496] *Morris Seely v. The State of Ohio.

A special act authorizing the complainant to file a bill, as in chancery, against the state, and requiring the cause "to be decided upon principles of justice and good faith," will be construed as intending to relieve the complainant from all technical objections that might arise in an ordinary proceeding in chancery.

The case of Morris Seely v. The State, 11 Ohio, 501, reviewed and affirmed.

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fail to embrace. The defence of insanity is not uncommon. It is by no means a new thing in a court of justice; it is a defence often attempted to be made, more especially in cases where aggravated crimes have been committed, under circumstances which afford full proof of the overt acts, and render hopeless all other means of evading punishment. While, then, the plea of insanity is to be regarded as a not less full and complete, than it is a humane defence, when satisfactorily established, and while you should guard against inflicting the penalty of crime upon the unfortunate maniac, you should be equally careful that you do not suffer an ingenious counterfeit of the malady to furnish protection to guilt. Supposing that you should find the proof of insanity prior to, and subsequent to the homicide, sufficient, counsel have requested us to instruct you that the defendant must go acquit, even if you should find that the act was committed during a lucid interval. We do not so understand the law. An act done during a lucid interval, is an act for which the law will hold the individual accountable. By a lucid interval, we mean that state of mental sanity which is indicated in the main question that I have already stated to you. Proof of prior insanity throws upon the state the burden of proving the crime perpetrated during a lucid interval. It defeats the legal presumption of sanity, and creates a legal presumption of continued lunacy, which, like the former, must be satisfactorily overthrown by proof. This is its sole effect.

What is a reasonable doubt?

A verdict of guilty can never be returned without convincing evidence. The law is too humane to demand a conviction while a rational doubt remains in the minds of a jury. You will be justified, and are required to consider a reasonable doubt as existing, if the material facts, without which guilt can not be established, may fairly be reconciled with innocence. In human affairs absolute certainty is not always attainable. From the nature of things reasonable certainty is all that can be attained on many subjects. When a full and candid consideration of the evidence produces a conviction of guilt, and satisfies the mind to a reasonable certainty, a mere captious or ingenious artificial doubt is of no avail. You will look, then, to all the evidence, and if that satisfies you of the defendants's guilt, you must say so. If you are not fully satisfied, but find only that there are strong probabilities of guilt, your only safe course is to acquit.

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Seely v. The State of Ohio.

THIS case is a proceeding in the nature of a BILL IN CHANCERY, and was before the court at the last term. It is reported in 11th Ohio Reports, 501.

At that term the following decree was entered;

This case came on to be heard upon the bill of the complainant, and the exhibits thereof; the answer of the said defendant, the testimony of witnesses, the report of the master, and the exceptions thereto. Upon consideration whereof, it is the opinion of the court that the complainant is entitled to recover for the cost of the construction of said tail-race, or canal and basins thereon so by him made, in the pleadings mentioned, and for the actual value of the land occupied by said tail-race, or canal and basins, if the same has been dedicated, or has been caused to be dedicated by the complainant for public purposes, or shall, under the decree of this court, so dedicate the same; but that the said complainant is not entitled to recover for any other cause. And that the said complainant, on the 21st February, 1834, received of the said defendant, by virtue of an act of the General Assembly, the sum of $5,000, which shall operate as a credit thereon.

Therefore it is ordered and decreed by the court here, that this case be referred to Joseph Davison, who is hereby appointed a Special Master, to take and state the account between the complainant and the said defendant, in respect to the actual cost or expense of the construction of the said tail-race, or canal, and the basins thereon, exclusive of all cost of constructing roads, streets or bridges, in the vicinity of the said *tail-race; also, the actual value of the ground so [497 occupied by the said tail-race and basins, if the same has been dedicated lawfully, or has been caused to be dedicated, or if the complainant shall so dedicate the same under the decree of this court; the value to be determined on said 18th November, 1829.

It is ordered that either party may take further testimony in relation to the questions thus referred, until within forty days of the next term of the Supreme Court for Montgomery county, and that the master, in the making up of said account, shall first ascertain the sums to be charged against the state, and then compute interest thereon, from and after the 18th day of November, 1829, until 21st day of February, 1834, and then deduct the said sum of $5,000, so paid as aforesaid; and that if any balance be found due to the complainant, after the allowance of the said credit, that the master compute interest thereon until the first day of the next term of the said Supreme Court for Montgomery county, to which court the said master shall return

the said account to be stated by him, together with the testimony in relation thereto. The report shall be made twenty days before the commencement of the term, for the purpose of allowing each party to file exceptions, if they should think proper to do so. And that the said bill, as to any and all other matters than those above referred to the said master, be and the same is dismissed. The question of costs, and all questions not herein decided, are continued until the coming in of the said report.

Witness my hand, and the seal of said court, at Co-
[SEAL.] lumbus, this 28th day of December, A. D., 1842.
L. STARLING, JR., Clerk.

Pursuant to the foregoing order the Master Commissioner went on to take testimony, and, on the first day of May, made the following report;

The undersigned, Special Master Commissioner, to whom this cause 498] was referred, to take and state an account between *the complainant and said defendant, report as follows, to wit: The actual cost or expense of a tail-race, or canal and basins therein, constructed by said complainant, in the year 1829, also the actual value of the ground so occupied by said tail race or canal, etc.

Upon an examination of the evidence in relation to the cost of said work, I find the only witness, who testifies in relation to the actual cost of said work, is William Mershon. He deposes that, in March, 1829, he was employed by complainant to superintend said work; that he was the first, and only superintendent, employed by complainant on the work; that he kept the books and accounts of said complainant, from the commencement of the work, until the same was stopped, in the fall of 1829. And that from said books, so kept by him, he made out a statement of the cost of the work, which he believes was nine thousand dollars, including some gravel hauled upon two or three streets, close to the line of said canal; the extra expense of hauling said gravel witness puts at one hundred dollars; this, deducted from the nine thousand dollars, leaves eight thousand nine hundred dollars. And that a bill of tools, necessary for doing said work, such as shovels, picks, spades, plow and wheelbarrows, and the blacksmith's bill for repairs to the same, was not included in the statement made by him, the amount of which was two hundred and fifty-six dollars.

