

acted upon their advice that the walls were not in danger of falling. *Jolliffe v. Woodhouse*, 10 T.L.R. 553; *Valiquette v. Fraser*, 39 S.C.R. at p. 4; *Ainsworth v. Iakin*, 57 L.R.A. 132; *Hughes v. Percival*, 8 A.C. 445; *Attorney-General v. Heatley* (1897), 1 Ch. 560; *Todd v. Flight*, 9 C.B. N.S. 377; *Tarry v. Ashton*, 1 Q.B.D. 314; *Lower v. Peate*, 1 Q.B.D. 221; *Dalton v. Angus*, 6 A.C. 740, and 3 *Halsbury*, p. 315, followed.

Appeal allowed with costs.

*Phillipps and Chandler*, for plaintiffs. *O'Connor and Dysart*, for defendants.

#### KING'S BENCH.

Mathers, C.J.]

[April 2.

#### BRANDON ELECTRIC LIGHT CO. v. CITY OF BRANDON.

*Damages—Settlement of claim on discovery of facts—Fraud—Omnia praesumuntur contra spoliatores—Waiver of right to rescind contract—Formal acceptance of settlement.*

*Held*, 1. If one party makes a claim upon another in the existence and amount of which he has an honest belief and the other party agrees to pay it without further investigation, the latter will be bound by his agreement: *Dixon v. Evans*, L.R. 5 E. & I. App. 606. And that is so even although the claim put forward turned out afterwards to be wholly unfounded. *Callister v. Beschaffsheim*, L.R. 5 Q.B. 449, and *Cook v. Wright*, 1 B. 7 S. 559, followed.

2. The plaintiffs, by the voluntary payment of five successive cheques extending over five months, had waived any right to rescind the settlement even if there had been any evidence of fraud or duress. *Doll v. Howard*, 11 F.R. 577, and *Ormes v. Beacel*, 2 DeG.F. & J. 333, followed.

*Wilson, K.C.*, and *Kilgour*, for plaintiffs. *O'Connor and Mackay*, for defendants.

Robson, J.] SELICK v. TOWN OF SELKIRK. [March 23.

*Trial—Notice of trial—Close of pleadings—Unserved co-defendant—Dismissal and discontinuance—Failure to serve co-defendant.*

*Held*, 1. A notice of trial is irregular unless the pleadings are closed as to all parties including a co-defendant not served with the statement of claim within the time prescribed for service. *Ambrose v. Evelyn*, L.R. 11 C.D. 759, followed.