

defendants thus succeeded at the trial with regard to water supply, and the plaintiffs as to sewers.

J. W. Nesbitt, K.C., and F. R. Waddell, Hamilton, for defendants, contended that the plaintiffs were not entitled to judgment as to sewers, and that, at all events, the defendants should not have been ordered to pay all the costs of the action.

W. A. H. Duff, K.C., and John Harrison, Hamilton, for the plaintiffs, contra.

The judgment of the Court (FALCONBRIDGE, C.J., BRITTON, J., RIDDELL, J.), was delivered by

RIDDELL, J.—In October, 1902, the defendants entered into an agreement with certain persons in the township of Barton (not parties to this action), whereby, as the defendants were about to construct a common sewer on Sherman avenue, between Wilson and Main streets, the persons jointly and severally agreed to pay to the city half the cost and one cent annually per foot frontage of their lands which might be connected with or drained into the sewer, and an additional one cent per foot of every building, and the city agreed that these parties should be allowed to drain into the sewer their lands east not more than 703 feet from the middle line of Sherman avenue, “under and subject to the provisions of sec. 1 of by-law No. 30 and sec. 40 of by-law No. 40. . . or such other by-laws as may from time to time be in force relative to the construction of private drains
‘ ‘ ‘ ‘ ”

Shortly thereafter a document under seal is signed by the plaintiff Barnes and others, wherein, after reciting the fact that the defendants are constructing a sewer as aforesaid, and that the residents and property owners had agreed to a division of the amount to be paid by each of the one-half of the cost, the division to be made by certain persons named, and that these persons had divided the amount accordingly, Barnes and the others covenanted and agreed to pay to the defendants the sums set opposite their names, Barnes's amount being \$100.

The judgment appealed from holds that these two documents must be read together; but that they are and were *ultra vires* of the defendants; this part of the judgment is not appealed from, and consequently it stands.