

XL. And be it enacted, That from and
 2 after the passing of this Act, in all cases in
 which the Jury before whom any action of
 4 ejectment shall be tried, shall assess damages
 for the defendant as provided in the next
 6 preceeding section, for improvements made
 upon land not his own, in consequence of
 8 unskilful survey, and when it shall be sa-
 tisfactorily made to appear that the defend-
 10 ant does not contest the plaintiff's action
 for any other purpose than to obtain the
 12 value of the improvements made upon the
 land previous to the alteration and esta-
 14 blishing of the lines according to law; it
 shall and may be lawful for the Judge before
 16 whom such action shall be tried, to certify
 such fact upon the record, and thereupon
 18 the defendant shall be entitled to the costs
 of the defence, in the same manner as if the
 20 plaintiff had been non-suited on the trial,
 or a verdict rendered for the defendant ;
 22 Provided the defendant shall, at the time
 of entering into the consent rule, have
 24 given notice in writing to the lessor or
 lessors of the plaintiff in such ejectment,
 26 or to his Attorney named on the Writ or
 declaration of the amount claimed for such
 28 improvements on payment of which
 amount the defendant or person in posses-
 30 sion will surrender the possession to such
 lessor or lessors, and that the said defendant
 32 does not intend at the trial to contest the
 title of the lessor or lessors of the plaintiff;
 34 and if such notice shall on the trial be found
 not to have been given as aforesaid, or if
 36 the jury shall assess for the defendant a
 less amount than that claimed in the notice,
 38 or shall find that the defendant has refused
 to surrender possession of the land claimed,
 40 after tender shall have been made of
 the amount claimed, then in any of such
 42 cases the Judge shall not certify, and the
 defendant shall not be entitled to the costs
 44 of the defence, but shall pay costs to the
 plaintiff; any thing herein contained to the
 46 contrary notwithstanding : Provided always,
 that upon the trial of any such cause no
 48 evidence shall be required to be produced

Defendant
 contesting any
 such action
 only to recover
 the value of
 his improve-
 ments, not to
 pay costs.

Proviso
 Notice of the
 purpose for
 which action is
 contested, must
 have been
 given to the
 plaintiff.

PROVISO.