

Province of Manitoba.

KING'S BENCH

Mathers, C.J.]

[April 2.

BRANDON ELECTRIC LIGHT CO. v. CITY OF BRANDON.

Waters—Public water supply—Meters—Clandestine taking of water—Presumption—Settlement of Claim—Ratification—Repudiation—Waiver—Estoppel.

Held, 1. Where the consumer continued to use water through a concealed pipe knowing that the supply so obtained was not going through the meter after a change made from a flat rate to a meter rate and the placing of a meter on another and visible supply pipe, he is liable to pay on the basis of the capacity of such concealed pipe for the entire time for the water so wrongfully taken through it unless he can prove the quantity actually used, and he must pay at the general fixed rate without regard to any reduced rate applicable to the metered service. *Lamb v. Kincaid*, 38 S.C.R. 516, and *Armory v. Delamirie*, 1 Strange 505, applied.

2. In computing the amount of damages recoverable for clandestine use of a water supply the maxim "omnia praesumuntur contra spoliatores" applies. *Lamb v. Kincaid*, 38 S.C.R. 516, specially referred to; see also *The King v. Chlopek*, 1 D.L.R. 96.

3. Where a settlement of a claim for water rates by a municipal corporation against a consumer is made by unanimous resolution of the council, and the terms of the settlement are in part carried out by payment to and acceptance by the treasurer of the municipal corporation of successive instalments of money due to the municipality under the settlement, there is such ratification of the contract as to preclude a successful attack upon it by reason of the settlement not having been formally adopted by the council.

4. The voluntary acting under an agreement for five months after knowledge of facts afterwards set up to prove that the agreement was obtained by fraud, duress, undue influence or