complains, so as to render the Respondents amenable to him in damages? Now, this passage, which it is pretended by the Respondents was sufficient, and this space which was occupied by the one and stated by him to be so by the permission of the other of them, should have been such a passage as to be "*sufficient for the public and free from all embarrassments,*" (32 Geo. 3, chap. 9, sec. 68,) and be a sufficient portion of the street "*to allow persons freely to pass with their horses and carriages,*" (18 Vic., chap. 159, sec. 80), while it was in reality such that the witness, Robert Parnell, swears, "two vehicles could with difficulty pass one another, while "there was an inclination to the centre of the street to the parapet, which rendered it still more difficult." and he adds, "I always considered the obstruction unreasonable and exceedingly dangerous, and during the week of the "accident I noticed several large stones some four feet in length a good deal outside of, or beyond the line of the "pile of bricks, and these stones would expose vehicles to danger and accident, more especially at night; this "encumbrance was the subject of frequent conversation as being a dangerous public nuisance." Another witness, W. B. Valleau, deposes to the street being "particularly obstructed on the night of the accident," and says: "I had to stop my horse, and even then another waggon passing ran against mine, the passage was often so "narrow that two could not pass each other." Another witness, Adolph Kranth, states: "it was often "impossible for two vehicles to pass one another." Robert Richardson says, "that portion of the street was "continually thronged with vehicles, and the encumbrance there was exceedingly dangerous, for a fortnight in "October, two vehicles could not pass in the gap." Francis Milligan states, "I often remarked "that two vehicles could not pass through the gap between the encumbrance and the side walk." William Shoredicke, himself an officer of the Corporation, admitted that "two vehicles, *in the day time*, could not easily "pass one another." Alexander Farquhar swears "it was the common conversation with the people that they "never in their lives saw a street so encumbered. George W. Ellison says "I was often prevented passing "because another vehicle was coming in an opposite direction." James Woodley says "two vehicles could not "have passed without danger, and where one of the stones lay outside the pile of bricks, *two could not have* "*passed at all.*" John Walker says "a few days before the Appellant's accident he, the witness, very nearly "met with a similar one at the same spot;" and George Thompson swears there was one stone in particular that "prevented him passing another horse, and that he had to back out his carriage."

Then as to the space so occupied by the building materials it should not in any case have exceeded *one-third of the width of the street*, and should have been enclosed with a board fence at least ten feet high, (22 Vic., chap. 30, sec. 17,) and the materials should have had one or more lights kept on them during the night, (Regulations of the Corporation of 1818 and 1831). Now, not only does the evidence disclose that not one of the witnesses, even of those examined by the Respondents, say that the space occupied did not exceed one-third of the street, but it will be seen that the space encumbered more than doubled that sanctioned by law; one witness, Robert Parnell, declares that fully two-thirds of the street was covered, and says in addition, he saw several large stones four feet in length, a good deal outside of the pile; W. B. Valleau swears that on the night of the accident the street was fully three-fourths of the width encumbered; Robert Richardson swears to the same fact, as does also George Stevens; and James Woodley corroborates their statements by deposing to the street being covered two-thirds of its width besides a large stone which he saw three or four feet outside the rest; Dr. Robitaille, one of the Respondent's own witnesses, and himself a member of the Corporation, admits that the pile of bricks occupied a greater space than the rules of the Corporation allow; another witness, Joseph Bertrand, states that the day of the accident the stones extended six or seven feet further into the street than the pile of bricks; while another one, Pierre Gauthier, well knowing the peril which such stones would occasion to passengers, deposes that every night, to prevent accidents, they were particular not to allow them to project further than the pile, which assertion is disproven clearly by all the other witnesses.

Then, it is admitted on all hands, that there was no fence to enclose these materials, which enclosure would evidently have afforded a most material safeguard for the public, and would, beyond a doubt, have prevented the accident which occurred to the Appellant, as the rubbish would have been retained within bounds and the width of clear carriage way clearly indicated, and to such a protection the law gave him a right even though he should be driving an unruly horse through the street, nor would the Respondents cease to be wrong-doers because he might be travelling at night with such an animal.

As to there being a light upon the materials no one attempts to prove this to have been the case either; but the Respondents establish that a candle in a lanthorn was placed upon one of the houses which, although it probably threw a light on the footpath for foot passengers, is proven actually to have made matters much worse; for those using the street and travelling in carriages, inasmuch as the pile of bricks being between them and the light a shadow was thrown across their way. That there was no light upon the encumbrance is positively sworn to by Joseph Parnell, Nicholas Piton, W. B. Valleau, Ed. Smith, William Shoredicke, George Steven, James Woodley, and Alexander Adair; one of these witnesses, Edward Smith, swears that on the night in question Mr. Shoredicke, the Manager of the Quebec Water Works, observed this and exclaimed that it was a shame there was no light at such a spot upon the pile, and he, the witness, observed that the light was so placed as to throw the stones, outside the pile completely, in the shade of the bricks, so that persons driving could not see them; while James Woodley states there was one large stone which he was positive, from the darkness of the night, and there being no light on the pile, no person driving could have seen, and that he himself, while examining the spot, kicked against it before he became aware of its presence; and Alexander Adair states that the place where there was a large stone outside the pile of bricks was the darkest spot in the street. The evidence discloses also, that it was in this passage the collision occurred which caused the injury complained of.

Now the Appellant respectfully submits that evidence according to the nature of it affords different degrees of certitude, some may be positive and so direct that no Court could do otherwise than adjudicate conformable to it; other testimony may be of so uncertain a character as to form no sufficient foundation for a judicial decision, while in other cases the facts established may produce such strong presumption of the existence of the fact sought to be established as to leave no reasonable doubt in the mind of the Court and as fully to justify its assuming the fact as if it were directly and positively sworn to.

It is the office of the Judge to determine the value and effect of such evidence, as it is also his duty to discern between conflicting probabilities. The law throws upon him the responsibility of ascertaining facts in dispute, and it is a task which must be performed by him who endeavors correctly to administer justice, while the wise system of our law, with a view always to ascertain the truth and enlighten the Judge in the search of it permits and directs him, in cases of doubt, to make the subject more clear and certain by the examination on oath of the party in whose favor it is considered the balance of testimony exists. Pothier in his Treatise on Obligations, No. 925, says: "Lorsque la preuve du fait qui sert de fondement à la demande est déjà considérable