If the evidence of this witness is to be relied on, (and there seems to be no evidence to contradict it,) we find the actual cost of said work, in 1829, exclusive of hauling gravel on streets, and including the above

bill of tools and repairs, to be nine thousand one hundred and fifty-six dollars ($9,156) Interest on this sum, from the 18th day of November, 1829, until the 21st day of February, 1834, is two thousand three hundred and thirty-four dollars and seventy-eight cents—making eleven thousand four hundred and ninety dollars and seventy-eight cents. The five thousand paid complainant by the defendant, being deducted, leaves a balance due on said work, February 21st, 1834, of six thousand four hundred and ninety dollars and seventy-eight cents (6,490.78.) Interest on this amount, *from the 21st of Feb- [499 ruary, 1834, until the 1st day of May term, 1843, thirty-six hundred and two dollars and thirty-two cents ($3,602.32.)

I am also ordered to report the actual value of the ground occupied by said tail-race, or canal and basins, on the 18th day of November, 1929.

We have the evidence of William Bomberger, Ephraim Broadwell and Elisha Brabham, in relation to the value of said ground, in the year 1829; all of whom sold ground to complainant on the line of said race or canal in that year, at prices averaging about two hundred dollars per acre.

The quantity of ground covered with water is ten acres—at two hundred dollars per acre, make two thousand dollars ($2,000) Interest on same, from the 18th day of November, 1829, until the first day of May term, sixteen hundred and twenty dollars ($1620.) The towpath has also been dedicated for public purposes, and contains two acres 40-100, at two hundred dollars per acre—four hundred and eighty dollars. Interest on the same, from the 18th day of November, 1829, until the first day of May term, three hundred and eighty-eight dollars and eighty cents.

There is another item referred to in the deposition of William Mershon, in relation to the cost or expense of said work, not included in the above, to wit:

What were complainant's services worth on said work? Witness says three hundred and fifty dollars. Interest on the same, from the 18th day of November, 1829, until the first day of May term, two hundred and eighty-three dollars and fifty cents.

There is another view presented in the depositions of Bomberger, Broadwell, Brabham and others, in relation to the value of the ground occupied by said race, or canal and basins, to wit:

What were said lands worth per acre, in 1829, for the purposes for which they have been and are now used?

The witnesses vary from eight hundred to fifteen hundred dollars per acre.

500] *If said lands were worth eight hundred dollars per acre, to dedicate them for the purposes they have been and are now used, twelve acres and 40-100 would amount to nine thousand nine hundred and twenty dollars. Interest on the same, from the 18th day of November, 1829, until first day of May term, eight thousand and thirty-five dollars and twenty cents. Balance due complainant, February 21st, 1834, as above stated, ten thousand and ninety-three dollars and ten cents.

Complainant's services, while constructing said work, three hundred and fifty dollars. Interest on the same, from the 18th day of November, 1829, until first day of May term, two hundred and eighty-three dollars and fifty cents.

If this view, in relation to the value of the land occupied by said race or canal, comes within the meaning of the decree of the court, complainant will then be entitled to twenty-eight thousand six hundred and eighty-one dollars and eighty cents. ($28,681.80.)

Recapitulation of the first view in relation to the cost of said work, and value of the ground:

The actual cost of said race, or canal and basins	$9,156.00	
Interest on same, Feb. 21st, 1834	2,334.78	
	$11,490.78	
Deduct payment	5,000.00	
Balance due Feb. 21st, 1834		$6,490.78
Interest on same until the first day of May term,		3,602.32
The actual value of said ground, in 1829		2,000.00
Interest on same until first day of May term		1,620 00
Value of the ground occupied by the towpath		480.00
Interest on the same		388.80
Complainant's services (if allowed)		350,00
Interest on same		283.50
		$15,215.40

501] *Balance due complainant on the cost of said race, or canal, etc., with the actual value of the ground occupied by said canal and towpath, and complainant's services, with interest.

Recapitulation of the second view, taken in relation to the value of the lands occupied by the race, of canal, etc.:

Balance due complainant on said work, Feb. 21st, 1834.....	$6,490.78
Interest on same..... ...	3,602.32
Value of the ground, for the purposes for which it has been, and is now used.....	9,920.00
Interest on the same.....	8,035.20
Complainant's services.....	350.00
Interest on same.....	283.50
Balance due complainant.....	$28,681.80

if the second view, taken in relation to the value of the ground, be correct.

All of which is respectfully submitted. Reported, May 1, 1843.

JOSEPH DAVISON, Special Master Commissioner.

Special Master's fees, for examining the evidence and making this report, $30.

To this report exceptions were filed, as follows :—

The defendant excepts to the report of the Special Master Commissioner, filed in this cause, for the following reasons, to wit:

First: That the sum allowed by the Special Master Commissioner to the complainant, for the cost of digging the tail-race, etc., is excessive, greatly exceeding the cost of similar work, founded on the testimony of a single witness, testifying, as to his recollection, after a lapse of nearly fourteen years, of books kept by him, containing charges of the expenses of the work, as they accrued; which books were not produced on the hearing, although the complainant was duly notified to *produce them before the Special Master Commissioner, who, [502 to account for their nonproduction, alleged that he had suffered the said books to be destroyed; and that this estimate of the cost of said work is not merely unsustained by satisfactory evidence, but in direct contradiction to the testimony of Messrs. Young and Forror, etc.;

Second; That if the cost of this work was enhanced, whether from want of capital or credit of the complainant to carry it on successfully, or the failure of the necessary skill and superintendence on his part, the state, under the interlocutory decree of this court, is accountable only for the amount which it would have cost with regular payments, and with proper skill and superintendence, and not for increased expenses incurred by the neglect or default, or want of skill of the complainant;

Third: That the estimate and allowance by the Special Master Commissioner, of the price and value of land occupied by said tail-race, of

dedicated to the public, is excessive, and wholly unwarranted by the testimony in the cause, or of the actual value of land in that vicinity, in 1829.

Fourth: That the estimate of said land, at $800 the acre, is founded on a total misapprehension of the interlocutory decree, by which the complainant was entitled to an allowance for the fair cash value of those lands in 1829, which fair cash value is grossly exaggerated by Special Master in both his estimates, whether of $200 or $800 the acre;

Fifth: That the sum of $5,000, paid to the complainant by the state, was a full and liberal compensation for the costs of the work, if properly conducted, and for the price and value of the land, in 1829;

Sixth: That said report is, in various other respects, defective, and unsupported by proof. JOSEPH H. CRANE, Sol. for State of Ohio.

