

was absent, but the Acting Mayor, and the Clerk signed it at the meeting, and the plaintiffs' seal was affixed. The cheque was handed back the next day. On November 13th, 1899, a resolution, reciting the agreement and ratifying its execution by the Acting Mayor, was passed. The minutes of this meeting were read and confirmed at a subsequent meeting, and the corporate seal of plaintiffs attached. Thereafter the contract was acted on by both parties, and was being acted on when this action was brought.

The contract without express enactment would be good under sec. 568 of the Municipal Act. . . . The necessity of a by-law to create liability on the part of a municipal corporation on an executory contract was discussed and decided in *Waterous Engine Works Co. v. Palmerston*, 21 S. C. R. 556, secs. 282, and 480, there in question being secs. 325, and 565, for comparison, of the present Municipal Act. . . . The town there was held not liable, in the absence of by-law, for the price of a fire engine which had not been accepted. The council acted here under sec. 568, and sec. 272 gives the Acting Mayor all the powers of the Mayor. . . . *Bernardin v. Dufferin*, 19 S. C. R. 581, decides that a corporation is liable, on an executed contract, for the performance of work within its powers, and which it has adopted, and has had the benefit, though the contract is not under the corporate seal. The contract here is, to all intents and purposes, an executed one. A valid contract in full force was terminated before its expiry, and rights under it abandoned, and the new one has been acted on for 2 years, and defendants changed their position on the faith of its running for 5 years, renewable for 5 more years. The plaintiffs are, I think, bound, as an individual may be, by acquiescence, and are estopped in this action: *Pembroke v. Canada Central R. W. Co.* 3 O. R. 503. The corporation itself is plaintiff, not a ratepayer, and its not passing a by-law looks like bad faith. In 1900, and 1901, by-laws were passed for raising by taxation, in addition to other moneys, sums to pay defendants under the contract, and this could only be done by by-law: Secs. 404, 405 of the Act. These by-laws lawfully ratified the contract: *Robins v. Brockton*, 7 O. R. 48. The action is dismissed with costs. The defendants are entitled to a declaration that, as between them and the plaintiffs, the contract is a valid and binding one, and that plaintiffs must carry it out in all respects.

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