

PROVINCE OF CANADA.
LOWER CANADA.

IN THE QUEEN'S BENCH.

John William Barrow,

Plaintiff in the Superior Court.

APPELLANT.

AND

The Mayor, Councillors and Citizens of the City of Quebec,

Defendants in the Court below,

AND

Emilie Marie Poulin & Louis Larose, her husband,

Intervening parties in the Court below,

RESPONDENTS.

THE present appeal arises from a judgment rendered in an action in which the Appellant by his declaration alleged as follows:—"That at the City of Quebec, on the sixth day of November last past, the said Plaintiff was possessed as proprietor of a certain brown gelding horse of the value of £50, and of a certain four-wheeled carriage, called a waggon, of the value of £30, and of a certain set of harness upon the said horse, of the value of £8. That about six o'clock on the evening of that day the said horse, attached by the said harness to the said carriage, was quietly driven by a fit person to guide the same, to wit, the Plaintiff, and at the ordinary and reasonable rate at which horses in harness are usually driven, over and along a certain street in the said City of Quebec called St. John's Street, to wit, on a part thereof outside one of the said City Gates called St. John's Gate; that the said horse and carriage being so quietly driven, arrived at a certain part of the said street, opposite a certain house, in the course of erection upon the property of one Marois, on the north side of the said street, at which place, opposite the said house then being built, the said street was occupied and encumbered with building materials and rubbish, deposited thereon to the extent of two-thirds of the width of the said street; that the said part of the street so occupied by the said building materials and rubbish was not in any manner enclosed to prevent accidents to passengers upon the said street, which, long before then had been, and was at the time, a public thoroughfare of the said city, over which passengers, horses, and carriages were constantly passing; that the said horse and carriage, so carefully driven, at the said place encountered, was met by a certain other horse and carriage driven in like manner by some person to the said Plaintiff unknown, at which place, the evening being dark, in consequence of the said building materials and rubbish occupying the said street, the said Plaintiff's horse and carriage and the said horse and carriage of the said person to the said Plaintiff unknown, for want of sufficient space to pass one another became entangled together, which caused the said Plaintiff's horse to take fright, run away, and become unmanageable, whereby the said carriage in which the said Plaintiff then was, to which the said horse was harnessed, was broken to pieces, the said Plaintiff and his sister being in the said carriage, were violently thrown out and bruised and wounded; and the said horse dashing himself against another vehicle in the said street broke two of his legs, rendering himself useless and necessitating his destruction, whereby the said horse, carriage, and harness were lost to the said Plaintiff, and he, the said Plaintiff, in consequence of his said bruises and wounds became injured and sick, and unable to attend to his ordinary business, and has been put to great trouble and expense in procuring medical attendance rendered necessary by the injuries by him received, and in consequence of bruises and wounds so sustained. And the said Plaintiff further saith that it was solely by the fault and negligence of the said Defendants in not causing the said street to be kept open and free from impediments to passengers, so that they might pass and repass over the same by day and night that the said accident occurred and that the property of the said Plaintiff was thus destroyed, and himself bruised and wounded; and that the said Defendants, contrary to their duty, suffered and knowingly permitted the said street to be occupied by the said materials and rubbish exceeding two-thirds of the width of the said street, and did not cause to be enclosed the said part of the street so occupied by the same, with a fence as required by law; nor did they cause a light to be kept near the same in order that passengers might be enabled to see the said impediment in the said street and avoid the danger caused thereby, but wholly neglected their duty in these respects, contrary to the ordinances and statutes which regulate the administering, making, and keeping in repair of the said streets and thoroughfares of the said city under the control of the said Defendants, and that by reason of the said fault and negligence of the said Defendants the said Plaintiff hath, ever since the said accident, been deprived, not only of his said horse, harness, and carriage, but hath, as aforesaid, suffered in his body, and been otherwise greatly injured to his damage of £500." The conclusions of this declaration were for a condemnation for £500, interest, and costs. On the return of this action in the Court below the Defendants appeared by Attorney, as did also the other Respondents to the present Appeal who intervened therein, and by their petition in intervention among other things set forth as follows:—"Que les dits intervenants sont les entrepreneurs qui ont contracté pour la