right, by some mere guess or approximation, to decide conclusively, as a matter of fact, for with respect to such cases there could be no question of law, what the proprietor's expense in ejecting that class of squatters would be, and to deduct it from the intrinsic value of his land, without giving him any information as to how much they did deduct on that account—yet surely with respect to the other, whether they sustained.* Mr. Davies' contention, that Stewart had no title to Lot 47, and a large part of Lot 30, either on account of breach of condition or adverse possession or not, they should have stated how they did decide it; otherwise, by a plain mistake in law, Stewart might be wronged out of thousands. Even a common award *inter parties*, which failed to dispose of such a contention, would be bad. Thus Russel awards, 253, "If the fact that a "matter submitted has *not* been decided be brought before the Court in any regular "manner, as by plea or affidavit, according to the nature of the proceedings, the award "will be deemed invalid, however good it may be on its face." So in *Stone* v. *Phillipps*, 4 Bing. K. C. 37, four actions of ejectment and all matters in difference were referred; but there was a fifth action brought before the Arbitrators, which they omitted to notice in their award; on this being shown by affidavits, the Court held that, as the matter omitted was not capable of being severed, the award was bad in toto. In *Ross* v. *Boards*, 8 A. & Ell. 295, there was a contention before the Arbitrator, whether the Defendant who had agreed to sell a piece of land to Plaintiff, had a good title to it, the award directed Defendant to convey the land to Plaintiff, but omitted to find whether Defendant had a good title or not. Littledale says, "The Arbitrator should have stated in "his award whether the title was good or bad;" it is said he has done so in effect. I had some doubt, but I am of opinion that he ought to have proceeded in a direct way to determine the question as it arose out of the agreement; he should have said whether the title was good or not. What is the law with respect to the liability of a vendor who cannot make out a marketable title? Dart, V. & P., 871, says, "On a contract for the "sale of land, the purchaser, as a *general rule*, is only entitled to *nominal damage for* "*the loss of his bargain*, where the vendor, through want of title or otherwise, having "acted *bonâ fide*, is unable to convey the estate." And in *Angel* v. *Eitch*, L. Rep. 3. Q. B., 314, Chief Justice Cockburne says, "That in the complicated state of the law "of real property the owner of an estate is often unable to make out such a title as a "purchaser is compellable to accept, and it is, therefore, only reasonable, if the purchaser "refuses the title, that the vendor's liability should be limited to repayment of the "deposit and expenses." So in equity a purchaser cannot claim a conveyance of an interest to which a vendor shows a doubtful or defective title, with an abatement in respect of the imperfection of title extending to the whole estate, Dart. V. & P., 979. And in Loyd on Compensation it is laid down that if a Railway Company contracts for the purchase of land, they may claim a 60 years' title. But if they refuse to accept the *best title the vendor can make*, the latter may call on them to complete or *abandon* the contract. Now the Statute which deprives a man against his will of property he has long possessed, and at the same time authorises deductions from its value on account of real or fancied defects of title, which never injured, and which each year became less likely to injure him, is certainly hard enough, and contrary to the principles which govern like questions regarding voluntary and compulsory sales at law and in equity, where the doctrine is, if you do not like the title you need not accept it, but if you do accept it you must pay the full value. But we are asked in effect to put a much harder construction on the Statute, by holding that those who make the deductions may so frame their award as to conceal from the owner the *grounds* on which they are made, and thus in the shape of deductions really make the owner pay thousands of dollars damages on account of *supposed* defects which, it stated, he might have shown to be unreal; would not this be the height of injustice? But it is a rule that the Court must not put a construction on a Statute which is unjust and absurd, if it will bear a construction which is reasonable and just. Here the Legislature no doubt saw that it was leaving difficult questions of law affecting property of very great value to a tribunal quite incompetent to decide them, and therefore provided the appeal to this Court, to have the award remitted back, so that by the light reflected on the question by the discussions here, it might better discern its duty and correct its errors. We cannot suppose the Legislature did not know that, when preliminary questions were raised affecting the amount to be awarded, the Commissioners were bound to decide them, and there is nothing to show an intention in this respect to set aside the usual mode of proceeding in such matters by permitting the necessary requisite of stating how they did decide to be dispensed with. But it is said the Act makes the Commissioners the sole Judges of the *value of land*, and also of the *amount* which, after a consideration of the "facts and circumstances" mentioned in the Act (when correctly ascertained to be 66 facts) they will

* Sic.