

mode in which the occupied mill privilege has, up to the time of application, been used.

An order made under the Act must state specifically the height of the authorized dam.

Judgment of the County Court of Peterborough reversed.

*Cassels, Q.C.*, and *Edwards* for the appellant.

*W. R. Meredith, Q.C.*, and *Wood* for the respondents.

[Jan. 15.]

GARFIELD *v.* CITY OF TORONTO.

*Municipal corporations—Sewers—Damages.*

Where a sewer, built without any structural effect, is of sufficient capacity to answer all ordinary needs, the corporation is not liable for damages caused, as a result of an extraordinary rainfall, by water backing into the cellar of a person compelled by by-law to use the sewer for drainage purposes.

Judgment of the Queen's Bench Division reversed.

*Fullerton, Q.C.*, for the appellants.

*Reeve, Q.C.*, for the respondents.

[Jan. 15.]

BOND *v.* TORONTO RAILWAY COMPANY.

*Master and servant—Workmen's Compensation for Injuries Act—Defect in arrangement of plant—Negligence—55 Vict., c. 30, s. 3 (O.).*

Having car buffers of different heights, so that in coupling the buffers overlap and afford no protection to the person effecting the coupling, is a "defect in the arrangement of the plant" within the meaning of the Workmen's Compensation for Injuries Act, 55 Vict., c. 30, s. 3 (O.).

Judgment of the Queen's Bench Division affirmed.

*J. Bicknell* for the appellants.

*J. McGregor* and *R. G. Smythe* for the respondent.

[Jan. 15.]

BEATON *v.* INTELLIGENCER PRINTING COMPANY.

*Libel and slander—Pleading—Evidence—Damages—Practice—Consolidated Rules 399 and 573.*

Facts intended to be relied on in mitigation of damages in a libel action must be set out in the statement of defence, and unless this is done they cannot be given in evidence.

Consolidated Rule 399 is inconsistent with Consolidated Rule 573, and governs.

The defendant may plead in mitigation of damages that the article complained of was published in good faith in the usual course of business.

Judgment of *ROBERTSON, J.*, reversed.

*W. R. Riddell* for the appellants.

*G. Lynch Staunton* for the respondent.