The case being reserved to bank, a petition was filed on the 5th of 503] December, 1843, for a rehearing, which, by agreement *of counsel, was treated as in the nature of a bill of review; all questions in the case being considered open for argument and consideration.

The act under which this bill was filed; the proposition of Seely, and answer of the canal commissioners, referred to in the argument and opinion, are as follows:

"Be it enacted, etc., that Morris Seely, of Montgomery county, Ohio, be and he is hereby authorized "to institute, commence and prosecute an amicable suit, by filing his petition in the nature of a chancery proceeding in the court of Common Pleas, of the county of Montgomery, at any time after the passage of this act, against the state of Ohio, for the recovery of any, and all damages which he may have sustained by reason of the nonperformance, upon the part of the state, of any contract entered into by her duly authorized agents with the said Morris Seely, which suit in chancery, so commenced, shall be investigated and decided by said court upon the principles of justice and good faith; and, upon the final hearing of said cause, upon the principles aforesaid, the court shall render such decree as, in their opinion, the principles of justice and good faith demand.

"SEC 2. Should a decree be rendered in favor of the said Morris Seely, the clerk of said court shall certify the amount thereof, under the seal of said court, to the auditor of state; who, upon such representation, shall draw an order upon the treasurer of state, in favor of Morris Seely, or his legal representatives, for the amount thereof, with costs, and the treasurer of state shall pay the same out of the canal

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fund ; but should the said Morris Seely fail to recover, a decree shall be rendered against him for costs, provided that either party may take an appeal to the Supreme Court, as in other cases ; but if such appeal be taken by the state of Ohio, no bond shall be required of the appellant, and, in case of such appeal, the Supreme Court shall be governed, in all things, by the provisions of this act ; and the clerk of said court shall, in case a decree be rendered in favor of Morris Seely, certify the same as before provided ; and the auditor and treasurer of state shall each *perform the like duties as prescribed upon the certifi- [504 cate of the clerk of the Common Pleas.

"SEC. 3. That notice of the pendency of the suit herein authorized, shall be given by copy of the proper process being left with the Governor of this state, at least ninety days previous to the sitting of the court to which the writ is made returnable ; and the Governor is hereby authorized to employ counsel for the state in said cause, provided that, before issuing the subpœna in chancery, as provided in the first section of this act, the said Morris Seely shall file with the clerk of said court his bond, with one or more sufficient securities, to be approved by the clerk, conditioned that he will pay all costs that may be adjudged against him in said court ; provided that nothing in this act contained shall be so construed as to recognize the existence of any contract between the state of Ohio, or her duly authorized agents, and the said Morris Seely, on which said Seely would be authorized to recover damages." Passed March 12, 1839.

On the 14th of January, 1829, Morris Seely made a proposition, in writing, to the board of Canal Commissioners, "that he would sell to the state of Ohio any quantity of land, not exceeding ten acres, at such prices as the board of canal commissioners, or acting canal commissioner, should consider a fair price, and at such point or points as he or they should deem the most eligible for the control of such water power ; or he would lease the water privileges at $400 a year, for the first ten years, and subject to a reappraisement perpetually. Your immediate attention to this proposition will be gratifying to me, inasmuch as it would enable me to facilitate the excavation of the basin, and, I would beg leave to add, advance the great interests of the state generally, and those of the town of Dayton in particular."

This answer was returned ;

"OFFICE OF CANAL COMMISSIONERS,
COLUMBUS, Jan. 15, 1829.

"The proposition of Morris Seely to convey to the State of Ohio,

505] for the use of the canal fund, one or more acres of *ground on outlot No. 3, or 1, in the town of Dayton, for the purpose of selling or leasing on said ground the water which passes from the feeder into the canal below, was considered; whereupon it was resolved, that the Board will purchase of said Seely one or two acres of ground, at the rate of five hundred dollars per acre, to be selected by the acting commissioner, provided the title is made clear of incumbrances, and the said Seely, or others intrusted, shall make a cut from the canal, and upon the same level, up to a convenient point for the use of the water upon said Seely's ground, for the free flow of the tail-race water into the canal."

Upon which is indorsed Governor Trimble's approval:

"I concur in opinion with the board of canal commissioners in relation to the purchase of the lot or lots, mentioned in the within agreement, and my assent to the contract is hereby given.

"February 20, 1829. A. TRIMBLE."

DANIEL PECK, for the State.

It is contended by the defendent, that the decree made at the last term is erroneous in two principal matters—

First: The court erred in not dismissing the bill, because there was no good cause of action made out in the case; and,

Second: If there was any cause of action, the proper parties were not before the Court.

Was there any sufficient cause of action exhibited in this case to entitle the complainant to a decree?

It will be remembered, that the act under which this bill was filed, only authorized Seely to institute a suit against the state, to recover any damages which he might have sustained "by reason of the non-performance, upon the part of the state, of any contract entered into by her duly authorized agents, with said Morris Seely."

This act can not, nor does it purport to give any relief, upon any other ground, than for the breach of a contract; it can not be construed to mean anything else.

506] *This act does not define the term contract, but leaves that word, at least, to its original signification, though the act does provide that if there be any legal contract proved, and a breach of it, then the court shall decide the case upon the principles of justice and good faith.

This act does not authorize the court to ascertain any breach of morals on the part of the state, or to give damages to Seely on his

moral right, as distinguished from his legal or equitable right, but only upon the breach of a contract.

Now if the act had directed the court to ascertain what was good faith between the parties, and had directed damages to be given for a breach of good faith, or on Seely's moral right to be compensated, then, indeed, it would be immaterial whether there was a contract or not; but such is not the act.

The first question to be considered by the court, is, was there any contract between the parties, and, if so, has there been any breach of it on the part of the State? if not, there is an end of the case; if there was, then the case is to be decided on the principles of good faith.

It is contended that the court erred in the construction of this act.

It seems to us, that the court give a very strained and uncalled for construction to the words, good faith. The phrase may not, necessarily, mean anything more than the ordinary equity between man and man, in common equity proceedings, if, indeed, the framers of that act knew what in particular they would have.

Was there any necessity in this case for the court to consider that the act cut the judges loose from all precedent or rule, and set them afloat without any guide but their own notions of right, as legislators?

It speaks but poorly for law and equity, that the court should find itself able to do better justice without precedent or rule, and take the first opportunity to clear itself from the trammels and rules laid down by the courts from time immemorial.

