

The appeal was heard by MACLAREN, MAGEE, and HODGINS, JJ.A., RIDDELL, J., and FERGUSON, J.A.

A. W. Anglin, K.C., and Glyn Osler, for the appellant.

A. C. McMaster and C.M. Colquhoun, for the defendants, respondents.

MACLAREN, J.A., in a written judgment, said that the broad ground on which the judgment below was based was, that the defendants had never contracted with the plaintiff under seal or as required by the Municipal Act, and that it did not fall within the class of cases in which such a formality might be dispensed with.

The learned Judge of Appeal agreed with the trial Judge as to the general result of the authorities and the effect of the evidence.

It was strongly urged by counsel for the appellant that *Pim v. Municipal Council of Ontario* (1885), 9 U.C.C.P. 304, which was not considered or referred to by the trial Judge, was applicable to the present case, and was binding upon this Court as an authority. It was perhaps a sufficient answer to say, that the present statute-law on the subject differs widely from that in force when the *Pim* case arose, and this Court is bound by the decision of the Supreme Court of Canada in *Waterous Engine Works Co. v. Town of Palmerston* (1892), 21 S.C.R. 556, determined under a statute practically similar to that in force when the present case arose.

It was also argued that it comes within the class of cases in which it has been held that, where a contract has been entered into by or on behalf of a corporation without being under seal or without the observance of some other required formality, the plaintiff would nevertheless be entitled to recover if it had been fully carried out and the corporation had benefited by it; and a number of cases were cited to establish this proposition. An examination of these cases shewed that where the plaintiff succeeded, the contracts under consideration had been made either with the governing body of the corporation, such as the council or board, or by its duly authorised agent or agents, or had been duly ratified. In the present case it could not be said that the council had any knowledge that any contract such as the plaintiff asserted had been made; and the testimony of the Mayor, of which the trial Judge expressed his "full and unqualified acceptance," shewed that he had no idea that he was entering into any such contract in his dealings and communications with the plaintiff; and, even if he had, it had not been fully carried out, and could by no means be designated an executed contract.

The only report made by the plaintiff was designated by him as