

On 23rd January, 1907, counsel for both parties appeared before the Master and stated that the case had been settled, and after recording the resolution evidencing the settlement, the Master adjourned the reference.

On 12th February another special meeting of defendants' council was held, at which a resolution was passed rescinding the resolutions of 23rd January.

When the matter came again before the Master, counsel for defendants stated that defendants had repudiated any settlement, and desired to proceed with the reference. This being opposed, the Master, without objection, proceeded to take evidence as to the validity of the settlement, and ruled that the settlement was not binding on defendants. While other reasons are assigned by the Master, the objection chiefly relied upon was the absence of the corporate seal.

Plaintiff now appeals from the Master's ruling.

In discussing the question how a municipal corporation can be bound by contract, the fact must be kept in mind that the council is not the corporation.

Under the Municipal Act, the "inhabitants of every county, city, town, village, township," etc., are "a body corporate," and by sec. 10 "the powers of every body corporate under this Act shall be exercisable by the council thereof;" and sec. 325 enacts that "the powers of the council shall be exercised by by-law when not otherwise authorized or provided for;" and sec. 333 enacts that "every by-law shall be under the seal of the corporation," etc.

As shewing the tendency of legislation in regard to the necessity for municipal councils exercising their powers by by-law, it may be noted that sec. 326 of the Municipal Act, R. S. O. 1897 ch. 223, provided that "every council may make regulations," etc., but by 3 Edw. VII. ch. 18, sec. 70, this was amended by inserting the words "by by-law" after the word "may" in sec. 326.

This amendment was shortly after *Liverpool and Milton R. W. Co. v. Town of Liverpool*, 33 S. C. R. 180, holding that the regulations there in question could only be made by by-law.

Argument of counsel for the appellant was based on the contention that the agreement of settlement in this case was founded upon an executed consideration, and therefore neither a by-law authorizing the settlement nor an agreement authenticated by the seal of the corporation need be shewn in order to bind the corporation, as was held in *Mac-*