

authorised the Fire and Water Committee to ascertain the price of a fire engine, and on the committee's report recommending the purchase a contract was entered into under the corporate seal of the council for the construction of an engine by the Waterous Co. No by-law of the corporation was passed authorizing or sanctioning such contract. The engine was built and placed in the town Hall and a committee of the council was appointed to engage experts to test it. The test was made and the experts reported favorably upon it, but the council afterwards passed a resolution that all negotiations in reference to the purchase be dropped, and that the company be notified to remove the engine from the town hall. An action was brought against the municipal corporation for the contract price of the engine and hose, on the trial of which the presiding Judge found as a fact that the engine had answered the test and fulfilled the requirements of the contract, but held that the contract could not be enforced for want of a by-law. This judgment was affirmed by the Divisional Court (20 O. R. 411), and by the Court of Appeal (19 Ont. A. R. 47).

*Held*, affirming the decision of the Court of Appeal, Gwynne, J., dissenting, that the engine not having been accepted by the corporation the contract was not executed; that sec. 282 of the Municipal Act requires all powers of the corporation to be exercised by by-law unless otherwise expressly authorized or provided; that the authority to purchase fire apparatus is expressly given to municipal corporations by the Act, and is a power to be exercised by by-law under said section, and the contract being executory the want of a by-law was a bar to the action.—*Bernardin v. North Dufferin* (19 Can. S. C. R. 581) distinguished.

*Held*, per Gwynne J.—That the powers to be exercised by by-law are only legislative powers, and a contract such as that in question in this case could be enforced without a by-law.

Appeal dismissed with costs.

*Wilkes, Q. C.*, for appellants.

*A. M. Clark*, for respondents.