Another by-law was passed in December, but that was to remedy some technical defects in the former one, and seemed to be of no particular importance as far as the matters in question in this suit were concerned.

The plaintiff had a verdict for $373.50, with leave reserved to the defendants to move to enter a nonsuit.

In Easter Term last, *Flint*, for defendants, obtained a rule *nisi* to enter a nonsuit or verdict for defendants, pursuant to leave reserved, on the following grounds:—

1. That the agreement mentioned in the report of the 6th May, 1868, was to be subject to a vote of the people to raise funds for dredging the harbour, and all expenses connected therewith, which never having been done under that report, there was no concluded agreement with the plaintiff.

2. That on the 15th July, 1868, the council adopted a report breaking off the negotiations with the plaintiff, the same day that the vote was taken on the by-law.

3. That the plaintiff had no right to act until the vote was taken and the by-law passed.

4. That by the report of the 6th May, 1868, the agreement was to be subject to a vote of the people, and the agreement of the plaintiff could not have been concluded, from the terms of the report, until the vote had been taken, and on the same day the vote was taken the agreement was rescinded.

5. The agreement under which the plaintiff sues is not under the seal of the corporation, and is not binding on them.

6. That the by-law passed on the 15th July, 1868, was bad, and no other by-law to carry out the terms of the report of the 6th May, 1868, was passed until the 7th December, whereas the agreement with the plaintiff was rescinded on the 18th July, 1868, before the by-law of December, 1868, and yet all the expenses were incurred, and dredge brought, in May, 1868, before the time allowed by the report of 6th May, 1868.

John Bell, Q. C., of Belleville, shewed cause. The matter done or to be done under the agreement was within the power of the corporation to do, and being reduced to writing in the shape of a report adopted by the council, the agreement was binding on the corporation to the extent that it was performed by the plaintiff: *Perry* v. *The Corporation of Ottawa*, 23 U. C. R. 391.

Flint, contra. The evidence shews that the engagement to bring over the dredge was made in the middle of April, whilst the report was not made until the 6th May, and is then to be subject to a vote of the ratepayers. The next report of the committee was on the 17th of June, and the by-law passed on the 15th July was bad, and the only operative by-law was that passed in December, long after the bargain was made: *Wingate* v. *The Enniskillen Oil Refining Co.*, 14 C. P. 380; *McLean* v. *Corporation of Brantford*, 16 U. C. R. 347; *Nicholson* v. *Guardians of Bradfield Union*, L. R. 1 Q. B. 620; *Add.* Con. 700; *Calvin* v. *Provincial Ins. Co.*, 20 C. P. 21, 267; *Mayor of Ludlow* v. *Charlton*, 6 M. & W. 815; *Arnold* v. *Mayor of Poole*, 4 M. & G. 860; *Diggle* v. *London and Blackwall Railway Co*, 5 Ex. 442; *London Dock Co.* v. *Sinnott*, 27 L. J. Q. B 129. Here the defendants received nothing from the plaintiff. He merely brought his own property from the United States to Canada at his own expense. As far as he is concerned, no part of it comes within the rule laid down in L. R. 1 Q. B. 620.

RICHARD, C. J., delivered the judgment of the Court.

It is not suggested that it was not within the scope and authority of the defendants as a corportion to enter into an agreement of the kind which the plaintiff contends was made with him. The only ground urged is, that they did not execute the agreement under their seal, and, being a corporation, are not bound by it.

The Courts of England, from time to time, have been inclined to hold that when the contract is within the scope and powers of the corporation it is good, though not under seal. Many of the cases are in relation to trading corporations and their contracts, and in one of the recent decisions Chief Justice Cockburn speaks of the rule requiring the corporation to execute contracts under seal as "a relic of barbarous antiquity."*

Though many of the cases arise out of contracts with trading corporations, they are not all so. But as to other corporations, when they have received the benefit of the agreement which has been executed, the Courts have held them bound by it to the extent of paying for that which has been performed. Most of the cases are referred to in *Nicholson* v. *The Guardians of the Bradfield Union*, L. R. 1 Q. B 620; *South of Ireland Colliery Co.* v. *Waddle*, L. R. 3 C. P. 463; S. C. in Ex. Ch., L. R. 4 C. P. 617.

In *Pim* v. *The Municipal Council of Ontario*, 9 C. P. 304, the Court of Appeals in this country, ten years ago, in relation to municipal corporations, carried the law as far, if not farther, than it has gone in England in relation to the liability of similiar bodies there on contracts not under seal.

Perry v. *The Corporation of Ottawa*, 23 U. C. R. 391, seems to me to be a strong authority in favour of the plaintiff. There a committee of the corporation was authorized to treat with and recommend to the council an engineer for making surveys, &c., for supplying the city with water, and making application to the government for the site of a reservoir. The chairman of the committee employed the plaintiff to make plans, which the Commissioner of Public Works required to see, and one of the committee wrote to the plaintiff to come to Quebec to assist in pressing the application for a site, which he did; the chairman also told him to go; and the report of the proceedings was approved by the council. The Court held the plaintiff entitled to recover.

Here the harbour committee had been apparently specially charged with looking after the harbour, and endeavouring to obtain a dredge to clean it out, and devising other means to get rid of the saw-dust that was filling it up. The expense attending these other proceedings appear to have been paid by the defendants without question.

Having failed to obtain a dredge from the Board of Works, or any other material aid from the government, they wisely concluded they had better help themselves. Learning that the plaintiff was the owner of a dredge which was

* *South of Ireland Colliery Co.* v. *Waddle*, L.R. 4 C.P. 618.