

May 2, 1892.

Nova Scotia.]

## PEERS v. ELLIOTT.

*Practice—Trial—Charge to jury—Misdirection—New trial—Negligence.*

P., a farmer, having a quantity of hay on his farm, agreed with E. to have it pressed by his (E's) steam engine, and in the course of the work the barn of P. was set on fire by sparks, as he alleged, from the engine, and was burned with its contents. P. brought an action to recover damages for his said loss, alleging negligence against E. both in the construction and management of the engine. On the trial the main issue was whether or not the spark arrester, which it was shown E. possessed in connection with the engine, was in its place when the fire occurred, and the judge directed the jury that if there was no spark arrester that in itself would be such evidence of negligence as would entitle plaintiff to recover. A verdict was given for plaintiff, which the full Court set aside for misdirection by the trial judge in so charging the jury.

*Held*, that the judge had misdirected the jury in telling them that the want of a spark arrester was negligence in point of law, and it could not be said that the jury were not influenced by it in giving their verdict. A new trial was therefore properly granted.

Appeal dismissed with costs.

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

*W. B. Ritchie* for the respondent.

May 2, 1892.

New Brunswick.]

## ST. JOHN v. CHRISTIE.

*Municipal corporation—Control over streets—Duty to repair—Transferred powers—Negligence—Notice of action—Defence of want of—34 V., c. 11 (N. B.), 25 V., c. 16 (N. B.)*

The act incorporating the town of Portland [34 V., c. 11 (N. B.)] gives the town council the exclusive management of and control over the streets, and power to pass by-laws for making, repairing, etc., the same. By s. 84 the provisions of 25 V., c. 16 and amending acts relating to highways, apply to said town, and the powers, authorities, rights, privileges and immunities vested