ROSE, J., in a written judgment, said that there were no pleadings, the action having been commenced by a specially endorsed writ. The defence specifically raised by the affidavit of merits was that the bridge had not been completed according to the agreement between the parties, in that the bridge for which the defendants agreed to pay was to be one of 15 tons' capacity, whereas the bridge erected was not of that capacity. At the trial, an additional defence was raised—that no by-law had been passed by the council of the defendants authorising the order for or accepting the bridge.

There were two agreements between the plaintiff and defendants, both under the corporate seal of the defendants, but no by-law or resolution authorising the execution of either of these agreements was passed.

After stating the facts at length, the learned Judge said that the plaintiff had completed the bridge. There were disputes as to whether it was in accordance with the specifications. Mr. Farncomb, a civil engineer, acting on behalf of the defendants, inspected the bridge and reported that certain work had to be done. This work was done, and the bridge was in good condition and in use by the defendants. It was well above the standard requirements of a class B. bridge, and could safely be crossed by a 15-ton threshing outfit. The defendants had paid part of the price, but refused to pay the balance, $2,500.

If the want of a by-law was not an insuperable difficulty, the plaintiff was well entitled to succeed. He had performed his part. The words "a 15-ton capacity bridge" were susceptible of two meanings—a bridge designed to carry a concentrated live load of 15 tons at 10-foot centres, i.e., a class A. bridge; or a bridge which could safely be crossed by a 15-ton threshing outfit. It was in the latter sense that the parties used them, and the evidence was clear that the bridge answered the description. The plaintiff had done what he contracted to do.

But the decision of the Appellate Division in Mackay v. City of Toronto (1918), ante 155, compelled the learned Judge to hold that, even in the case of an executed contract such as this, the other contracting party could not have judgment against the municipality unless the power of the council to enter into the contract had been exercised by by-law, in accordance with sec. 249 of the Municipal Act, or there had been an adoption of the contract, evidenced by a by-law. In this case there was no difficulty about the seal; it was affixed to the two agreements; but that was not enough. If the power to contract is one that must be exercised by by-law, the use of the bridge by the defendants did not help the plaintiff: see per Patterson, J., in Waterous Engine Works Co. v.