

the adjacent or opposite country for the repairs of the Canal; and at such times as the Canal Company may find it necessary to use the lower track of the said rail road for such repairs, the Rail Road Company shall furnish from the nearest depot or station at which they may be procured, such cars, at a reasonable price, for the use thereof, as may be needed for the transportation of the said materials, the cars to be returned in as good order, if practicable, as when received, and any injury which they may have unavoidably sustained, repaired, or paid for by the Canal Company.

Of Cars, &amp;c.

VII. And if the Canal Company should be kept out of use in any one part of it, after the section to Harper's Ferry shall have been completed, or delayed in its completion to that place, by and during the construction of the Rail Road, the Canal Company shall be indemnified for any injury or loss of profit therefrom, either above or below Harper's Ferry, by the Rail Road Company; and if the two companies cannot agree on the amount of indemnity, then its amount shall be ascertained, at the choice of the Canal Company, either by arbitrators, one to be appointed by each Company, with power to call in an umpire, in case of difference, or by the board of Commissioners, to be appointed as hereinafter provided; the award of the said arbitrators or commissioners to be final between the parties; and the Baltimore and Ohio Rail Road Company shall not occupy the Maryland shore of the river Potomac, above Harper's Ferry, where they shall have liberty to cross the Canal by the pivot Bridge now erecting by the Canal Company thereat, or by another pivot Bridge constructed at an elevation above the surface of the Canal, not less than that of the aforesaid pivot Bridge, or in such other manner as the board of commissioners hereinafter mentioned, shall deem most expedient, consistently with the perfect and unimpeded use of the Canal, in the most advantageous manner for it.

Case of being kept from use of Canal

How indemnified.

Arbitrators, &amp;c.

Rail Road not to occupy Maryland shore above Harper's Ferry. Liberty to cross.

VIII. There shall be a board of commissioners, to be appointed immediately after the mutual acceptance of this act, consisting of an Engineer, appointed on the part of each company, and in case of their disagreement, they are to have the power to appoint such third person or engineer as they may select, or in the event of their nonconcurrence in such selection, and the report thereof to their respective companies, such third person or engineer shall be appointed by the President of the United States, at the request of the two companies, or should one of the compa-

Board of Commissioners.

How constituted.

Their duties.