

an investigation the Appellant knows will be given by this Honorable Court to that enquiry as is bestowed upon all matters submitted to its consideration. The evidence in the case establishes that, in violation of the law, the portion of the street occupied by the building materials causing the obstruction complained of, exceeded two thirds of the width of that street; that the ground so occupied was not inclosed with a board or any other fence, and that no light, such as to be of any service to persons passing with carriages in the street, was at night kept upon them. In addition to this it was shown that the street where this state of things existed, and which was caused by one of the parties Respondent, and permitted by the other, is a great thoroughfare and the chief outlet of the city, over which, day and night, vehicles are constantly passing; that at such a place it was, above all things, peculiarly dangerous not to conform to the provisions of law made in regard of such matters, and that for the want of their observance there existed on the spot when the accident befel the Appellant, a great nuisance likely to cause mischief and endanger life; that this state of things was not of momentary duration but had existed for months; That the attention of the Respondents was called to the peril caused the public by it, but that not well after a severe injury to two of the citizens was any attention paid to their complaints, and it will be remembered that it was not even pretended by the Defendants in the Court below, that they were unaware of this public and vexatious annoyance, but on the contrary, they tacitly admitted the allegations of the Intervening parties that the portion of the street occupied, which caused it, was so occupied by their, the said Defendants, permission.

It will be found also, by a perusal of the evidence, that persons were unable to pass freely in the street in carriages of any description, but were compelled to stop at the entrance of the passage left between the building materials heaped up there, that horses and vehicles had to be backed out of this passage if they happened to have entered it without perceiving a carriage at the other end, and that collisions were the frequent result of attempts to pass, by carriages too far in the passage to be backed out; and it may be fairly a matter of wonder that serious accidents, such as happened to the Appellant, were not of daily occurrence. It will be also seen, that within the limits assigned by law, the width of that street afforded abundant space upon which to deposit the materials required for the construction of any building, and, therefore, the wilful infringement of the law in this particular by the Respondents becomes perfectly inexcusable, and is indicative of such gross disregard of the convenience and safety of the citizens as to bear a close resemblance to malice; for it is supposed that a man intends that which is the natural consequence of his own act, therefore the wrong done the Appellant may even be looked upon as the result of a mischievous intention on the part of the Respondents to inflict it.

The evidence further shows that the street was covered not only to the extent of from two-thirds to three-fourths of its width, instead of only one-third as directed by law, but also to a distance of about one hundred feet in length, so that it may be readily perceived that, at a dark night, by the only light being a candle placed, not on the pile but on the footpath, in such a manner as, instead of illuminating the carriage way in any degree, only to cast the shadow of the pile of bricks upon it, this passage was rendered a perfect trap to carriages travelling over it. The testimony likewise establishes that for several feet outside the pile of bricks there were left large stones, against one of which the witness, James Woodley, deposes that he kicked his foot while examining the spot immediately after the occurrence of the accident in question, being unable to see it in the darkness of the shade caused by the pile, which stones necessarily must have exposed vehicles to peculiar danger at night, and will readily account for the collision of the carriages which took place then; and what will further indicate the cause of it, is, that this part of the street, as stated in the evidence, was uneven and sloping towards the side furthest from the pile; that is, to the right side of the street entering the city, and as the Appellant was at the time approaching the city he was correctly on this, the lower side, and thus the vehicle with which he came into collision would be naturally driven upon him, not from any fault, but as well from that carriage being on the higher side as from the necessity under which the driver was placed to avoid these stones in his own front.

Then again it will be seen that this state of the street was brought under the notice of the members and officers of the Corporation, and that it could not, as the witnesses depose, but be known to them, and in fact, that ignorance of it, as before remarked, is not pretended by the Respondents, and even if it were, and in reality existed, such ignorance would have been inexcusable, therefore, the carelessness and indifference of the Respondents, both the Intervening parties and the Defendants in the Court below to the public weal, for which alone the latter were created a Corporation, is manifest, and it may here be remarked that although the party committing the nuisance may be considered, perhaps, more culpable than the other who but suffers and permits its continuance, still both these are before the Court agreeing that the damages to be obtained by the Appellant against the Defendants shall be borne by the intervening parties; they go hand in hand, they deny their liability, and pray that not they, but the Appellant himself may be held to have been the cause of the injury which he sustained.

The evidence also discloses the fact that, immediately following this accident these stones which the Appellant complains of as being the cause of the collision, and which the Respondents contend were rightly in the street and in no wise contributed to the Appellant's misfortune, were by themselves removed, and the street was then put in proper condition, but that not until that late period was this done although great inconvenience had been, up to that moment, occasioned the public; accidents, more or less annoying, repeatedly taking place even in the day time, and the matter had been universally looked upon and talked of as a perfect nuisance, while continued complaints had been made and it had become matter of wonder that such a state of things was suffered to exist. It was, notwithstanding all this, as the witnesses Robert Parnell and Alexander Farquhar depose, not until after the accident had taken place which brought upon the Appellant the destruction of his horse and carriage and the very near loss of his own and his sister's lives that the Respondents thought it advisable to yield obedience to the law; and now they desire to escape the consequences of their previous continued criminal neglect of duty by inducing the Court to believe the accident was not occasioned by their fault, and this, because it may be possible the collision which caused it might have taken place had they not been in fault, and because it was, perhaps, possible for two carriages to have passed each other without collision in the then condition of the street.

The Appellant however contends that the question is not whether such a thing was within the range of possibility, but is rather, was there a sufficient passage left, such as the law contemplated and enjoined should be left, for the convenience and safety of the public? Had the citizens that protection afforded them by means of fences and light which the Legislature prescribed? Did the accident occur at the spot where the injunctions of the law in these respects were violated, and does the evidence disclose a *prima facie* proof of the accident having been caused by the deficiency of the passage and the other infringements of the law of which the Appellant