

them out. The act generally was not one within the scope of the authority of the county treasurer as an agent of the corporation. There therefore could be no exercise of an implied authority which would bind the corporation. The evidence fails to show any express authority or direction from the corporation to make the contract. The defendants were not principals in this transaction, nor was Sanford their agent for any such purpose. If there were any principals they would be the various local municipalities whose business was being conducted by Sanford pursuant to the statutory powers and directions.

I make the further extract from Dillon, par. 460 :—

“In reference to money or other property it is not difficult to determine in any particular case whether a liability with respect to the same has attached to the city. The money must have gone into her treasury or been appropriated by her, and when it is property other than money it must have been used by her or be under her control. But with reference to services rendered the case is different. Their acceptance must be evidenced by ordinance or express corporate action to that effect. If not originally authorized no liability can attach upon any ground of implied contract. The acceptance upon which alone the obligation would arise would be wanting.”

In discussing the liability of a corporation upon an executed contract, not under seal, Mr. Justice Gwynne, in *Bennardin v. Municipality of North Dufferin* commenting on the case of *Sanderson v. Guardians of the St. Neot's Union*, 8 Q.B. 810 makes the following remarks :—

“The court, it is submitted, based their judgment in that case upon a sound and rational principle equally applicable in the case of every corporation and not limited to trading corporations only, namely, where work has been executed for a corporation under a parol contract, which work was within the purpose for which the corporation was created and it has been accepted and adopted and enjoyed by the corporation after its completion, it would in such case be fraudulent for the corporation while enjoying the benefit of the contract to refuse to pay for it upon the ground that the contract in virtue of which it had been executed was invalid for want of the corporate seal and that justice required that it should not be permitted to commit such a fraud.” See also *Haigh v. North Brierly Union*, 1 E.B. & E. 873. The question of the liability of the defendants in this case is rather one of fact than of law, namely, where the work performed by the plaintiffs was incidental to the purpose for which they as a municipal corporation were created, and I am of opinion that it was not.

After a careful consideration I am of opinion that the plaintiffs have failed to establish any liability on the part of the defendants, the County of Simcoe, to pay their claim. The action will be dismissed with costs.