*If the court can do better without the trammels of the law [507 in the case of Morris Seely, why not in all other cases? If this be the case, the Legislature or the Courts can not be too quick in breaking those trammels, and letting justice and good faith have the untrammeled sway in all cases.

It appears to us that the act did not remove from this case any rule which ought to govern any other case, and that if even it was intended to leave the judges the most ample discretion, in every respect, in this case, that such discretion could not be so well exercised in any other way, as by closely adhering to the well established rules and precedents which govern other cases. A departure from those well established rules of decision must be fraught with danger, and can not lead to any satisfactory result, and will, in the end, materially lessen that confidence we ought to have, that the decision of the courts will be uniform, and that law and equity will be equally administered.

It seems to be admitted that Seely could not recover for the breach

of any contract, on the part of the state; so that if the court should be of opinion that the act ought to be construed as we contend for, then the bill ought to be dismissed.

It ought not to be overlooked that, before Seely got the $5,000, he thought so lightly of his claim, that he says not one word about it in his application for the benefit of the insolvent law, and destroyed the books of accounts kept of the cost of the making of the canal.

The court seem to have some difficulty in finding out the object the Legislature had in sending this case to the court for settlement.

It is highly probable that the Legislature were tired out with Seely's applications. Two acts had already been passed for his relief, both of which were intended, no doubt, to settle his whole claim, and, under one of them, he received the $5,000. Still, he applied again, and that body can see no end to this business, or his importunities; and some of the members having understood that the courts could make some final decree or judgment in any case before them, hit upon 503] this expedient of *sending Seely before the judicial tribunals, as courts, and not as legislators, so that, if he could make out any legal or equitable claim, he should have justice done him according to law and equity, as administered in courts; not that he should be relieved at all events, for that body expressly refuse to acknowledge that he is entitled to any relief. It is not perceived how the Legislature could delegate authority to any court, or other persons, to act as legislators.

If Seely had a right to recover against the state, or had any claim, either in law or equity, it undoubtedly passed from him to the commissioner of insolvents. That he could not sue the state can not, in any respect, alter the case.

If any more money is to be appropriated to Seely's use, it ought to be applied, first, to the payment of the debts he had contracted at the time he made his application for the benefit of the insolvent law.

We ask the court to look into the list of creditors made by him on the 14th of May, 1832, in his application. His debts amounted then to nearly $12,000, and now, together with the interest, amount to about $20,000.

It is highly probable that the greater portion of those debts accrued in the prosecution of this very work, for which he asks compensation; and it is certainly within the principles of good faith, that they who performed the labor and expended the cash, should have the compensation given for it, and that it should not go into Seely's hands, who, it seems, had then nothing to lose, but anticipated profits in the sale of lots.

The case of Robert Milnor *et al. v.* George W. Metz, is reported in 16 Peters, 221; it is this:

Milnor and Thompson applied to Congress for extra fees, as gaugers for the port of Philadelphia.

Their memorial was presented to Congress in January, 1838, and, in May, 1840, an act was passed for their relief, by which the sum of $2,757.23 was ordered to be paid to them. Metz made no claim before Congress, as the assignee of Robert Milnor.

*In December, 1838, Robert Milnor applied, at Philadelphia, [509 for the benefit of the insolvent laws of Pennsylvania; and he was discharged in January, 1839, having executed the usual assignment for the benefit of his creditors. Metz was duly appointed his assignee.

After the act of 1840 had passed, Metz applied at the Treasury Department, claiming the amount of the sum allowed by the same to Robert Milnor, being the one-half of the whole sum so allowed, the other portion belonging to John Thompson.

This application was rejected; and the original suit was instittued against Milnor, Thompson, Petrekin and Woodbury, the Secretary of the Treasury, in the District Court for the District of Columbia. The court made a decree in favor of Metz, the assignee, and Milnor appealed to the Supreme Court.

Milnor claimed this money on three grounds—

First: That it was not his purpose to pass this claim by his assignment.

Second: That he had no such interest at the time of the assignment in his claim upon Congress as could pass by that instrument;

Third: That Congress had the right to model their relief at pleasure, and having granted it to him, and not to his assignee, the latter is without relief by the present suit.

He contended that only an actual interest could pass by such an assignment, and not an expectancy. That the power of Congress over the matter was complete, and it having been granted to him, he and no one else was entitled to it.

On the other side it was contended that whatever interest Milnor had in this matter, had passed to his assignee for the use of his creditors; though he could not have sued the United States for it.

That the right to compensation, is property belonging to the party who has performed the services, and, as such, belongs to his creditors.

The court decided that the sum granted was not a gratuity, but the

payment of an equitable claim. In support of that position, the case of Comeyges v. Vasse, 1 Pet. 196, is cited.

510] *In concluding the opinion, the judge says: "Had a similar claim on the part of Milnor existed against an individual instead of the government, there can be no doubt he could have recovered by suit, or it could have been the subject of setoff, or could have been assigned. So it would have passed to his administrator in case of his death. As the government was equally bound to do its creditor justice in a different mode, with an individual, we think no ground of distinction exists in the two cases; and, therefore, order the decree to be affirmed."

There is no substantial difference between the case of Milnor and Seely; Milnor claimed for extra services, and Seely for the breach of a contract. Congress passed an act for the relief of Milnor, and his assignee, by a decree of the court, took the money out of the treasury, under the assignment. If Seely is entitled to recover, it is only for the benefit of his creditors.

It is palpable that, on the 14th May, 1832, he had all the right and claim he has ever had in respect to this matter, and, as a matter of law, it did pass to his assignee for the use of his creditors, whether he mentioned it in his assignment or not.

Nor is there any hardship in this, for, as before observed, it is certain that a part of his indebtedness was for the construction of the very work for which he now claims compensation, and probably a large portion of it accrued in that manner.

It ought to go into the hands of the commissioner of insolvents to insure its application to the payment of the debts of Seely, due at the time of his application.

I presume that, as in the case of Milnor, it will be said here, that the Legislature had full power over this subject, and have the right to make a gratuity to Seely. But the act only mentions any contract which might exist between the parties, and says nothing about a gratuity, or of Seely's moral right to have any thing, nor indeed of his great moral claims. Nor does the bill, the foundation upon which a decree must be framed, claim any thing except by virtue of the contract. There can be no pretence that the Legislature intended to make a gratuity to Seely.

