

VIS MAJOR.1. *Damages—Neglect to Repair—Onus.*

It is a condition precedent to getting the benefit of the "act of God" that the party pleading it shall have performed its duty. If the court can see upon the whole evidence that a substantial, ascertainable portion of the damages is attributable solely to the excess of water which would have overflowed if the defendant had performed its duty of keeping drains in repair, then there ought to be a proper reduction in that respect, but the burden of proof is upon the defendant to shew beyond a reasonable doubt that if it had done its duty the same damages would have resulted.

Fewster vs. Raleigh, 227.

2. *Rain-storm—Damages.*

For damages caused to the crop of a farmer by an unusual rain-storm and the backing up of water from a large river a municipality is not liable.

McCulloch vs. Caledonia, 340.

3. *Liability to Provide Drainage for Exceptional Rainstorms—Discretionary Powers.*

Where a municipality has constructed a drain sufficient according to the requirements of the locality for carrying off water flowing over lands from swamps and ordinary rainfalls, though apparently not sufficient for carrying off water caused by exceptionally heavy freshets from rainstorms, held: a sufficient fulfillment of their statutory duty with regard to drainage.

Where an exceptionally heavy rainstorm caused waters from a drain to overflow and damage the plaintiff's crops, held: that the

damage was caused by *vis major* and that the municipality was not liable.

It is not usual for the court to review the discretionary powers of a municipal council, provided such discretionary powers are exercised within the limit of their statutory jurisdiction and without disregard of personal right.

McKenzie vs. West Flamboro, 353.

VOLUME AND SPEED.

See ASSESSMENT, 9.

WATERCOURSE.

See NATURAL WATERCOURSES.

WITHDRAWAL.

57 *Vic. ch. 56, section 86—Mill Dam — Consent — Appeal to Referee—Terms—Expenses —Section 97.*

A council which has consented to acquisition of a milldam as part of a drainage work proposed to be constructed by an adjoining township, pursuant to section 80 of the Drainage Act, may withdraw such consent before the passing of the by-law of the constructing municipality. Such withdrawal is sufficiently manifested by appealing to the drainage referee.

The withdrawal in such a case should only be allowed upon the appealing municipality indemnifying the originating municipality against the preliminary expenses which should be charged upon the lands and roads affected by the proposed improvement as provided by section 97.

Augusta vs. Oxford, 345.