

vit, and by the affidavits of all three arbitrators, one filed by him, the other two on shewing cause; and that an award may be set aside for mistake or error if admitted by the arbitrators. See *Henn v. Swinnerton*, (1 Coop. C.C. 419,) citing *Nichols v. Chalie*.

We cannot point out any thing wrong on the face of the award, and he therefore in effect asks us to follow the case of *In re Hall and Hinds*, (2 M. & Gr. 847,) where the court set aside the award for a gross mistake of the arbitrators, as equivalent to misconduct on their part, though not apparent on the award. This case is spoken of approvingly by Lord *Denman*, C. J., in *Hutchinson v. Shepperton*, (13 Q. B. 955,) but though it has not that I am aware been expressly overruled, it is certainly shaken by the decisions and observations in *Phillips v. Evans*, (12 M. & W. 309,) *Hodgkinson v. Fernie*, (3 C. B. N. S. 189,) and *Hodge v. Burgess*, (3 H. & N. 293.) (See also *Lancaster v. Hemington*, 4 A. & E. 345.) The rule now adopted in courts of law seems to be, that an award good on its face is not to be set aside on the ground of mistake alone.

If our power to interfere was more extensive, (and I assume the agreement in the submission that it shall be made a rule of court gives us jurisdiction,) we should still have to determine that the alleged mistake, if established in fact, is a mistaken construction of the terms of the acts.

The first act authorises an arbitration to determine the sum which the owner of a water lot is to pay the city for constructing the esplanade across his lot, when he fails to do so; and it certainly provides no reimbursement to the owner beyond a conveyance of land and land covered with water under the patent of February, 1840.

The second act (20 Vic., ch. 80, sec. 4) declares that the property directed by these letters patent to be conveyed to the owners of water lots was intended as a compensation for the land which might be taken for the esplanade, and for the expense of constructing the same across the several lots. And then—after enacting “that the owners be respectively charged with their respective shares of such expense,” (a matter provided for by the first act)—it authorises an arbitration be-