511] *Did not the court then err in deciding that this claim did not pass to the Commissioner of Insolvents, and that it was a grant to

Seely, upon a moral, as distinguished from a legal, or equitable right? We think that such a view of the act, and the case, is erroneous.

If, however, the court should not think that those errors assigned are sufficient to open this case for a rehearing, and to dismiss the bill, then the exceptions to the Master's Report must be considered; they may be embraced under three heads:

First; By the testimony, the master ought to have found the cost of the making of the canal to be much less than the sum reported;

Second: The rule adopted by him to ascertain the value of the land occupied by the canal is erroneous; and,

Third: He should not have reported anything due for the land used for the canal, for the reason that Seely has not conveyed, nor can he convey it to the State.

The Master has found the cost of the canal partly made by Seely, to have been $9,000. This is found upon the testimony of one Mershon alone, who was the superintendent of the work for Seely. He thinks that the actual cost of the work to Seely was about $9,000. It is certain that at this time no one can tell the actual cost of that work, and Seely, as by his affidavit appears, has destroyed his books, the only evidence which is entitled to much credit for the purpose of ascertaining its actual cost.

We do not understand the reference to direct the master to allow Seely exactly what this work may have cost him, but what it was worth to perform the work and labor bestowed on the canal by him.

It seems to us that there is sufficient and unimpeachable testimony to show that the canal, excavated by Seely, could have been done for less than $4,000. We refer to the testimony of the Engineers, and especially to that of Mr. Forrer.

We think that the master did not take into consideration the whole evidence of the case on that point, and should have *found that [512 Seely ought not to be allowed over $4,000 for the expense of the canal.

The master has found, on one view of the case, that the land used for the canal and towpath to be worth $200 per acre. This, though it seems like a high price for land, ought not, perhaps, to be objected to, if Seely has conveyed, or can convey, the same to the state. But there is no evidence in the case which shows that he ever did convey or dedicate this for public purposes; or, that he ever had the legal title to any considerable portion of the land overflowed by the canal, but, on the contrary, it does appear that, for the most of it, at least, he had not the legal title. If he had the legal or equitable title and did not

make his dedication before his application for the benefit of the insolvent law, he can not now do it, nor can the court by any decree do it for him, for all of his interest then passed out of him.

We object, then, to any thing being allowed on that part of this claim, and think that the master should have found, that Seely had been fully satisfied by the $5.000 already received by him.

There is another view taken of the value of the land, so appropriated for this canal, by the master, which, we think, is entirely out of the case.

Some witnesses were examined for Seely, who say, that for the purposes which this land was taken for the canal, they would not have taken less than $1,000 per acre; that is, they as owners of the surrounding land, would not have sold out land for the track of the canal, considering it has turned out to be a great nuisance, for less than that price.

Now, because Seely by his act, in not finishing his work, has materially injured the land of the adjoining proprietors, he claims the damages he has done to their land.

If, then, any thing ought to be given for the damage done by this canal, it should be given to those actually injured thereby.

JOSEPH H. CRANE submitted an argument on the same side.

513] *ODLIN and SCHENCK, THOMAS CORWIN and P. P. LOWE, for complainant.

Does the proposition made, accepted and acted upon, as averred and proved, constitute a contract or equitable agreement, which, in "justice" and "good faith," entitles Morris Seely to remuneration under the provisions of this special act of the legislature.

By the act of the 7th February, 1826, Chase's Statutes, vol. 3, page 1527-28, section 1, the canal commissioners were authorized to purchase a suitable number of acres at points where the surplus water of the canal might be profitably used, provided that before the contract should be binding, the Governor should approve it.

The complainant's proposition is to sell land, not exceeding "ten acres, at prices to be fixed by the canal commissioners, at the points eligible for the control of the water power, or to lease the water power, etc."

The proposition of Morris Seely is accepted, and it is accepted, say the board of canal commissioners in their written acceptance to him, "for the purpose of selling or leasing on said ground the water power" which passes from the feeder into the canal below. Such was

the understanding of the board of canal commissioners of Morris Seely's proposition, as recited in the preamble of their written acceptance; and they agree to accept, provided the title is clear, "and provided he will make a cut from the canal and upon the same level, up to a convenient point for the use of the water upon Seely's ground, for the free flow of the tail-race water into the canal." This purchase is approved by the Governor. The complainant conveys the land, and the excavation and works proceed under the superintendence and management of the officers of the State.

In the deposition of Micajah T. Williams, the acting canal commissioner, and having charge of this work, taken on the 11th May, 1841, he swears "that he received the deed of Wm. Lodwick, for this land, in pursuance of an agreement (above *set forth) made in Jan- [514 uary, 1829, with the board of canal commissioners, to convey to the State, for the use of the canal fund, one or more acres of land in outlot No. 3 or No. 17, Dayton, for the purpose of selling or leasing thereon the use of the surplus water from the canal."

In his second deposition, of the 6th February, 1830, he says: "The commissioners knew of no other way, in which, at that time, the water power in question could be made available to the state."

What does he mean by this? It is manifest that the state of Ohio, under any constitutional power which she possesses, could not appropriate the land of her citizens, whereon to use her water power, whatever power she possesses to use it for the way of her canals.

Cooper's representatives, owning all the land except this, sought to control the state officers; and Mr. Williams speaks advisedly when he says, "we knew no other way the water power could be made available to the state" (but through Morris Seely.)

We have proved, also, that the price to be paid by the state was a low price for the land as land. How then stands the question? The land is sold at a low price, at a price at the discretion of the state, and it is sold and accepted for the purpose of selling or leasing, on said ground, the water power of the state; this is Seely's proposition, and this is the state's acceptance. The state also requires of Morris Seely to make a cut for the convenient use of the water; (where?) on Morris Seely's ground, and for the free flow of the tail-race water into the canal. If then there was to be tail-race water, there was to be mills or manufactories, as a consequence only upon them, could there be tail-race water? He was to make a cut, too, which the testimony yet shows (sifted, as it has been, and open for years to the efforts of

counsel on the part of the state, to contradict by testimony if they could,) cost Morris Seely at least nine thousand dollars.

Micajah T. Williams also swears, in his deposition of February, 515] 1840, that it was understood that Morris Seely expected *to be remunerated for his expenditures, by an enhancement in the value of the lands adjacent, which he anticipated would follow the proposed arrangement.

