

or with regard to which such power is intended to be exercised as aforesaid, to name another Arbitrator, and for the said two Arbitrators, to name a third, to arbitrate upon, adjudge and determine, the amount which the said Company shall pay, before taking possession of such land or exercising such power as aforesaid, and upon such sum being ascertained, due attention being had by the Arbitrators, in ascertaining the same, to the benefits to accrue to the party demanding compensation, by the construction of the said road or other work, it shall be lawful for the said Company to tender such sum to the said party claiming compensation, who shall thereupon be bound to execute a conveyance, or such other document as may be requisite, and the said Company shall, after such tender, whether such conveyance or other document be executed or not, be fully authorized to enter upon and take possession of such land, to and for the uses of the said Company, and to hold the same, or to exercise such power as aforesaid in such and the like manner as if such conveyance thereof or other document had been executed as aforesaid: Provided always, that if any such owner or occupier shall neglect to name an Arbitrator for the space of twenty days, after having been notified so to do by the Company, or if the said two Arbitrators do not within the space of twenty days after the appointment of such second Arbitrator agree upon such third Arbitrator, or if any one of said Arbitrators shall refuse or neglect, within the space of ten days after their appointment, to take upon him the duties thereby imposed, then, upon the application of the said Company, or of the other party, it shall be lawful for the Judge of the County Court of the County within which the land lies to nominate any disinterested competent person or persons, from any Township adjoining the Township in which such land shall be situate, to act in the place of such Arbitrator or Arbitrators so refusing or neglecting as aforesaid, and that every Arbitrator so appointed by the Judge of the County Court, as aforesaid, shall and he is hereby required to hear and determine the matter to be submitted to him, with all convenient speed, after he shall have been so nominated as aforesaid; and any award made by a majority of the said Arbitrators shall be as binding as if the three Arbitrators had concurred in and made the same: Provided, that no road or other such work as aforesaid shall be made through or upon any pleasure ground, garden, yard or orchard, or materials taken therefrom, nor shall any timber be taken from any enclosed lands, without the consent of the owner: Provided also and nevertheless, that it shall not be competent for any owner or occupier of land through or along which such road is intended to pass, after a survey of such road is made, to enclose any part of such surveyed land as a yard, or plant fruit trees thereon, so as to form an orchard, with a view to prevent such Company taking possession of such land.

Mode of computing damages, &c.

Tender of payment.

Proviso if the party shall neglect to name an arbitrator, or the arbitrators cannot agree on a third.

Award may be made by any two. Proviso as to gardens, yards, &c.