

cutting that work, deemed to be of public utility, they have been authorized to cause lands, held as private property, to be taken and condemned to that use; and, according to the mode specified, the owners are allowed to obtain a compensation for the injury they may sustain by the construction of the proposed rail road over their lands. (a) It has not been intimated that this legislative enactment is, in this or in any other respect, unconstitutional; and therefore, the only questions which this court can now be called upon to consider are such as relate to the fairness of the conduct of the body politic in the execution of their act of incorporation.

By its fifteenth section it is declared, that in all cases where the company cannot agree with the owner of any land which may be wanted for their road, they may have it condemned by a jury to their use. It is not said that the damages must be ascertained by a jury *before* the company enters upon the land for the purpose of constructing their road; nor is any time specified within which the inquisition must be taken; but it is declared that the inquisition shall be returned to the clerk of the county, and shall be confirmed by the court at its next session, if no sufficient cause to the contrary be shewn; and when confirmed shall be recorded; and further, that upon the payment of the valuation to the owner of the land, the estate and interest therein shall vest in the company. But it is manifest from the general nature of this provision, that if the benefit estimated by the jury as likely to result to the owner from conducting the rail road through his land should amount to a total extinguishment of his claim for damages, that then the estate and interest must vest in the company immediately upon the confirmation of the inquisition; because, where nothing is required to be paid by the corporation, the confirmation of the inquisition by the court must be considered as that last act upon which the vesting of the interest in the company is to depend.

The objects of the inquisition are to designate the land taken, and to compensate the owner to the full extent of the injury he may sustain. Hence it cannot be indispensably necessary, in all cases, to have it taken before the company proceed to construct their road; because, the estimate of damages may, in many cases, be as accurately made after the road has been nearly or entirely completed, as before the land was entered upon for the purpose of its construction. Indeed as to all deep cuttings, or high

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(a) 1827, ch. 72.