Is this not the known principle upon which the state contracts, and is contracted with? The state avails herself of the anticipated benefits of her improvements. She receives land, and contracts to put her improvements at such a point; she demands of her citizens the expenditure of $10,000; and the sale of his land below price, she stands by, and says, when the work is done—True, the water was to be used there—true you have reposed confidence in that faith which if violated by an individual, would brand him as a knave; but there is no contract—there is not even "equity" or "good faith" in your claim.

The term contract may be defined; in its full and liberal signification, every agreement, obligation, or legal tie, whereby one party binds himself, or becomes bound, expressly or impliedly, to another, to perform or omit a certain act: and, in its more technical phraseology, may be defined as the mutual assent of two or more persons competent to contract, founded on sufficient legal motive, or consideration, to perform a legal act, or omit an act not enjoined by law. Chitty on contracts, page 7.

There was unquestionably a motive and a legal consideration on both sides. The state knew no other way to use her valuable water power; and Morris Seely, by the agreement to use the land for certain purposes, on the consideration of its performance, expends (to pass the water) $9,000.

Should the court be of the opinion that no contract existed, in the legal, technical sense of that term, it does by no means follow that Seely is without remedy in the case presented.

All admit that the legislature have power, by law or joint resolution, to give to the citizen compensation in money for any injury done by an authorized act of a public officer, whether such injury were sustained with or without the consent of the party complaining. Thus, in the familiar case of property taken for roads or canals, without the owner's 516] consent, *or with it under the constitutional right to compensation, the legislature have, repeatedly, (after appraisers had awarded a sum of money in compensation,) by law, granted an additional amount,

because it was shown that justice had not been done. In all these cases there was no contract to govern the action of the legislature, but they followed that noblest, if not safest, of all the guides, the "principles of justice and good faith." The question in such case is, has the citizen, complaining, sustained damage by the act of the state, or its agents? If he has, "justice and good faith," will not be satisfied until such damage is fully repaired.

Had it been the intention of the legislature to simply turn Seely over to a court of chancery as any other suitor, they had only to say that the state waived its sovereignty and permitted a suit to be brought against it in equity. It would have been preposterous in that case, had the legislature assumed to tell the court on what rules, and by what principles courts of chancery were guided. But as the legislature intended the subject should be treated by the court as they would have treated it, had it been convenient for them to try it; they admonish the court that the case is not to be adjudicated by the positive rules of law, or even the more enlarged principles applicable to litigation in courts of chancery. In the first section of the act, it is sedulously, three times repeated, that the controversy shall be adjudicated upon "the principles of justice and good faith." Why insert these rules for the government of the court, unless it was intended that the court should act as arbitrators rather than as judges of a court of law; rather as a committee of the legislature than as chancellors in a court of equity. The language of the act can only have meaning in it by supposing the legislature to say, that, although the rules of law and principles recognized by courts of chancery, as such, may not afford relief, yet if justice and good faith demand it, relief shall be granted.

We think the reasoning of the court on this point at the last term, 11 Ohio, 506, carries with it the true meaning and intention of the act in question, and this the only rational exposition of its words.

*It is further contended that Morris Seely ought not to recover, [517 because, in May, 1832, he applied to the commissioner of insolvents of Hamilton county, Ohio, made his assignment, and obtained the benefit of the insolvent act, and his schedule of debts is now presented on the part of defendant. (In December, 1832, the Court in Bank finally determined the injunction on bill of review, 5 Ohio, 391.) To sustain this position, the defendant's counsel cites 16 Peter, 221, Milnor *et al. v.* Metz.

By the operation of this injunction the action of the state was sus-

pended. After its dissolution, in December, 1832, the state had yet the power to perform her engagements; no act of hers violated those engagements, and gave Morris Seely the right to damages. Until freed from that injunction she refused to perform by making other arrangements for the use of this water power, with the representatives of Cooper; abandoned the land of Seely, and having, through his instrumentality, brought Cooper's representatives to understand that other arrangements to the water power could be made, in bad faith, goes over to the enemy, and leaves Morris Seely ruined by the refusal of the state. In 8 Term Reports, page 259, Hadley v. Clarke, "The defendant contracted to carry the plaintiff's goods from Liverpool to Leghorn; on the vessel's arriving at Falmouth, in the course of her voyage, an embargo was laid on her, 'until the further order of council;' held that such embargo suspended the contract, and that after two years, when the embargo was dissolved, the defendants were answerable to the plaintiffs in damages for nonperformance." Here, then, Morris Seely had no right, legal or equitable, to assign, nor did he assign any at the time of his insolvency, in May, 1832. There was nothing the commissioner could take hold of, or seize upon, had the sovereignty of the state been waived, or had it been a matter between individuals. In the former adjudication of this case, 11 Ohio, 508, the court says: "No legal contract was violated, and yet 'justice and good faith' to Seely was disregarded."

518] *In the case in 16 Peters, the court say, the equity of the claim was "free from doubt; the guagers only received fees for specific services actually performed. He was ordered by his superiors to perform, and did perform 'extra services.'" It was only rejected upon the ground that there was no law providing for the case; the right was as perfect as extra services performed by one individual for another; the sovereignty only of the government was in the way of its recovery. Our case seems to us to come within the decision of the court in the case of Emerson v. Hall, 13 Peters, 409.

We, therefore, conclude, on this branch of the case, that there was no interest, legal or equitable, in Morris Seely, that passed by the assignment, and so the court have determined. And, if there was, that the state, under this act, can not avail itself of the technical objection that the commissioner is not a party, the statute having taken it out of the chancery rule, by providing a party in whose name the suit shall be sustained.

As to the exceptions taken to the correctness of the report of the

last master to whom this case was referred, we claim, most confidently, that the testimony of Mr. Mershon, in relation to the actual costs of constructing the work, is the least exceptionable, and certainly the most likely to be satisfactory. He commenced and continued until the end in superintending this work as the only agent. He was the only book-keeper of the expenses of the work. He made calculations, at the time the work was done, as to its cost, and swears positively, in his last deposition, that the actual cost of said canal (including tools and Mr. Seely's services not included in his estimate in his first deposition) amounted to the sum of $9,506.

So far, then, as this item of expenditure in the construction of this work is concerned, and which is reported in either view taken by the last master, there could be no good reason why the court should not confirm it.

