemnation can be entered if the garnishee appears. What amounts to appearance by attorney? *Northern Central Ry. Co. v. Rider*, 45 Md. 31.

This section has no application to the time for appeal. *Mears v. Adreon*, 31 Md. 236. This section referred to in construing secs. 10 and 35—see notes thereto. *Harris v. Balk*, 198 U. S. 215.

This section referred to in construing sec. 46. See notes thereto. *Sanitary Grocery Co. v. Soper*, 146 Md. 134.

An. Code, 1924, sec. 13 1912, sec. 13. 1904, sec. 13. 1888, sec. 13. 1715, ch. 40, sec. 4. 1880, ch. 28.

13. No sheriff or other officer shall levy by way of execution against the garnishee more than the plaintiff's debt and cost, nor more than what the said plaintiff shall make appear to be the value of the property and credits attached in the hands of such garnishee, together with such costs only as the garnishee shall put the plaintiff to by denying himself to be indebted to the defendant, and contesting the same; and upon any judgment of condemnation *nisi* against any garnishee for want of appearance or plea, the plaintiff shall be at liberty to proceed and prove his case in the same manner as in any judgment by default *ex parte*, and not otherwise, by proof of his debt, and also of the amount of the assets of the defendant in the hands of the garnishee properly subject to attachment; and no judgment of condemnation *nisi* shall be made absolute without such proof; provided, that in all cases in which a garnishee has been summoned, at any time after the return of the writ, the plaintiff may file interrogatories in the cause, which shall be served by the sheriff upon the garnishee within ten days thereafter; or, if the garnishee shall be a non-resident of the State, shall be served upon the garnishee by some person to be appointed by the court in which the case is pending; and if the garnishee shall fail to answer