

MAY 1st, 1909.

DIVISIONAL COURT.

TOWNSHIP OF BARTON v. CITY OF HAMILTON.

Municipal Corporations—Sewers—Water Supply—Contract between City Corporation and Owners of Land in Adjacent Township for Use of City Sewer—Ultra Vires—Contract between City Corporation and Township Corporation—Annexation of Part of Township to City—Proclamation of Lieutenant-Governor—Confirmation of Contract—Specific Performance—Contract ultra Vires qua Contract—Operation of Proclamation—Validity—Same Effect as a Statute—Powers of Provincial Legislature—Delegation of Statutory Rights—Enforcement—Action—Parties—Amendment—Class Action—Plaintiff Suing in Representative Capacity—Connections with City Sewer—Construction of Proclamation—Conditions—Declarations—Costs.

Appeal by defendants from judgment of ANGLIN, J., in favour of plaintiffs, the township corporation, one Barnes, and two other persons, in an action for a declaration of the rights of the plaintiffs in respect of water supply and sewers, and for specific performance and other relief.

The judgment of ANGLIN, J., declared that the agreement of 6th March, 1903, between the municipalities, was *intra vires*, and valid and binding upon all parties, on the terms and conditions expressed in the proclamation of 13th March, 1903, that the city water supply was inadequate for fire purposes, and that defendants could not add to the demands upon it without danger, and could not be compelled to supply residents of Barton with water; that the agreements of 6th and 27th October, 1902, were *ultra vires* of defendants; that defendants were not entitled to require residents of Barton, as a condition of furnishing them with water under the agreement of 6th March, 1902, and the proclamation, to execute agreements containing provisions as to not opposing annexation of territory with defendants, and as to relinquishing pipes, etc., laid and paid for by them, and so as to sewer accommodation; and declaring that plaintiff Barnes was entitled to sewer connection, etc. The