would not insure as B 1, and she was used uninsured, and was lost.

Held, that the measure of damage was what was necessary to make her class B 1.

Wallbridge, Q.C., for plaintiff.

Robinson, Q.C., and *W. H. P. Clement*, for defendants.

THURLOW v. SIDNEY.

Drainage—Rate—Award.

Arbitrators, on an appeal from surveyor's report by defendants, awarded under the Municipal Act that the deepening of a creek, etc., benefited lands in defendants' municipality, and that the defendants should pay $350, without mentioning the lands in Sidney, which the arbitrators considered benefited, nor charging them with a proper portion of the outlay therefor, as per sect. 535.

Held, that lands not being specified or charged in award, defendants could not comply with the Act, and award therefore bad.

J. K. Kerr, Q.C., (*Holden*, with him), for plaintiffs.

Wallbridge, Q.C., for defendants.

HARGREAVES v. SINCLAIR.

Slander—Repetition—Privilege.

Plaintiff assisted one C. in his shop, (that of a druggist,) over which defendant and her husband, a doctor, lived; C. being tenant of the latter. Plaintiff was charged by defendant, in presence of a witness, with taking $4 from her trunk. Of this C. was told by defendant's husband, and that plaintiff must be dismissed on pain of losing his (the husband's) prescriptions. A meeting having been arranged between the parties, in presence of the witness, to investigate the matter, as was stated, the slander was repeated, and the plaintiff was dismissed.

Held, a privileged occasion.

Bethune, Q.C., for plaintiff.

Robinson, Q.C., for defendant.

COMMON PLEAS DIVISION.

JUNE 23.

ROSENBURGER v. THE GRAND TRUNK RAILWAY COMPANY.

Railways—Accident—Failure to sound whistle or ring bell—Collision—Evidence—Findings—New trial.

Action against the defendants for the omission to give the necessary statutory warning, namely, by ringing the bell and sounding the whistle on approaching a railway crossing, by reason of which the plaintiff's horse took fright and ran away, and injured the plaintiff.

Held, (WILSON, C.J., dissenting,) that sect. 104 of C. S. C., ch. 66, is not restricted to injuries caused by actual collision but extends also to the case, as here, of a horse taking fright at the appearance or noise of the train.

The jury in answer to the question:—"If plaintiffs had known that the train was coming would they have stopped their horse further from the railway than they did?" said "yes."

Held, that though this was not very definite, yet taken with evidence on which the jury acted, which is set out in the case, it was sufficient.

A new trial was also asked for on the ground of the verdict being against the evidence and weight of evidence, but was refused.

Ward Bowlby, for the plaintiffs.

Bethune, Q.C., for the defendants.

MURTON v. KINGSTON AND MONTREAL FORWARDING CO.

Bill of lading—Excess in quantity named therein—Right to—Custom.

The Northern and North Western Railway and the Great Western Railway shipped a quantity of wheat from Hamilton to Kingston, consigned with Molsons Bank, in care of the defendants. The bills of lading contained the following provision:—"All the deficiency in cargo to be paid for by the carrier and deducted from the freight, and any excess in the cargo to be paid for to the carrier by the consignee." The quantity described in the bills of lading was 15,338 bushels, while the actual quantity shipped was 15,838 bushels. In shipping the wheat it was weighed in drafts of 500 bushels at a time, and by mistake a draft of 500 bushels was omitted in making up the total quantity shipped.