

instructing him to sign. A by-law was introduced appointing an acting mayor to sign the contract. This by-law was put through its three readings and a reference to committee of the whole at one meeting of the council, the mayor opposing at all stages.

The contract was then signed, the contractors notified, and the work begun.

The learned Judge considered the various objections raised by the plaintiff, and ruled as follows—

(1) When there is a by-law for the doing of the work, a by-law approving of the contract is not necessary. The distinction between the legislative and the administrative powers of the council is discussed in *Foster v. Reno* (1910), 22 O.L.R. 413, 416.

(2) There is no statute requiring the mayor to sign contracts. The corporate seal is the essential thing. The council may by resolution authorise the sealing and delivery with the counter-signature of any designated person of any contract within its power—more particularly when the municipal officer whose duty it is to sign refuses to discharge that duty.

(3) The contract as drawn was approved by the council.

(4) That the by-law was put through the council in violation of the general regulation, being read three times at one meeting, was not material, in view of what had been said; but a by-law is not void because passed in violation of some domestic rule or practice of the council: *Re Kelly and Town of Toronto Junction* (1904), 8 O.L.R. 162; *Re Caldwell and Town of Galt* (1905), 10 O.L.R. 618.

(5) As a matter of discretion, the Court ought not to interfere with the construction of a work within the competence of the council, save in very exceptional circumstances.

The motion should be turned into a motion for judgment, and the action should be dismissed with costs.

FALCONBRIDGE, C.J.K.B.

DECEMBER 20TH, 1916.

### BAKER v. GRAND TRUNK R.W. CO.

*Release—Claim for Damages for Negligence—Injury to Railway Servant—Validity of Release—Alternative Claim for Damages for Breach of Contract to Employ Plaintiff—Evidence—Dismissal of Action—Costs.*

Action to recover damages for injuries sustained by the plaintiff by reason, as alleged, of the negligence of the defendants, in