Again, they assert that the accident was caused by the imprudence and fault of the Appellant of which there is also no proof unless it be found in the opinion of one of the officers of the Corporation, Joseph Rousseau, who says, he thinks that with ordinary precaution the Appellant might have passed the pile [illegible] without coming into contact with it, because, he says, the pile of bricks extended only over about one-half of the width of the street, and there was sufficient space between it and the other side of the street to allow carriages easily to pass without touching; but this witness takes no account of the large stones left in this passage, proved to have extended as much as six feet into it, and this is the only witness who endeavours to show anything like imprudence on the part of the Appellant by saying that he was trotting his horse while the other person with whom he came into collision was walking his, but he is obliged to admit that the Appellant was going at a slow or heavy trot; and the witness, William [illegible], an officer of the Corporation, says, it was a very gentle trot. Again, the Respondents alleged the Appellant was conducting a fiery and unruly horse, an absurd allegation, which assertion it was not attempted to prove, and the contrary was, by the Appellant, clearly shown [illegible], John [illegible], a farrier, saying the animal was a very gentle horse; another, John [illegible], Major in the Volunteer Artillery, declaring him to be an admirable animal and well trained, and also stating that the Appellant was an excellent driver and exceedingly careful; and a third, John G. [illegible], deposing that the horse was a quiet one, his fault being that he was too quiet and lazy. The Respondents asserted that a sufficient passage was left to the public, the reverse of which is proven by all the witnesses examined on the part of the Appellant, although one of those of the Respondents, Dr. Robitaille, a member of the Corporation, testified he thought there was a sufficient space for two vehicles to pass one another, still he admits that he himself was in the habit, when passing the spot, of stopping to allow any carriage going in the opposite direction to pass him, and although Joseph Bertrand, Edmond Legaré, Celestin Pardé, and Louis Favreau, carters, in the employ of the Intervening parties, state that on the day of the accident they saw two vehicles pass each other in the passage, one of these witnesses saying he saw two carters pass each other on that day at a trot, this being indeed possible at a different hour of the day from that on which the accident occurred, as it is established the stones outside the pile of bricks were not left stationary but were often moved from one position to another, and two carriages might thus have passed at one moment, particularly in daylight, when the stones could be perceived, and thus perhaps avoided and have been unable to do so at another, more especially at night.

If, in addition to the presumption arising in favor of the Appellant, from the truth of the allegations by him made and the opposite character of those advanced by the Respondents, the Appellant has established clearly in the Court below, that the Respondents in every particular infringed the rules of their own body and disregarded the law of the land, if they did that which the Legislature expressly forbid, and neglected to do that which is prescribed; if those things which should have been performed and were left undone, were directed to be done precisely for the prevention of such accidents as that which happened to the Appellant, and which would probably, in all probability, sooner or later happen to some one, in consequence of their not being done; if the precautions which were not taken, yet, which the regulations of law and of the Corporation itself prescribed, were such as were directed to be followed out for the sole purpose of preventing such and similar disasters as that which befel the Appellant, is it not a legitimate deduction, that the accident which did take place at the spot where the things directed to be done were left undone, and where those prohibited were done, was the result of such disobedience to the law and disregard of the dictates of prudence, reason and duty?

The Appellant believes the Court below should have so held, as it may be seen those of France have done. Instances of such decisions are to be found, and they appear to be consonant to sound reason. In Merlin's Repertoire, vol. 9, page 683, verb. presomption, a case is reported in which the Defendant, one Vaucheret, was condemned to pay a sum of money to the Plaintiff, Piquet, because of the strong probability of the truth of the statement made by the former, and because that if the Defendant were really not guilty he had been, at least, negligent; the author writes "Les motifs de ce Jugement ont été pris dans les diverses circonstances de la "cause, de ce qu'il n'était pas probable que le sieur Piquet, qui jouit d'une grand réputation de probité répétat "une somme qu'il n'eut pas deposée et que si Vaucheret n'est pas coupable d'infidelité, il l'était au moins de "negligence."

Again, in the "Traité des Assurances D'Emerigon," par Boulay Paty, vol. 1, pages 410 and 412, are two reported cases, adjudged upon the same principle, awarding damages to the sufferer by an accident, on the probability that it was caused by the party who was shown to have been in fault. These were two cases of collision between ships, in one case the Court presumed the accident to have been caused by that ship which had disregarded the rules laid down for the prevention of such occurrences, and cast upon that vessel the onus of proving the cause of collision to have originated in the fault of the other vessel; the author writes thus, "Lorsque "deux vaisseaux se présentent pour entrer dans un port qui est de difficile accès, le plus éloigné doit attendre "que le plus proche ait défilé, et que le passage soit devenu libre, s'ils s'abordent, le dommage sera réputé au "dernier venu." In the other case the Court held that the accident shall be presumed to have occurred through the fault of that party whose negligence would likely occasion it; this was the case of one of the ships which had come into collision having been negligently left without a guardian; here the Court maintained the principle that the party evidently in fault shall be the party *prima facie* supposed to be the cause of an accident happening which was likely to occur by reason of such fault. "L'abordage est *presumée* proceder du navire "laissé sans gardien."

Our statute law at an early period prescribed that where materials for building were laid on the highways a sufficient way or passage should be left for the public; (36 Geo. 3, chap. 9 sec. 68); a subsequent act indicated more clearly what should be considered a sufficient passage and directed that all persons occupying a part of any public street, while erecting any building, should leave unoccupied and *free from all embarrassments* a sufficient portion of the said street to allow persons *freely to pass with their horses and carriages* (18 Vic., chap. 150, sec. 80) and that statute was followed by a still later 22 Vic., chap. 30, sec. 17), which enacts that all persons building shall not in any case occupy more than one-third of the width of the street, and shall enclose the ground occupied with a board fence at least ten feet high, while the oldest rules for the regulation of the City of Quebec directed that not more than one-third of the width of any street within it should be occupied by such materials, and that one or more lights should be kept at night upon the materials. (Vide regulations for the years 1818 and 1831, pages 69 and 71 of printed rules).

All these regulations prescribed by the statutes of the Province and the rules of the City, have solely in view, and were intended for, the convenience, safety, and protection of the public. The great thoroughfare immediately outside the chief gate of the City where the casualty occurred was a spot which, more peculiarly than any other, required that these laws should be strictly attended to and observed. It is obvious it became the