

of compensation?" Have they duly considered the tracts of land held adversely, the lands claimed by purchasers under the Land Assessment Acts, or under other Acts by which strangers or third parties hold *prima facie* titles by, and if so what lands are they? What quantity do they amount to? How are they distinguished or bounded? The validity of title to these tracts of land *cannot* be decided by the Arbitrators. The Supreme Court is the tribunal for that; but, what assurance does the award give that these matters have been duly considered? Not the slightest. Suppose that the Arbitrators have calculated on a certain quantity of land being held by squatters or under land tax sales, &c., and disallowed the proprietor the price of these; and suppose they mistook the law regarding these species of title. How is the proprietor or the Supreme Court to arrive at a knowledge of this, and of the amount, if anything, deducted for such tracts of land? or of their localities or descriptions? The award on the subject is perfectly silent and thereby equally uncertain. The award gives no boundaries for either freehold or leasehold land, nor what land in any form or of any kind the Arbitrators have given compensation for; all is left in uncertainty. It was argued by Counsel that the Public Trustee is as capable of finding the boundaries as the Commissioners. He might be, but in the first place it does not appear to be his duty: nor is he invested with the necessary power to enable him to do so. He is not authorised to sign a deed until the sum is awarded to the proprietor, and not until 14 days even after that. He must convey according to the boundaries which the Arbitrators have adjudicated upon. He must convey the whole land they have valued and *no more*, and he ought first to have some assurance and certainty that what he does convey was the land of that proprietor brought into Court, and that for which he has been compensated. The Island Act of Assembly, 27 Vict. cap. 2, commonly referred to as the "Fifteen Years' Purchase Act," confirms the former Land Commissioners' award made previously to that Act, and settles the question of the arrears of quit rents with respect to the estates whose owners are named in such Act; but notwithstanding this, there is no telling whether the present Arbitrators, in their award, were guided as regard the quit rents, by this Act or not. Counsel opposed to the rule have agreed that section 26 of the Land Purchase Act, fully enables and only requires the Arbitrators merely to award the sum they have agreed to as a money compensation and nothing more; and that those matters in subsections of said section 28, are merely matters directory of what the Arbitrators shall or shall not consider of in deliberating; but I wholly differ from this, and consider these matters as subjects to be arbitrated upon, as much so as if they were drawn up in a written submission to which each of the parties had assented and subscribed with their own hands. Nor are they, by any means *collateral* matters, not requiring to be stated by the Arbitrators as further argued by Counsel, who cited in support of that, the case, viz., "In Re. Byles 25 L. J., Exch. 53, where under the Lands Clauses Consolidation (Imperial) Act, 1854, an arbitration was held where some damages had accrued by the foundering of a river embankment built by private agreement, and compensation for taking land connected with the embankment was found by an arbitration; there the damages arising from the giving way of the wall was, and very properly, considered a question quite collateral to the damage arising from the works of the Company, coming under the head of compensation. But, in the present case, the subjects specified in section 28 of our statute, are the very vitals of the award.

In the case of *Round v. Hatton*, 10 M & W., cited by Counsel, an action of trespass to plaintiff's house and lands was, by an order of Nisi Prius, referred to an Arbitrator who was "*to settle at what price and on what terms the defendant should purchase the plaintiff's property.*" The order of reference enjoined nothing further, no particular *circumstances* for the Arbitrator's consideration in computing the amount, and it gave him no power to determine which were the premises in question, and no dispute existed on the subject. And the affidavits, as remarked by Lord Ch. B. Abinger, *did not show any dispute as to what was the property to be adjudicated upon.* And the Arbitrator awarded that after deducting certain sums he settled the sum of 153*l.* odd, to be the price at which defendant should purchase the plaintiff's property: in this the case was one plain and almost isolated fact, differing materially from the one in question, which is constituted of several disputed facts of great diversity in character, and several of them most material and important as regards the main subject to be decided.

With reference to the case of *Wrightson v. Bjwäter*, 3 M. & W., 199, the law, as there laid down, does not appear to me in favour of the present award, for while the award in that case was upheld, yet the grounds of the Court's decision, as clearly enunciated by Baron Parke, show that the case is one which ought by no means to apply to the present one. "The question, therefore," he says, "is reduced to this,—whether, " under this reference, it is necessary to the validity of any award to be made pursuant