

of olden days, his pleading would be held demurrable. (See, however, *Blaikie v. Staples*, 13 Gr. 67, 69.) But he comes into Court shewing knowledge by the corporation for at least 6 months of the alleged illegalities, and no action taken. He is met upon these motions by the contention of counsel for defendants that the city council has ratified and acquiesced in the mayor's acts and stands by them, and, in support of this contention, the counsel produces a resolution of the council instructing him to defend the action upon these grounds. Nothing, therefore, is lacking except a formal allegation of the unwillingness and refusal of the council to sue, and this plaintiff should be and will be allowed to supply by amendment of his statement of claim. Upon this amendment being made, on the authority of *Paterson v. Bowes* the objection that this action would only lie in the name of the municipal corporation must be overruled. See, too, *Crampton v. Zabriskie*, 101 U. S. 601, 609; *Dillon on Municipal Corporations*, 4th ed., pp. 1103-1119; *Baxter v. Kerr*, 23 Gr. 367; *Kirby v. Bowbier*, there cited; and *Township of West Gwillimbury v. Hamilton and North-Western R. W. Co.*, 23 Gr. 383.

If plaintiff's allegations are true—as they must on these motions be assumed to be—the payment of \$3,000, part of the \$200,000, was without consideration. It would be a distinct breach of trust on the part of the municipal council to attempt to ratify such a payment. It is illegal and incapable of ratification. If, as plaintiff alleges, there was a valid and enforceable bargain sanctioned by by-law for the acquisition of the Consumers' Co.'s plant, as it existed on 17th July, for . . . \$197,000, the municipal council could not, by ratification, or in any other way, validate a transaction, purporting to have been carried out under that by-law, involving the payment for that same plant of \$200,000, or, perhaps, of \$203,771.79, out of the municipal funds. As to all in excess of the \$197,000, the payment would be without consideration and in breach of trust. Neither, therefore, in the contention that the execution by the mayor of the impeached document and the payment of the \$200,000 were susceptible of ratification, nor in their alleged ratification, do I find anything which would justify me in giving effect to defendants' motions.

As to the claim for an injunction to prevent payment to the Consumers' Co. of the further sum of \$3,771.79, or of any further sum—assuming that plaintiff will at the trial