

# The Ontario Weekly Notes

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## APPELLATE DIVISION.

FIRST DIVISIONAL COURT.

JULY 6TH, 1920.

\*RE OTTAWA GAS CO. AND CITY OF OTTAWA.

*Municipal Corporations—Injury to Pipes of Gas Company Laid in Highway—Compensation under Municipal Act—Right of Gas Company to—Property of Gas Company—Injurious Affection—Company's Special Act, 28 Vict. ch. 88—Pipes Maintained in same Place for 40 Years—Presumption of Legality—Onus—Forfeiture—Evidence—Pipes Used for other than Lighting Purposes—Question whether User Unwarranted—Determination in Action—Effect of Unwarranted User.*

Appeal by the Corporation of the City of Ottawa from the award of the Official Arbitrator for the City of Ottawa that the city corporation should pay to the Ottawa Gas Company the sum of \$892.39 as compensation to the company for injury occasioned to the gas-mains and service-pipes of the gas company when opening up a trench in Gloucester street, Ottawa.

The appeal was heard by MACLAREN and MAGEE, J.J.A., MASTEN, J., and FERGUSON, J.A.

F. B. Proctor, for the appellant corporation.

G. F. Henderson, K.C., for the gas company, respondent.

MASTEN, J., reading the judgment of the Court, said that the city corporation contended that, by the terms of the instruments under which it was incorporated, the gas company was limited to the use of its pipes for the conveyance of gas for lighting purposes, and that it was exceeding its rights in conducting gas through its mains to be sold and used for cooking and heating purposes; that none of the gas passing through the Gloucester

\* This case and all others so marked to be reported in the Ontario Law Reports.