

Alteration being objected to, a Jury may be summoned and alteration made if declared necessary.

4 W. 4. c. 45.

Jury to assess damages when alteration affects improved lands, &c.

All Roads deemed Highways for which public money has been appropriated, and expended.

Damages for Roads laid out under Sect. 3, to be assessed by a Jury summoned as in Sect. 5.

Assessment of damages to be laid before the Sessions and order made for payment.

V. And be it enacted, That when any such intended alteration shall be objected to, then any five or more of the freeholders of such Town or Parish may apply to two of Her Majesty's Justices of the Peace for a Warrant, which Warrant it shall be the duty of the said Justices to direct to the High Sheriff, his Deputy, or any Constable within the County, commanding such High Sheriff, Deputy or Constable, to summon a Jury of twelve disinterested freeholders or occupiers of land in the said County, who shall be sworn before any one of the said Justices, to examine the said Road; and the said Justices, or either of them, are also hereby empowered and required at the instance of either party to call before the said Jurors at the time and place appointed, such witnesses as may be required to give evidence in and respecting all cases of damage or other matters that are by this Act required to be decided and determined by the verdict of such Jurors; which witnesses shall be subpoenaed under the hand of any one of the said Justices, and sworn before either of the said Justices in the usual manner, and for refusal or neglect to attend and give evidence when so required, shall be subject to such damages as persons neglecting or refusing to attend and give evidence when duly summoned, are made subject and liable to by an Act made and passed in the fourth year of the Reign of His late Majesty King William the Fourth, intituled *An Act to regulate proceedings before Justices of the Peace in Civil Suits*; and all expenses attending the summoning, swearing and attendance of such witnesses, shall be estimated by the said Jurors, and paid by such party and in such manner as the said Jurors may determine and assess; and if said Jury after such examination, shall unanimously declare that an alteration is necessary, then shall the Commissioners forthwith proceed to make the alteration in manner pointed out by the Jury; and in case the said Road so altered 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 at the time of laying out the same as aforesaid; provided, that in cases where the alterations made occasion a new Road to be opened, and the old Road or any part thereof, in consequence of such alteration, is allowed to be shut up, and revert to the owner of the land through which such altered Road passed or extends, the Jury in assessing the damages occasioned by such alteration, are authorized and empowered to take into consideration the value of the old Road or any part thereof, thus shut up, in diminution of the damages; and that in all cases where Roads are laid out, altered or extended by virtue and authority of any Act relating to Highways, the Commissioner or Commissioners, Surveyor or Surveyors, as the case may be, shall have full power and authority, and they are hereby authorized to enter upon and open all such Roads so laid out, altered or extended, and from the same to remove any fences, buildings and obstructions, any law, custom or usage to the contrary notwithstanding.

VI. And be it enacted, That all and every Road and Roads in this Province, for and upon which any money has heretofore been appropriated by the Legislature out of the public moneys of this Province, and expended, and of which no records have been heretofore made or kept, shall be deemed and used, and the same are hereby declared and confirmed to be Public Highways or Roads, for the use and benefit of the Public, in as ample and full a manner as if the same had been laid out and recorded under and pursuant to the provisions and regulations of any Act of this Province for laying out and repairing Highways.

VII. And be it enacted, That if any Public Road hereafter to be laid out by virtue of the third Section of this Act shall pass through any improved lands, the damage to the owner or owners of such lands, by means of such Road, shall be ascertained by a Jury to be summoned in the manner mentioned and directed in the fifth Section of this Act, on the application of the owner or owners of said land; or if such Road shall occasion the removal of any fences or buildings, then and in such cases the damage to the owner or owners of such land, occasioned by the removal of such fences or buildings, shall also be ascertained by such Jury; and that in all cases where a Jury is summoned for any of the purposes provided by this Act, the Justices issuing the Warrant for the summoning of such Jury, or one of them, are hereby required to attend and preside at such inquest or examination.

VIII. And be it enacted, That the said Commissioners shall and may in all cases when the Jury shall have assessed the damages for the owner or owners of any land over which a Road may have been laid out or altered either by the said Commissioners or a Jury, lay before the Justices of the said County at their General Sessions, the assessments so made by said Jury, which assessment the said Justices are hereby authorized and required to examine and allow, and to