It is still insisted by the defendant, that there has been no dedication of the ground occupied by the canal basins and towpath, and that therefore the item of $2,000 for land, in the first view of the case, and the item of $9,800, and more, in *the second view, ought not to [519 be reported in favor of the complainant. The price fixed, as to the value of the land, in the first view is admitted to be reasonable enough, if there has been a dedication. Apart from the admission, the proof shows that the value fixed by the evidence is rather under than equal to the true amount. The present inquiry, however, is, did Mr. Seely dedicate, or cause to be dedicated, the canal, or race, and towpath, as a public highway. To sustain the affirmative, we refer to the following facts:

First: Mr. Seely constructed this canal fourteen years ago; it has been a public nuisance ever since, and if he did not pass it through his own ground, we might suppose that the true owner, if there is any beside Seely, would have made some complaint; but there has been none made. Secondly: The official certificates of the recorder of Montgomery county, (see paper No. 40, and exhibit C.) which show that the canal, race, basins and towpath, streets and alleys of this work are all duly dedicated. Thirdly: Brabham, in his deposition, No. 62, says the canal, basins and towpath were dedicated by him, Seely, and others, at Seely's instance, upon an agreement with him. See, also, Eddy's deposition. Fourthly: we refer to Van Cleve's map of the town of Dayton, sworn to by him as correct, which shows a dedication of this canal, etc., as clearly as it shows a dedication of Main street; it shows lots on each side of the canal, and that he platted and sur-

veyed the lots for Seely. Fifthly: The bill charges this canal to be on Seely's ground and the answer does not deny it. Were it deemed necessary, we might add fact upon fact, and enlarge upon this point, but it is, we think a waste of time. The report, then, we think, is fully sustained in this particular.

In the second view taken by the report of Mr. Davison, it is objected that he should not allow the complainant the value of his land, for the purposes for which it is used. The reasoning of defendant's counsel on this point is not satisfactory. The claim that the complainant can not recover the value of his land, for the purposes to which it is applied, under the circumstances of Seely's having been the owner of 520] the adjacent *property, is but denying there is a remedy for a wrong, and that there is such a thing as an injury without an adequate remedy. Mr. Van Cleve, Eddy, Bacon and Reed, and other evidence, show to what extent Seely was the owner of lands through which this canal passed. Every body knows that locality, convenience, health and neighborhood, make up the value of real estate. Now here is a nuisance a mile and better in length through his ground; and is there no difference between occupying this ground as a nuisance through your town lots, where so many inhabitants are to be affected by it, and occupying the same ground for a healthy purpose? But the difference exists, and twelve witnesses, under oath, of good character, swear that there is a difference; and unless the proof is disregarded without the least effort to contradict it, we suppose the sworn evidence in this case, added to the force of the fact itself, justifies the last view taken by the master. The claim that Seely does not, or did not, own the land on either side of the canal; that others, and not Seely, are sustaining the damages incurred by the location of this canal, is contradicted by proof; we take it for granted that Seely owned the land the proof says he owned it. He was compelled to alienate the land along the race, because the state refused to comply with her contract and understanding with him. The injunction was over him, his hands were tied, his creditors pressed him, his lands were sold, they were sacrificed; the nuisance was the cause of it, the loss was sustained by him who had spent $9,506, in digging the channel. It is not rational that Mr. Seely expended this sum of $9,506, that he might have the pleasure of losing the like sum in depreciation of the value of his property, for this work, without the flow of water intended, made it less valuable than it was without any cut there at all. Had the water flown through this channel, in the volume anticipated by the parties,

nothing could be said: but this understanding was dishonestly and shamefully violated, by placing Seely in a worse condition than he was before he had expended a cent of the $9,506, and give him barely a sufficient amount of water to create a perpetual nuisance. If such an *injury as this is remediless under the act authorizing this suit, [521 then is it impossible to get redress by any possible care which one may use.

We claim that the second view of the master should be sustained by this court, and a decree accordingly entered up for it. The first view taken by the master meets with but slight opposition, and therefore no further defence is deemed necessary.

BIRCHARD, Judge. This case is the same that is reported in 11 Ohio, 501, and is before us on a petition for rehearing, which, by consent, is to be treated as a bill of review, and on exceptions to the master's report.

It is contended that the court erred, on the first hearing, in determining that a good cause of action was made by the case, and that the proper parties were before the court.

The basis of the first supposed error is the alleged want of a contract unperformed by the state. In determining the case, as reported in 11 Ohio, all the points now presented, and not arising upon the report of the master, made pursuant to that decree, were fully considered, and intended to be settled. We have again considered them, after full and elaborate argument, and are still satisfied with the governing principles of that decision. A special jurisdiction is conferred by statute, and the rule of action is not left to be gathered entirely from the general rules established by courts, in ordinary trials at law and chancery. We are enjoined, by the act, to investigate and decide the case "upon the principles of justice and good faith," and, upon the final hearing, upon the principles aforesaid, to render such decree as, in our opinion, "the principles of justice and good faith demand."

A contract was made, and land conveyed under it, to enable the state to avail itself of the water power created by the canal, at a time when the state knew of no other way in which it could be used. Seely was to excavate a race, which would cost large sums of money, and look to the benefits to be derived from the use of the water at that place, for his remuneration, *and the agents of the state agreed to use the [522 water there, as an inducement to the expenditure of his money for that purpose. Upon principles of justice, this was a contract

Legally, or at law, the portion of the terms and stipulations not embraced in the writing then executed, were no part of the contract; not because it would be just to disregard the unwritten terms, but because a rule of policy forbids; because, if parol evidence were allowed, as a general rule, to control or alter written contracts, a great door for the entrance of fraud and perjury would be thrown open. The state of Ohio disclaims, by the act, all benefit from such rules, as applicable to this controversy. The legislature has forbid the application, and commanded us to judge and determine her contract as it was, in fact, made; to disregard the writing, and look to the real contract, if good faith so demands. The language more than intimates that the state can not, without dishonor, condescend to take a technical advantage, and exclude the material parts of an agreement because omitted in the writing, and thus rob a citizen by virtue of a rule of policy, although sound, as applied in ordinary cases. The standard given is worthy a state like this, and it is the only one by which our people should ever wish to see Ohio, in her sovereign capacity, guided. Counsel say, that "it speaks poorly for law and equity that the court should find itself able to do better justice without precedent or rule," than by following long established rules. To this it may be said, that it certainly would not speak well for law or equity, were a court, under the influence of a blind and prohibited adherence to a technical rule, to depart from the manifest spirit of a positive statute, for the purpose of working out injustice to a fellow citizen. Were any thing needed, beyond what is to be found in the words of the statute, to direct us in arriving at the meaning of the General Assembly, the history of this legislation, and the facts in proof, would be ample. The written contract was before the legislature on numerous occasions. The letter of it had been complied with by the state. Yet a law was enacted, directing the agents of the state to pay Seely $5,000 on account of the contract.
523] Upon *the legal principles recognized, and acted on, by courts of justice, the state was not bound to pay this sum, for the written stipulations had not been so violated as to present a cause of action. The members of the committee say they looked beyond the writing, and considered the actual consideration and terms of the contract, and were willing then to allow $15,000, and would have done so, if Seely would have accepted it.

