

18 Feb., 1896.

New Brunswick.]

## CITY OF ST. JOHN V. CAMPBELL.

*Municipal corporation—Repair of streets—Non-feasance—Elevation of sidewalk.*

In the city of St. John, N. B., a sidewalk on one of the streets adjoining private property had been covered with asphalt, whereby it was raised considerably above the level of the private way. After a time water dropping from a 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 misfeasance; and if from the street being out of repair it was mere negligence of non-feasance; and in neither case was the city liable. *Municipality of Pictou v. Geldert*, (1893) (A. C. 524) and *Municipal Council of Sydney v. Bourke* (1893, A. C. 433) followed.

Appeal allowed with costs.

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

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

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## ST. PAUL FIRE &amp; MARINE INSURANCE CO. 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