

any agreement as to payment, and that the assignment must be absolute. . . . "At that time I gave him (Duggan) to understand it would have to be left to the applicant, after he received what might come to him from the town of Brampton, to give the M. Gardner estate what would be considered fair out of the proceeds . . . but I clearly gave him to understand that it would have to be just the same as a voluntary gift. I further said that the applicant was, as he knew, an honourable man, and I thought the M. Gardner estate had nothing to lose and perhaps something to gain in the transaction." . . .

It is evident that these executors never contemplated making a claim against the town of Brampton, but apparently were willing that what Dyer regarded as a claim might be litigated at his own expense, and Mr. Duggan certainly expected that, as the solicitor for the applicant was also solicitor to the M. Gardner estate, that estate would, in the event of the applicant succeeding, get a share of what was recovered. . . .

[Reference to *Prosser v. Edmonds*, 1 Y. & C. Ex. 481; *Keogh v. McGrath*, 5 L. R. Ir. 478, 515-6; *De Hoghton v. Money*, L. R. 2 Ch. 164, 169.]

The evidence in the present case clearly makes the assignment champertous, as champerty is defined in the language of the Chief Baron in *Prosser v. Edmonds*.

It is asserted by the applicant that the town corporation entered the lands in question in 1891 for the purpose of lowering some of the pipes, as I have already pointed out; and also that in 1903 the corporation entered on lot 15 and established a pumping station. . . . As to the alleged trespass in 1903 the facts . . . are that some repairs were required to be made in the pipes, and the corporation put a small pump on the land, and temporarily placed a threshing engine there for the purpose of operating such pump so as to fill the pipes with water, which was the only use made of the pumping station and pump. . . .

The corporation had the right, under sec. 6 of the Act, to enter upon the lands appropriated by the commissioners and which had become vested in the corporation, for the purpose of "taking up, removing, or repairing or altering the pipes."

The motion for a mandamus must be dismissed with costs.