If entitled to recover at all there seems no objection to the amount.

The latest decisions in England have established that when a corporation is a trading one, and as I understand especially where it is established for a special purpose, they are bound by a contract made in furtherance of the purposes of the incorporation, though not under the corporate seal.

The same doctrine and fully to the same extent has been established in this Province by the decision of the Court of Appeal in *Marshall* v. *The School Trustees of Kitley*, and *Pym* v. *The Municipal Council of Ontario*. We cannot, therefore, entertain any objection for the mere want of a contract under seal to charge the defendants as a corporation. But there are other difficulties in the way. I am not prepared to admit that the Township Council can, by resolution, delegate to third parties power to bind them by contract for purposes which the Legislature have specially entrusted to the Council, and enabled them to execute by the passing of by-laws: *Rumsay* v. *Western District Council*, 4 U. C. Q. B. 374.

The plaintiff did not contract with any known officer or servant of the Municipal Corporation. He does not appear to have entered into a formal contract with the three persons named in the resolution, though it appears that he and they signed the specifications, they signing as individuals, not as acting under or for the Municipality. The resolution under which alone they could assume to act, for the Municipality is not referred to, was not, for all that appears, communicated to the plaintiff, and it is not shewn that in dealing with him he had any ground to suppose he was contracting with the Corporation: they may have told him so, but it does not appear that he ever enquired how it was.

If, therefore, there is a liability on the part of the Municipality it must arise from their subsequent adoption of the contract, or a receiving of the work. The evidence was insufficient to establish a liability founded on either of these assumptions. I thought, if in fact there had been an adoption of the contract and the work done, by an appropriation on account of it, after it was so nearly brought to a conclusion, it was a matter capable of easy and direct proof; whereas, though it was proved to have been submitted for consideration to the Council, of the two witnesses who spoke of it, one thought it had been struck out of, and the other was not certain, though he thought it had been included in, the gross sum to appropriate which a by-law was passed. I did not think this sufficient, and I said so, and I was not asked to submit it to the jury, and now the motion is not for a new trial, but to enter a verdict for the plaintiff on the assumption that this evidence was enough to give him a right to recover. I still think it did not go far enough; the case struck me thus, when the resolution was adopted to grant the prayer of the petition, an aid to make some repairs and improvements was contemplated, which would enable the inhabitants of the locality to make the highway good. I do not believe the idea of building a new bridge and of grading the approaches for a considerable distance on each side was even then thought of. When the expense incurred by the committee became known, and it was proposed to make an appropriation for it, the appropriation was refused, because it was thought the expenditure was unauthorised, and that an unfair advantage was sought to be taken of the resolution appointing the committee, and I am confirmed in this view by the resolution which was afterwards adopted directing the Reeve to take legal advice as to the liability of the Municipality, and I conclude, therefore, that unless the committee had legal authority to bind them, and did bind them to this payment on the work being done, the Council had not done anything subsequently to bind them, and I continue of that opinion. As to any acceptance of the work, there was no proof whatever of it, except that it was conceded that the public used the bridge as part of the highway which had theretofore been in use, and this I thought formed nothing on this point for the plaintiff.

I think the rule should be discharged.

DeBlaquiere et al. v. Becker et al.

Agency—Evidence—Misdirection.

Held, that the question of agency is a question of fact for the jury, there being some evidence to go to them of which the judge must decide; and, *Held*, that the entry of a party on the assessment roll as resident, when in fact he is non-resident, did *not* render his assessment nugatory.

Held, also, that a statement and demand of taxes, are not a necessary condition precedent to uphold a distress for taxes in the case of non-residents.

Replevin,—Declaration averring special damage from the taking of plaintiffs' goods.

Plea.—Not guilty, by statutes 16 Vic. cap. 182 (1853), and 14 & 15 Vic. cap. 59 sec. 5 (1851) — the plaintiffs' goods had been seized for taxes due to the Municipality of Walsingham for 1857, defendants justifying as collectors.

At the trial before *Hagarty*, J., at Simcoe, John Leighton was called for the plaintiff, who proved the property seized to be plaintiffs. Plaintiffs had taken it the day before seizure, under a bill of sale given by a debtor of theirs. They were about selling it by auction on the morning it was seized by defendants. Evidence was given to shew special damage, which need not be further noticed here. Plaintiffs had carried on a large lumbering establishment at Port Rowen, in Walsingham, but had broken it up. Till within six months before the trial they had an office in Walsingham. During 1857 plaintiffs lived at Woodstock in another county. DeBlaquiere had lived formerly in Walsingham, and had been Township Reeve. One Beard was plaintiffs' agent at their office till it was closed. Witness had been for ten years in Walsingham, doing business for plaintiffs "off and on." In selling this property, he instructed the auctioneer by instructions from plaintiffs; had taken this property for plaintiffs. Bought and sold logs for plaintiffs; paid taxes for them in adjoining Township of Houghton, and other taxes, such moneys being sent by plaintiffs to him. Bargained with persons for sale of plaintiffs' lands, and sold subject to their approval, and in one case left $5 of purchase money which vendee for defendants claims for taxes. Sometime before seizure defendant Becker spoke to witness about the taxes, and said, "what is to be done about DeBlaquiere's taxes," mentioning the amount, £170 odd. Witness said he was writing to Woodstock, and would let him know. Becker was collector, Smith was Bailiff; witness did not, however, inform plaintiffs: witness was winding up plaintiffs' saw log business, and selling their lands subject to their approval, and kept off trespassers: witness had no office: from a few days after 6th July, 1857, plaintiffs had no office or place of business in Walsingham. It was six miles from plaintiffs' mills, and in Port Rowen where Becker spoke to witness about the taxes.

The auctioneer deposed that he was instructed by Leighton for plaintiff. Plaintiff DeBlaquiere had not lived in Walsingham for the last two years. Beard was plaintiffs' "chief boss:" since July plaintiff had no business there.

Beard deposed that he had been plaintiffs' agent; office closed 4th July; for several years witness had returned plaintiffs' property to the assessors: lands were returned as those of "Residents." In 1857 assessors sent the assessment, and Beard on 18th April, 1857, wrote to them in reply:—

Gentlemen,—Your assessment of our lots in Walsingham is correct, with the exception of lot 17 in 11 concession, which we shall be obliged by your taking out of our assessment, leaving total amount of real property £13,089. Yours, &c.,

FARMER & DEBLAQUIERE.—W. BEARD.

Paid some school taxes for plaintiffs: did not know the rate imposed for 1857: did not know amount till seizure.

On the defence, the Township Clerk proved that Becker was collector under Township seal, produced collectors' roll for 1857, plaintiffs' taxes mentioned there: assessed as residents £175 6s. 2½d. on £13789: roll given to collectors 3rd October, 1857: taxes to be paid by 14th December, time was afterwards extended to 1st May: roll not yet returned: seizure was on the 5th November: knew Leighton twelve or thirteen years: understood him to be plaintiffs' agent: Leighton admitted to witness that the taxes had been demanded of him.

One Brown deposed, that he had bought land from Leighton acting for plaintiffs: had been manager for them a long time, buying grain, hay, &c.

One Forsyth deposed, that in beginning of October, 1857, he saw Becker at plaintiffs' premises, Rowen Mills, where their office had been. Becker said he was collecting taxes: asked was there any one in plaintiffs' office, as he was demanding taxes: witness told him Beard was not at home, but was at Woodstock. He was