

unavoidable; and this section shall not be so construed as to authorize the construction of any bridge across any of the navigable waters of this State; but the said corporation shall be responsible for any damages which any person or corporation may sustain by the erection, continuance and use of such fixtures; and in any action brought for the recovery thereof by the owner or possessor of any lands, the damages to be awarded may, at the election of such corporation, include the damages for allowing the said fixtures permanently to continue; on payment of which damages, the right of the corporation to continue such fixtures shall be confirmed, as if granted by the parties to the suit; provided, that no person or body politic shall be entitled to sue for or recover damages as aforesaid, until the said corporation, after due notice, shall have failed or refused to remove, in reasonable time, the fixtures complained of; or the president and directors of the said company may apply to a justice of the peace of the county or city where such lands are, and such justice shall thereupon issue his warrant, directed to the sheriff of said county or city, commanding him to summon twelve disinterested persons, qualified to serve as jurors, to meet at the proper place, as directed by the said justice; and the sheriff shall qualify the said persons, by oath or affirmation, faithfully to perform the duties required of them by the next succeeding section.

Notwithstanding this section, if a pole is erected so near the beaten track as to endanger the safety of travelers, it must be regarded as incommoding the public. This section dealt with in a suit for personal injuries, alleged to have been caused by the location of a telegraph pole too near the road. Term "unavoidable" qualifies only the restriction upon interference with the convenience of land owners and does not relate to the provision against incommoding the public use, to which the adverb "injuriously" is applied. Recital of a statute in prayers. *Phelps v. Howard County*, 117 Md. 180; *Earp v. Phelps*, 120 Md. 287.

This section does not entitle a corporation to make special use of the state's property without compensation; state held entitled to receive compensation from a telegraph company for its special use of the Conowingo bridge. *Postal Tel. Co. v. State Rds. Comm.*, 127 Md. 246.

Cited but not construed in *Meese v. Goodman*, 167 Md. 666.

The owner of a lot abutting on a street may recover for such direct and immediate injuries as he sustains by the erection of telegraph, etc., poles. Recovery by owner of fee in the street. The planting of a pole in a highway or street is not a public nuisance, but as to a country highway, is an appropriation of private property. Distinction between the uses to which city streets and country roads may be put. If the company elects to pay damages only for the period up to the bringing of the suit, subsequently suits may be brought. Injunction. Limited effect of this section. Measure of damages. *Chesapeake, etc., Telephone Co. v. Mackenzie*, 74 Md. 46.

This section did not give the right to telegraph or telephone companies to make special or exclusive use of the state's property without compensation. The legislature has not delegated to the state roads commission the authority to impose charges upon new users, or create a new liability upon telegraph and telephone companies for the use of the state roads. The commission, however, as the assignee of the turnpike road, may enforce an existing liability founded upon a contract acquired in the purchase of such turnpike. *C. & P. Tel. Co. v. State Rds. Comm.*, 134 Md. 4.

Inasmuch as the city of Baltimore has full and complete control over its streets and highways, the enforcement of an ordinance providing that the C. & P. Telephone Company should pay a pole rental for the use of streets within the section added to the city by the act of 1918, ch. 82, held not to violate this section or impair contract obligation. *Baltimore v. Ches. & Pot. Tel. Co.*, 142 Md. 82.

Contention that this section and sec. 335 confer upon telegraph and telephone companies power to construct lines upon highways or across bridges or waters in Maryland, by the erection of fixtures free of charge, overruled. State roads commission, under the facts, has authority to recover compensation for the use of the state for defendant's use and occupation of Conowingo Bridge. 132 Md. 194, distinguished. *Demurrer. Prayers. American Telegraph & Telephone Co. v. State Rds. Comm.*, 134 Md. 14.

The general privilege accorded telegraph and telephone companies to construct lines on public highways without liability for the creation of a nuisance, does not obligate state to permit any individual company to occupy and use state highways without compensation. City's right to charge for poles erected in streets, affirmed. While state has the right to impose a charge upon use of state roads for construction of conduits and manholes, this authority has not been delegated to state roads commission. A permit