The act which then became a law shows that the legislature did not stop to inquire what the writing contained, with intent to be governed by that alone. They did not seem to think such a course consistent

with justice, while they knew it would violate good faith to disregard the parts of the contract that were omitted in the writing, but well understood between the parties. Hence the precaution was taken of directing the court as to the principle by which to be guided in deciding upon it.

Again it is said, that Seely, by completing the race, has never rendered it possible for the state to comply on her part. This is a mere quibble. The proof shows that when the injunction was obtained against the state, by Cooper's heirs, more than $9,000 had been expended on the race; that the work was so nearly finished that the commissioner had advertised the sale of the water power to be used at the place; that the work was in progress, and would have been soon completed—some of the witnesses say, in a day or two. Thus stood matters when the injunction was pending When it was dissolved the canal commissioners leased the water power to be used elsewhere, and thus put it out of the power of the state to fulfill on her part. What right had they to ask Seely to make further expenditures after this? How would the completion of the race benefit the state, or him? An act had been done, by the canal commissioners, rendering the expenditures incurred, as well as what was needed to finish the race, entirely useless. It would require new notions of justice to sustain such a defence.

*Again, it is said that the acceptance of the $5,000 was in- [524 tended as a settlement of his whole claim. This point is not so strenuously urged as on a former occasion, yet it will be considered. If the $5,000 was intended as a satisfaction, most likely there would be something that would tend to prove the fact. The act providing for the payment of the $5,000 gives us no light on the subject. It does not purport to be in full satisfaction, or even look that way. Seely gave express evidence, on receiving the money, that he did not so treat it. The members of the committee, who reported the bill, swear that it was not intended as a discharge, and that the committee would then have given some $15,000, if Seely would have been satisfied therewith. The law under which we act, is, at least, some evidence that the claim was, by neither party, considered as finally adjusted. The whole, put together, ought to satisfy one that this objection is wholly groundless.

The remaining question to be reviewed, is, whether the proper parties are before the court.

The assignment to the commissioner of insolvents vested in that officer, in 1832, all the rights which complainant had, either legal or

equitable. If this claim falls within either class of rights, then the objection is well taken; otherwise, not. Now, it is worthy of remark that the able counsel for the state, both at the original hearing and now, have furnished very conclusive arguments, and such as have satisfied every member of this court, that, at the time of the assignment to the commissioner of insolvents, he had no right against the state, either at law or in equity, *id est;* no right that could be enforced, according to any known code of law, or by any legal proceeding. Had the state been suable, as a natural person, the rules of equity, as ordinarily administered, we all agree, could have afforded him no relief. The rules of law would have given nothing. Hence the deed of assignment passed nothing, upon the obvious principle that a grantor can convey no better title than the one he possesses. The assignment does not profess to touch this claim, and the operative words of the insol-
525] vent law are not broad enough to cover it. In a *moral point of view, it may be just that the creditors should receive this fund. If their demands still exist against complainant, the way is open for them to obtain the money. The statute, however, gives the right to maintain this suit against the state to Seely, and to no one else, and this in order that the demand may be settled upon the principles of justice and good faith. Neither the commissioner of insolvents, nor Seely's creditors, are named in the act, or authorized by it to become parties complainant against the state, and it is not essential to the object had in view by the legislature, that they should be made parties. Were we entirely in error as to the view taken of the rights of the creditor, or commissioner, under the assignment, it would not necessarily follow that this bill should be dismissed.

But the authorities will not sustain the views of counsel. Milnor *et al. v.* Metz, 16 Peters, 221, is a case, as we conceive, against them. It was a claim for services, as gauger, which might have been offset at law against any claim prosecuted against the insolvent by the United States. Fillebrown's case, 7 Peters, 1, and McDaniel's, 7 Peters, 50, are full to this point. It was, therefore, a claim that law or equity would have recognized, and which existed at the time the assignment was executed. The case of Comeyges *v.* Vasse, 1 Peters, 196, stands upon the same principle. Vasse, as underwriter, had succeeded to the rights of the owner of a vessel, wrongfully condemned by a Spanish prize court, whose sentence was final as to the right to the vessel, but, upon principles of national law, Vasse still had a right, a just claim, to remuneration. It was a legal right, which the United States were,

in duty, bound to enforce against Spain, and was, therefore, held to have passed by the assignment. Not so with this claim. No power could have enforced it, in any form, against the will of the state. It depended solely on her own sense of justice, and its consent to satisfy it, is purely voluntary. A pension granted for military services, might, with as much propriety, be claimed by the assignee of an insolvent, as this. Emmerson *v.* Ball, 13 Peters, 409.

*The exceptions to the report remain to be considered. The [526 first and second do not seem to be well taken. There is no reason why the master should have taken the testimony of Messrs. Young and Forrer as verity, and disregarded all the other evidence in the case. It was his duty to allow a fair compensation for the work bestowed upon the race, basin, and towpath, and to gather the facts from all the evidence, acting upon it, and weighing it, as a jury would on a trial of an inquest of damages. There is very little difference between these witnesses and others, as to the amount of work performed, but a very great one as to the value per yard for the excavation. The additional allowance of the former, for excavation under eighteen inches of water, is three or four cents per yard. Several experienced contractors, and three or four other engineers, concur in testifying that this estimate is entirely too low. No one puts it at less than three times that amount, while the actual cost shows that it was too low. The Master was governed by the weight of evidence, and, in our opinion, it fully sustains him, except as to the item of $350, for complainant's services, which should be disallowed.

The fourth exception is sustained, and the fifth is already disposed of by this opinion.

The third exception is not well taken. The value of the land is fairly estimated at $200 per acre, as shown by the proof. It appears to have been dedicated to the public by complainant, or by others, at his instance, and on contracts made with him. The allowance does not more than cover the expenses of the item.

Decree for complainant.