

propriety of the amount awarded, if it be for a proper ground of compensation.

It appears clearly from Manning's affidavit, and it is not denied on the other side, that it was objected, on behalf of the city, "that it was against the statute to include in favour of Leak the amount for the work he had done upon the esplanade," the other two arbitrators contending that he was legally entitled to such charge to be added to the price of the hundred feet.

Mr. Dalton's affidavit is to the same effect, and his letter to the arbitrators explicitly takes the same ground.

The affidavits filed in answer avoid any reference whatever to this pointed charge. Neither Mr. Cumberland nor Mr. Dennis vouchsafe any explanation whatever on the subject; and this silence, coupled with the refusal to accede to the earnest desire of the counsel for the city to embody in the award the items or grounds of compensation, can only lead my mind to the obvious conclusion that the applicants are right in contending that allowance has been made to Leak for the filling in done by him, to enhance the price allowed for the hundred feet.

I proceed, therefore, to consider if this be lawful.

The act of 1853 certainly contemplated no payment whatever to any water-lot owner. The corporation was allowed to make the esplanade, and the share of each water-lot owner for the cost of making it across his lot, if he did not elect to do it himself within a specified time, was to be ascertained by the city surveyor, or by arbitration, and became a charge on the land.

The question, therefore, turns on the act of 1857.

The first section empowers the corporation to make an esplanade one hundred feet wide across all water lots, to make a railway track thereon, or between that and the south side of Front Street.

Section 2 empowers the corporation to contract with the Grand Trunk Company, and others, for the filling up the whole space between the north limit of the esplanade and the bay shore, the expenses of such filling to be re-paid to the corporation by the owners of lots; the amount to be paid