

The Court held that the Jury had no right to give the 450*l.* for severance of the road, and that doing so was an excess of jurisdiction in a substantial matter injurious to the Company, and say that, "Where it appears that the Inferior Court has taken upon itself to decide matters over which it had no jurisdiction, the statutory prohibition does not apply, and the inherent jurisdiction is unrestrained;" nor need the excess of jurisdiction appear in every part of its proceedings, for it cannot give validity to one act in itself beyond the power of the Court, because it has done another it was competent to do. "The writ must therefore go, but as the proceeding was well commenced, and in three particulars out of four, it was well conducted, and the fourth *can be certainly and distinctly separated from the rest* owing to the verdict having been special, and in writing, we should not think it necessary to quash the whole, if the claimant were content to let it stand for the unobjectionable parts. This suggestion may, perhaps, lead to arrangements and amendment of the verdict by consent, otherwise the rule must be absolute." Suppose in this case the error had been neglecting to award compensation for loss of water, or something which the claimant had a clear right to be compensated for, would it not have been held equally bad, as against the Company on account of not exercising jurisdiction in a matter where its non-exercise was injurious to the claimant? In the present case, as in that, the Commissioners had jurisdiction over the main subject matters, and their proceedings were well commenced, but here the good cannot be separated from the bad, because a lump sum is given for compensation, and no one can tell how much it has been reduced in consequence of an erroneous decision on some of the preliminary questions they had to decide before fixing the exact amount. The principle on which the Court held itself bound to set aside or hold the awards bad in the above cases must, I think, govern this case. But before deciding that the whole awards must be quashed, the effect of the 32nd Sec. should be considered; it provides "that the Public Trustee when the sum so awarded shall have been paid into the Treasury as aforesaid, shall (unless restrained by the Supreme Court, or a Judge thereof) after fourteen days' notice to the proprietor, execute a conveyance of the Estate of such proprietor to the Commissioner of Public Lands, &c." Now what do these words, "unless restrained by the Supreme Court or a Judge thereof," mean? What power do they confer on the Court? and what state of circumstances is sufficient to invoke its exercise? Do they cut down or modify the stringent restrictive provisions of the 45th Section, so as to give the Court, notwithstanding those restrictions, some power to interfere in cases when the literal observance of them would permit consequences contrary to justice and equity to result from the Commissioners' proceedings? Or do they merely authorize the Court temporarily or perpetually to restrain the Public Trustee from conveying, in consequence of circumstances arising after the award made, or with which the Commissioners had nothing to do? If a power such as the first question implies be conferred, then the two sections are, in material points, repugnant to each other, but it is a rule in construction of Statutes, that each part of it is to be construed with reference to other parts, so that the whole may if possible stand. Now if we construe these words, "unless restrained by the Supreme Court or a Judge thereof," to imply merely an authority to restrain for causes similar to those in which a Court of Equity usually restrains between delivery of abstract and execution of conveyance, there will be ample subject matters for this part of the 32nd Sec. to operate upon, without being driven to the necessity of declaring either it or any part of the 45th Section invalid, for repugnancy to each other. For example, so long as the amount of compensation is sufficient to pay off incumbrancers they have nothing to do with the proceedings of the Commissioners, but if a less sum than the amount due to a mortgagee, be awarded a Court of Equity at his instance would restrain the Public Trustee from conveying, because the mortgagee not being notified, could not be injured by an award made behind his back. See *Martin v. London, Chatham and Dover Railway Co.*, Ch. Ap. L. R. 510, and a mistake in paying notes into the Treasury, and various other cases, where a Court of Equity would restrain the Public Trustee might be put, in all which cases it seems to me this clause would empower this Court, in a summary manner, to grant the same relief as a Court of Equity would have done. We must, therefore, exercise the power of this Court in the present case in the same manner as we would exercise it (when similarly restrained) over the proceedings of any other Inferior Court. It is said the Court may refuse to set aside the award though it be void. But I think it is clear, that where (even in ordinary submissions) the award is void and something may be done under it, the party who may be injured as a *right* to call on the Court to set it aside. Russel, on awards, 649, says, that if an award be altogether void and nothing can be done under it, the Court will not usually interfere to set it aside. "But there is an *exception where something may be done under the award* which renders the interference of the Court necessary. For instance, where the award orders a verdict to be entered, the