

compensation statutes cannot decide upon questions of title; they are only to assess the value of land claimed.

The mode which our Land Purchase Act prescribes for bringing an estate into the Commissioners' Court is enacted in a very summary manner by the second clause, which states merely that the Commissioner of Public Lands, after 60 days publication of the Governor General's assent to the Act, shall "notify any proprietor or proprietors that "the Government intend to purchase his or their Township lands under this Act."

The Commissioners being all appointed and the day of holding their Court published as the Act directs, nothing more appears necessary than the above notice to enable the Commissioners to proceed upon their enquiry: there are no pleadings, no record, no submission in writing under the hands of the parties, and the Commissioners are left to shape their course of adjudication by the Act itself.

The 2nd section, it will, doubtless, be observed, does not require that the Commissioners of Public Lands in his notice should be bound to set forth, by any certain description, the lands or local situation of the estate referred to. Had the Act intended he should do so, it would surely have prescribed such a direction in express terms; but the extreme, if not insuperable, difficulties which such a duty would impose on this officer, it may be concluded, were present in the mind of the Legislature, and when we refer to the ample powers which are conferred upon the Arbitrators, especially by the twentieth section of the Act to compel the production of plans, instruments, documents, &c., &c., it may fairly be presumed that the Legislature never intended to impose such a task upon that officer. Indeed, were the officer to undertake such a duty, and from lack of information which he could not acquire, omit some portion of the proprietor's lands, or mistake the course of some one or more of its boundaries, such error might exclude a portion, if not the whole of a particular estate from the scope of the Act, although in point of fact doubtless within its operation.

In the absence, then, of any record or written submission to start with, the Arbitrators can only refer to the statute itself, and here, as it appears to me, we find in the 28th section the matters of submission upon which those functionaries are to base their judgment and finding. This section is as follows (here the learned Judge read the section), now the language of the section is imperative, viz.:—

"The Commissioners *shall* take the following facts or circumstances into their "consideration."

Can the Commissioners, then, venture to make a final and just award, and at the same time totally disregard these elements, or at least various of them which must forcibly strike the mind of every reader of the statute, whether learned or layman, as testing the real value of the estate while in the possession and enjoyment of the owner; for instance, the gross rental paid by the tenants; the actual net receipts of the proprietor. The number of acres occupied by persons holding adversely to the proprietors. The performance or non-performance of the original grants from the Crown, and how far the despatches of the Colonial Secretaries of State have operated as waivers of any forfeitures. The quitrents reserved in the original grants. The number of acres of vacant or unleased lands.

Now a proprietor may own 20,000 acres of land, whereof he has leased 12,000 acres, and the other 8,000 remain freely at his own disposal. The leased land may yield him at its maximum an income of 500*l.* a year. The *unleased* has become the most valuable part of the Township, and he knows that he can at any time he chooses lease it out in farms to produce from it a rental of 700*l.* a year; ought not this to show the necessity of a separate and distinct valuation of these lands:—

If he and his ancestors have taken that estate subject to its forfeiture to the Crown in case certain specified conditions be not performed, if those or any of those conditions have been violated and he holds the estate by the uncertain clemency of the Crown, the estate must be much less in value than if such conditions were all duly performed, or being broken were waived by the Crown.

Further, if there be a lien on the estate for quit rents, past or present, would it be of no greater value to the owner than it would were all such quit rents duly paid or remitted; and is the Commissioner of Public Lands to take a conveyance of the estate and sell it out in small tracts without knowing whether these conditions attach to it or not? Again, if a certain number of persons have got into and hold adverse possession amongst them of a block of seven or eight hundred acres of land in different parcels or tracts, would not the value of the proprietor's estate be increased by the certainty of their not having a legal title, or diminished if it were certain they *had* gained such title. Now, to satisfy the statute are we assured that all these things were entered upon and duly considered by the Arbitrators in the words of the 28th section "*in estimating the amount*