

it had again filled up, for a like sum. This, I think, fixes his damages at \$20. He is not justified in asserting that he has suffered greater loss from the inconvenience which he could have remedied for this trifling sum.

The defendants now seek to evade liability, upon the ground that the contract is not under seal, and that there was no by-law. They then plead that any right which the plaintiff had to claim damages in respect of his grievances is lost by reason of the lapse of time and of the limitations contained in the Drainage Act. The dishonesty of this defence is such as to cause some surprise, and goes far to justify the statement of Lord Coke that corporations have neither soul nor conscience.

I am glad to say that I do not think that this defence has any more foundation in law than in morals. Our Courts have always refused to allow a municipality to set up the absence of a seal or by-law when the transaction is an executed one, and the municipality has received the benefits coming to it under the contract. Whether the plaintiff had a valid claim at the time of making the bargain, is not the point. Whatever claim he had, he abandoned. He cannot be put in the same position, for the defendants now rely upon the Statute of Limitations, after having lulled the plaintiff to sleep by his unsuspecting confidence in the validity of the unsealed contract.

The plaintiff could have recovered his \$20 in a Division Court. He seeks a mandatory order directing the defendants to comply with its contract and keep the watercourse clear in the future. I do not think that he is entitled to this mandatory order. I think that this remedy is to perform, himself, the work contracted for, and to sue for its cost as damages sustained upon each succeeding breach.

In all the circumstances, I think that the proper disposition is, to give judgment for the sum named, \$20, with costs fixed at \$100, as this litigation has in effect determined the wider question raised by the defendants, the validity of the contract.