

CHAP. 40.

opened at the expense of the petitioners, or others interested, and the valuation herein after directed shall be paid, or secured to be paid, to the individuals concerned, shall be thereafter deemed to be a public road for ever, and shall be kept in repair in the same manner as other public roads are directed to be kept in said county.

Vacancies, how to be supplied.

3. AND BE IT ENACTED, That in case of death, resignation, disqualification, or refusal to act, of any of the commissioners aforesaid, the remaining commissioners, or a majority of them, shall and they are hereby authorised and directed to fill up such vacancy or vacancies.

Damages to be ascertained.

4. AND BE IT ENACTED, That the commissioners aforesaid, or a majority of them, shall ascertain and value, if required, what damages may be sustained by any person or persons over whose lands the said road may pass, by opening the same, and the valuation shall be made before the said commissioners shall proceed to open the said road; *Provided always*, that any person or persons through whose land the said road may pass, or his, her or their guardian or trustee, shall conceive themselves aggrieved by such valuation and assessment of damages by the said commissioners, it shall and may be lawful for any justice of the peace of said county, on application of the party interested, or his, her or their guardian or trustee, to issue his warrant, under his hand and seal, directed to any constable of the county, commanding him to summon twelve freeholders, uninterested in the opening of said road, to appear on a day by the said justices to be appointed, on the land of the person or persons making application as aforesaid, or for whose benefit such application shall be made, and the said freeholders, having first made oath before a justice of the peace, that they will, without favour, affection or partiality, assess the damages sustained by the person or persons at whose request or for whose benefit such inquisition shall be taken, by reason of opening the aforesaid road through his, her or their land, shall thereupon proceed to assess and value the damages accordingly, of which the said commissioners, or a majority, shall have had at least five days notice, and shall return the damages so assessed to the said justices of the peace, and such inquisition and valuation shall be final and conclusive; and the party or parties in whose favour the valuation ascertained by the said commissioners, or the damages assessed by the said freeholders, shall be made, shall be entitled to receive the same from the said commissioners, or a majority of them, and the said commissioners shall pay, or cause the same to be paid, within the space of six months after the assessment of such valuation or damages, and before they shall proceed to affect the lands and tenements of the person or persons concerned; and upon the payment of the money, or securing the same to be paid, to the person or persons through whose land the said road is intended to pass, the said commissioners may open the said road through such person or persons land; *Provided*, that the said road shall not pass through any house, yard, garden, meadow or orchard, unless with the consent of the owner or owners thereof, nor shall the said road be laid out or opened through any field in which grain, hemp, flax, tobacco, or other cultivated vegetables, shall be growing, until after the season for collecting and securing the crop.

Provisos

Proviso.