" quoi-qu'elle ne soit pas tout-a-fait complète, c'est le cas auquel le juge doit se décider par le serment de l'une " des parties. Il peut même, en ce cas, le déférer au Demandeur, pour suppléer par ce serment à ce qui manquait " à la preuve qu'il a fait."

Neither the laws of England nor of France require that the proof in a cause should be so positive that every fact must necessarily be established by direct evidence from the witnesses own knowledge, but the facts may in certain cases be inferred from circumstances which most usually attend their existence. If the evidence be such as may afford a fair and reasonable presumption of the facts to be tried, it is for the Jury under one mode of trial, and for the Judge under the other, to determine upon the precise force and effect of the circumstances proved, and whether they are sufficiently satisfactory and convincing to warrant the finding the fact in issue. Phillipps in his Treatise on Evidence, vol. 1, page 155, sec. 2, says "evidence consists of either " positive or presumptive proof; the proof is positive when a witness speaks directly to a fact from his own " immediate knowledge; and presumptive, when the fact is not proved by direct testimony, but is to be inferred " from circumstances which either necessarily or usually attend such facts. If the circumstantial evidence be " such as may afford a fair and reasonable presumption of the facts to be tried, it is to be received and left to the con- " sideration of the Jury to whom it belongs to determine upon the precise force and effect of the circumstances prov- " ed, and whether they are sufficiently satisfactory and convincing to warrant them in finding the fact in issue." A " presumption of any fact is properly an inferring of that fact from other facts that are known, it is an act of reason- " ing; and much of human knowledge on all subjects is derived from this source." In the Répertoire of Merlin, vol. 9, verbo preuve, page 767, sec. III, and of Guyot vol. 13, page 562, under the same word preuve, the authors treating, "Des différents degrés de certitude auxquels il faut que les preuves soient portées pour servir de base " aux jugements, writes as follows:—"La preuve considérée par rapport aux différents degrés de certitudes dont " elle est susceptible, est communément divisée en preuve complète, en demi-preuve et en preuve légère. I. La " preuve complète est celle qui établit une entière conviction dans l'esprit du Juge. La demi-preuve est celle " qui forme à la vérité une presomption considerable, mais dont il ne resulte pas une parfaite conviction. II. Il " y a sur cet objet deux différences très remarquables entre les matières civiles et les matières criminelles, la " première est que cette preuve est reputée complète dans les unes, et n'est que demi-preuve dans les autres; la " seconde différence est qu'en matière civile les demi-preuves produisent plus d'effet, et font plus d'impression " qu'en matière criminelle. III. Au reste, il est certain que dans un procès criminel, il ne faut pas autant de " preuves pour condamner l'accusé à des dommages-intérêts envers la partie civile, que pour lui faire subir une " peine affective ou infamante."

And indeed the law itself makes a large class of presumptions, and in many cases assumes the existence of certain facts until the contrary is proved, and even makes them binding on the Judge when not disproved by adverse evidence; and very frequently such presumption is founded entirely upon the probability that the circumstances inferred did take place, as in the matter of prescription, founded on the presumption of payment, which is sometimes a bar to the recovery of a debt, the law supposing such payment, because it is probable the creditor would not have allowed the period to have elapsed without bringing suit had he not been satisfied his debt; the law of England not even permitting evidence to the contrary, while that of France requires the oath of the party alleging such payment should be offered and received as a completion of proof.

The law again presumes the payment of arrears of house rent where the tenant produces receipts for three successive years subsequent to the period for which the rent is demanded, because it is not likely that the lessor would have received those later years' rent if the previous years had been due, and because, it is usually the case that the previous years rent are the first paid. The law presumes, in the case of the dismissal of an Attorney, that he was retained by the client if he be in possession of such client's documents relating to the business in dispute, because it is probable that he would not be in such possession had the party not retained him. Durnaton Vol. 13 No. 401, writes: "Les présomptions sont des conséquence que la loi ou le juge tire d'un fait " certain, pour connaître la vérité d'un fait dont on n'a pas la preuve, ces conséquences sont déduites de ce qui " arrive le plus ordinairement dans le cas donné," and Pothier in his obligations, No. 849, says: "Quelque " fois le concours de plusieurs présomptions que nous appelons *simples*, reunis ensemble, equipolle à une preuve."

In short, the law in many instances establishes presumptions even binding on the Judge, while in other cases it leaves to his prudence and discretion to draw as consequences facts deducible from that which ordinarily gives rise to the facts taken to be proved.

This being so, it is submitted there arises a strong presumption of the truth of the material fact alleged by a party when all the attendant circumstances which would naturally lead to the existence of such fact are found to be truly stated by that party, while all the pretended occurrences asserted by the adverse party, and which would tend to an opposite conclusion, are shewn to be untrue. Boonier in his Traité des preuves No. 370, says: " si l'une des parties a nié un fait qui se trouve ensuite clairement établi, les Juges se conformeront à l'esprit de " la loi, en déférant le serment à l'autre partie."

It will be remembered the Appellant, by his declaration, informed the Court below, that on a particular night he was driving his horse at an ordinary and reasonable rate along one of the streets of this city; That as he drove, he arrived at a certain spot that was encumbered with building materials to the extent of two-thirds of the width of the street; that the said portion of the street so encumbered was not enclosed to prevent accident that there he was met by another vehicle, and the night being dark, the building materials occupying so great a portion of the street, they not being enclosed by a fence and no light being kept upon them, and for want of sufficient space free from obstruction to enable the vehicles to pass each other, they became entangled, causing his horse to take fright, run away, and become unmanageable, whereby the accident occurred; that the Respondents were guilty of a neglect of duty in knowing and permitting the said street to be so occupied without an enclosure to protect passengers, or a light to enable them to see the impediments and avoid the danger caused by them.

Now, all these allegations are proven beyond contradiction, merely the accident which immediately ensued upon this condition of things is not by so direct and positive evidence established to have been so entirely caused by it as to exclude the possibility of its occurrence had the street been free from encumbrance, or to demonstrate that it could not have happened by the negligent driving of one or other of the carriages which came into collision. On the other hand, the intervening parties alleged that the materials in the street might legally occupy the space upon which they had been thrown, the contrary of which is undoubtedly the case inasmuch as they occupied over two-thirds of the width of the street, while only one-third could, under any circumstances, be lawfully so occupied.