

former act for payment for the construction of the esplanade.

By section 5 all sums ordered to be paid by the city to the owners of the water lots shall be paid within one year from the date of the decision of the arbitrators, or from the date of any rule of court ordering the same, with interest, and the sum to be paid to the city, by the lessees of water lots or others for filling up, &c., shall be a charge upon the lands, as provided by the first act in respect to the esplanade.

Mr. Dalton has very strenuously urged the first objection on us. He contends that the patent of 1840, by which the city was authorised to lease water lots, and to convey to previous owners of water lots certain strips of land adjacent thereto, and also additional portions of land covered with water, expressly required that the water lots leased should be filled up at the lessees' expense, to the height of three feet from the water's edge of the bay to the south side of the esplanade, and that the leases should contain covenants from the lessees to this effect; and as to the strips of land and the additional portions, the conveyances thereof were to be subject to the like conditions, and to all general regulations as to lots which were designated in the patent by reference to a map attached thereto, both in respect to buildings and the construction of the esplanade thereon: that the act 16 Vic., ch. 219, as regards the esplanade, unequivocally affirms the duty of the owners of water lots, while the act 20 Vic., ch. 80, declares that the conveyances to be made under the letters patent by the city to such owners were intended as a compensation for the land taken for the esplanade and for the expense of the construction thereof, which if done by the city was made a charge on such lots; that this expense was thrown upon the owner by both acts, and no part of it therefore could properly form a charge on the part of the owner against the city; and that if, therefore, the arbitrators had in this case allowed to Leak any amount for work, &c., done at his expense, in partially constructing the esplanade across the water lot owned by him, their award is erroneous and should be set aside. And he desires to establish that this error had been committed by the evidence given before the arbitrators, a verified copy of which is attached to his affida-