

may name a third, and the said three arbitrators shall determine the amount which the Company shall pay to such owner or occupier before taking possession of such land, or taking materials therefrom or exercising such power as aforesaid, and also the amount which either party or both shall pay for the costs of the arbitration; and if any such owner or occupier neglects to name an arbitrator for the space of twenty days after having been required so to do by the Company, or if the said two arbitrators do not, within the space of twenty days after their appointment, name such third arbitrator, or if any one or more of the arbitrators appointed as herein provided, refuses or neglects within the space of ten days after his or their appointment, to take upon him or them the duties thereby imposed, then, upon the application of the Company, or of such owner or occupier, it shall be lawful for the Judge of the County Court of the County within which the land lies, if it be in Upper Canada, and for any Judge of the Superior Court for Lower Canada, if the land be in Lower Canada, to nominate any disinterested competent person from any Township or Local Municipality adjoining that in which such land lies, to act as an arbitrator for the person so neglecting to name an arbitrator as aforesaid, or to act in the place of the arbitrator so refusing or neglecting as aforesaid; and in ascertaining the amount of compensation, the arbitrators shall have due regard to the benefits to accrue to such owner or occupier, by the construction of such railway, road or other work; 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; and upon the amount of the compensation to be paid being so ascertained, the Company may tender the same, with any sum due for costs, or less any such sum as the terms of award may require, to the owner or occupier, who shall thereupon be bound to execute a conveyance of such land to the Company, or such other document as may be requisite; and the Company may, after such tender, and whether such conveyance or other document be executed or not, enter upon and take possession of such land for the use of the Company, and hold the same, or exercise such power as aforesaid, in like manner as if the conveyance thereof or other document had been executed; but no such railway, road or other work shall encroach upon any building, or pass through or upon any pleasure ground, garden, yard or orchard, nor shall any timber or other materials be taken from any enclosed land, without the consent of the owner; and the owner or occupier of any land so required for any such railway, road or other work, after survey made, shall not by erecting any building, or enclosing any part of such surveyed land as a pleasure ground, garden or yard, or by planting fruit trees, or forming an orchard thereon, prevent the Company from taking possession of such land.

XXI. In case any land required by the Company for the purpose of any such railway, road or other work, or with regard to which any such power is to be exercised as aforesaid, is held or owned by any person or body politic, whose residence is not within this Province or is unknown, or in case the title to any such land be in dispute, or in case the owner of such land be unknown or unable to treat with the Company for the sale thereof or for the exercise of any such power by the Company, or to appoint an arbitrator as aforesaid, the Company may name one disinterested competent person, and the Judge of the County Court of the County within which such land lies, if it be in Upper Canada, and any Judge of the Superior Court for Lower Canada, if the land be in Lower