

was found for defendant. Defendant applied for an order for judgment for the costs of both trials, and plaintiff opposed same on the ground that defendant was not entitled to such an order when the first verdict was against him, and also because the order of the first trial judge, depriving both parties of costs, was outstanding.

Held, that the defendant was entitled to the costs of both trials, and that the order of the Court of Appeal, granting a new trial, by implication, discharged the order of the first trial judge on the question of costs.

Fulton, for defendant. *J. A. Chisholm*, contra.

Province of New Brunswick.

SUPREME COURT.

Full Court.] THOMSON *v.* CITY OF ST. JOHN. [June 15.
Negligence—Tug injured in a harbour—Jury's findings—Weight of evidence.

In an action for damages for injury to a tugboat by a "dodger" in one of the slips of St. John harbour, the jury found that the damage was caused by the "dodger," and that the tug was properly in the slip at the time, but negatived a question as to the harbour master being guilty of negligence in not discovering the obstruction. The defendants had contended all through their case that there was no "dodger" in the place complained of. There was a great mass of testimony as to the harbour master's inspection of the harbour.

Held, on a motion for a new trial, a verdict having been entered for the defendants on the findings of the jury, that, although the plaintiff has made out a strong case, upon which the court might have found differently from the jury, there was not such a preponderance of testimony as would warrant the setting aside of the verdict. MCLEOD, J. dissenting.

McLean, for plaintiff. *Skinner*, Q.C., for defendant.

Full Court.] LABELLE *v.* NORWICH UNION FIRE INSURANCE CO. [June 15.
Policy—Improper answer as to ownership of land—Agent's answer when real facts disclosed—Whether application a warranty.

Defendant company issued a fire policy on a building, owned by the plaintiff, which stood on the highway. In the application for the insurance, signed by the defendant, the question "are you the owner of the land on which the building stands?" was answered "yes," but it was proved on the trial that the plaintiff when making the application stated to the company's agent, who filled in the answers, that the building stood on the highway, and that the agent notwithstanding wrote down the answer "yes," stating at the same time that this was the proper answer under the circumstances. The application was not referred to in the policy except that the property was described "as per plan on the back of the application," and this reference was relied on as making the application part of the contract, and a warranty by