

embankments, to a sensible jury of the country, the ascertaining of the damages which the owner of the land would, or had sustained, would be much more clearly understood and readily estimated on viewing the work after it was done, than it could be by any description given of what it might be when done. But, where a public road is proposed to be opened under the authority of the county court, it is expressly declared, that the damages shall be paid to the respective parties before the road shall be opened; and consequently, the site of such a proposed road must be viewed and laid down, and the damages assessed before any entry can be made upon it. (b)

There is another and a more special provision in the eighteenth section of this act of incorporation, which expressly requires the valuation to be made before the property proposed to be taken is changed or altered by admixture with other substances. The reason of this is also sufficiently clear; the two provisions, taken in connection, shew, that it was intended, in all cases, that the subject of the inquisition should be viewed and inspected by the jury; and that they should have it so placed before them as to enable them to form a correct judgment as well from what they saw as from what they might hear in proof. In the case of an injury done by deep cutting or embankment, the understanding of the jury would be more enlightened by inspecting the work after it was done, than by viewing the site of the road before it was constructed; and therefore, the inquisition would be best taken after the road had been made; but in other cases, or where the materials proposed to be taken are to be blended with other substances, then it is clear, as the law expressly requires, that the inquisition should be taken before the admixture or alteration has been made.

These provisions of this act of incorporation are similar to those of almost all other laws authorizing land to be taken for the making of roads and canals; and they have been introduced into this and all similar acts of the Legislature, as a substitute for the ancient writ of *ad quod damnum*; and therefore, so far as the Legislature have been silent as to the mode of proceeding, or the nature of things requires it, they must be governed by the general principles of law applicable to the proceedings under a writ of *ad quod damnum*; since the object to be accomplished by both is the same. (c) According to the common law the inquisition under a

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(b) 1818, ch. 89, s. 10.—(c) *Rex v. Inhabitants of Flecknow*, 1 Burr, 465.