

house on the adjoining property wore away a portion of the sidewalk, and C. in stepping on it from the private property fell and was injured, and brought an action against the city for damages. At the trial of the action she was nonsuited, but the nonsuit was set aside by the full Court, and a new trial ordered.

*Held*, reversing the judgment of the Supreme Court of New Brunswick, (33 N.B. Rep. 131) that if the accident occurred from the level of the sidewalk being raised above that of the private way, it was not mis-feasance; and if from the street being out of repair it was mere negligence or non-feasance, and in neither case was the city liable. *Municipality of Pictou v. Geldert* (1893), A.C. 524, and *Sydney v. Bourke* (1893), A.C. 433, followed.

Appeal allowed with costs.

*Pugsley*, Q.C., and *Baxter*, for the appellants.

*Currey*, Q.C., for the respondent.

New Brunswick.]

[Feb. 18.]

ST. PAUL FIRE & MARINE INSURANCE COMPANY *v.* TROOP.

*Marine insurance—Voyage policy—"At and from" a port—Construction of policy—Usage.*

A ship was insured for a voyage "at and from Sydney to St. John, N.B., there and thence," etc. She went to Sydney for orders, and without entering within the limits of the port as defined by statute for fiscal purposes, brought up at or near the mouth of the harbour, and having received her orders by signal, attempted to put about for St. John, but missed stays and was wrecked. In an action on the policy evidence was given establishing that Sydney was well known as a port of call, that ships going there for orders never entered the harbour, and that the insured vessel was within the port, according to a Royal Surveyor's Chart, furnished to navigators.

*Held*, affirming the decision of the Supreme Court of New Brunswick, (33 N.B. Rep. 105,) that the words "at and from Sydney" meant at and from the first arrival of the ship; that she was at Sydney within the terms of the policy; and that the policy had attached when she attempted to put about for St. John.

Appeal dismissed with costs.

*Currey*, Q.C., for the appellant.

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

New Brunswick]

[Feb. 18.]

MOWAT *v.* BOSTON MARINE INSURANCE CO.

*Marine insurance—Goods shipped and insured in bulk—Loss of portion—Total or partial loss—Contract of insurance—Construction.*

M. shipped, on a schooner, a cargo of railway ties for a voyage from Gaspé to Boston, and a policy of insurance on the cargo, provided that "the insurers shall not be liable for any claim for damage on . . . lumber . . . but liable for a total loss of a part, if amounting to five per cent. on the whole