

excavation or embankment; and where the said Railway shall pass through any woodlands or forests, the said Company shall have the right to fell or remove any trees standing thereon to the distance of six rods from either side of the said Railway, which by their liabilities to be blown down or from their natural falling might obstruct or impair said Railway; provided always, that in all cases the said Company shall pay for such lands or estate so taken and used, (in case the owner thereof demand it,) such price as the said Company and the owner or respective owners thereof may mutually agree on; and in case the said parties should not agree, then it shall be lawful for the said Company to apply to two of Her Majesty's Justices of the Peace in the County wherein the said lands may be situate, for a Warrant, which Warrant shall be in the form set forth in the Schedule B to this Act annexed, and shall be directed to the High Sheriff, his Deputy, or any Constable within the said County, commanding such High Sheriff, Deputy or Constable to summon a Jury of five disinterested freeholders or occupiers of land in the said County, who shall be sworn to examine the site of the said Railway; and in case the said Railway shall pass through or extend upon any improved lands, or shall occasion the removal of any buildings or fences, then and in all such cases the damages shall be ascertained and assessed by such Jury; provided nevertheless, that such Jury in assessing the said damages are authorized and empowered, and shall take into consideration the enhancement in value of the land by the passage of the Railway, in regard to the increased facilities of access to the different stations and termini of the said Railway, in diminution of the damages; and in all cases where the Jury shall assess damages to be paid to the owner or owners of any land over which the said Railway may be laid out, the Justices who issued the Warrant shall lay the said assessment before the next annual meeting of the said Company under the authority of this Act, who are hereby required to pay the amount set forth in the said assessments into the hands of the persons for whom such damages may have been assessed within twenty one days next after such annual meeting of the said Company, together with the costs and charges of assessing such damages, which shall be agreeably to a scale in Schedule C of this Act; and in default of such payment, it shall and may be lawful for such Justices, or either of them, (in case of the absence or death of the other,) at the instance of the said party or parties to whom such damages are payable, by Warrant under the hands and seals of the said Justices, or one of them in case aforesaid, to levy the same with costs, by distress and sale of the goods and chattels of the said Company; provided also, that nothing in this Act contained shall be construed to affect the rights of the Crown in any ungranted lands within this Province, or to authorize the said Company to enter upon or take possession of any such land without the previous permission of the Executive Government of the Province.

Company to pay
for lands taken.

In case of disagree-
ment a Jury to be
summoned to assess
the damages.

Assessment to be
laid before the next
meeting of the
Company and
amount paid;

On default of pay-
ment may be
levied with costs.

XXII. And be it enacted, That the said Company, their superintendents, engineers, agents and workmen, may enter upon the land adjoining the said Railway, and from thence take and carry away any timber, stone, gravel, sand and earth, or material necessary for the construction of the said Railway; and in case of any slip happening or being apprehended to any cutting, embankment or other work belonging to the said Railway, the said agents and workmen shall at all times hereafter have full ingress and egress into and upon such adjoining lands, for the purpose of repairing and preventing such accident, and to do such works as may be necessary for the purpose, provided always that such works shall be as little injurious to the said adjoining land as the nature of the operations will admit of, and shall be executed with all possible dispatch; in all which cases the damage incurred, if the parties cannot agree, shall be ascertained and paid in like manner in all respects as provided for in the twenty first section of this Act.

Power to enter on
lands and take
materials for the
construction and
repair of the Rail-
way.

XXIII. And be it enacted, That the said Company at their own proper costs and charges, shall erect and maintain on each side of the Railway sufficient fences wherever the same may be necessary, in order to protect the public, or wherever any cleared or cultivated land occurs on the line of the said Railway; and for neglect or failure to erect and maintain such necessary fences, the said Company shall be liable to be indicted at any Court of Oyer and Terminer or General Sessions for the County where such fences shall be insufficient, and to be fined in such sum as shall be then and there adjudged; and such fine shall be expended for the erection or repair of said fences, and for compensation of individual damage, as the case may be; and it shall and may be lawful for the Justices of the said Court of Oyer and Terminer or General Sessions to make such order for levying the said fine on the property of the said Company, or

Fences to be main-
tained on each side
of the Railway.