

case of dispute. But this appears to be at variance with the preamble, which asserts that the property to be conveyed under the letters patent by the city to water-lot owners was intended as a compensation both for the land taken and for the expense of constructing the esplanade on such water lot; and the enacting part immediately after provides an arbitration for the owner dissatisfied "with any such compensation."

The second section, which recognises the right of the water lot owners to be paid for the land taken on which to construct the esplanade, and which provides for ascertaining the value either by the city surveyor or by arbitration, affords also an object to which to apply the words at the beginning of the fifth section, "All sums of money ordered to be paid" by the city "to the owners of the said water lots in fee shall be paid within one year from the date of the decision of the arbitrators;" but it does not help to remove the incongruity between the different parts of section 4, in which the apparently plain direction to place the expense of constructing the esplanade against the value of the land taken from the water-lot owner, seems opposed to the intention stated as to the property directed by the letters patent to be conveyed to him.

It is not, in my view, necessary to resolve this question, in order to dispose of the first objection taken by Mr. Dalton. The facts necessary to raise it do not appear on the face of the award, and admitting that if the mistake be pointed out by the affidavit of the arbitrator, the court will sometimes interfere (*Hutchinson v. Shepperton*, 13 Q. B. 955,) the affidavits of those arbitrators by whom the award was made disclaim any mistake or injustice; and after the conflict of authority has settled down into the rule previously enunciated, I am disinclined to adopt new distinctions to evade its application.

Great reliance has, however, been placed on *In re Brogden and the Llynvi Valley Railway Company*, (9 C. B. N. S. 229,) as in effect deciding that in a case analogous to the present the court had power to set aside the award upon grounds not apparent on its face, because they did not dispose of the case on that objection, which was raised by