

" construction de la maison sur le côté nord de la rue St. Jean, dans le faubourg St. Jean de Québec, et que comme tels ils ont placé les matériaux dans cette partie de la rue St. Jean, en la Demander. " en cette cause ne plaie qu'il souffrit des dommages résultant d'un accident causé par les dits matériaux. " Qu'en conséquence les Intervenant se trouvent garantis des Défendeurs en cette cause, et ils demandent à l'Intervenant pour défendre à la présente action. Que la Demander n'a pas de fait souffert les dommages qu'il réclame par la faute et négligence des Intervenant, et que les matériaux qui se trouvaient dans la rue n'ont pu être placés que conformément à la Corporation de Québec alors en force, et suivant la loi. " Que les dits dommages et le dit accident ne sont dus qu'à l'imprévoyance et à la faute du Demander. "

The Defendants having taken communication of this intervention filed in the Court below, the following written consent:—"Vo l'intervention de la dite Emile Marie Poulin, et de son dit époux, Louis Laroc, garante des dits Défendeurs, et vu que les dits garante ont par leur dite intervention sise en cette cause pris le fait et cause des dits Défendeurs, eux les dits Défendeurs, pour éviter un circuit d'actions, et aussi de plus grand frais, consentent par le présent que le jugement qui interviendra en cette cause, soit pour ou contre les Intervenant, soit le même pour ou contre les dits Défendeurs."

After the placing of this document upon the record, the said intervening parties pleaded to the Appellant's action, by a defense on facts, denying all the allegations of his declaration, and by a perpetual peremptory exception, in which they stated as follows:—"Que les Intervenant ont les entrepreneurs pour la construction d'une maison située dans le faubourg St. Jean de la Cité de Québec, au côté nord de la rue St. Jean, laquelle maison appartient à M. Marois, que la construction de cette maison, le déblaiement de la place, le déplacement des matériaux de la vieille maison, le transport de nouveaux matériaux sur la place pour une maison en pierres de taille à quatre étages, ont commencé le premier jour dernier, et que la dite maison n'est pas encore terminée. Que d'après la loi, les Intervenant avaient le droit d'occuper une partie de la rue St. Jean, vis-à-vis la propriété en question, pour déposer les matériaux nécessaires à la dite construction, laissant néanmoins un passage suffisant pour le public dans la dite rue, vis-à-vis la propriété en question. Qu'en vertu de la loi, avec l'assentiment et la permission de la Corporation de Québec, les Défendeurs en cette cause, les Intervenant ont occupé et occupaient une partie de la dite rue vis-à-vis la dite propriété, avec les matériaux de construction de la dite maison, de manière à laisser un passage libre et suffisant au public dans la dite rue, à l'époque que l'accident dont se plaint le Demander est arrivé. Que les Intervenant ne sont pas la cause de l'accident en question, et qu'il existait alors un passage suffisant dans la dite rue, à l'endroit en question, pour y passer piétons et voitures, sans aucun danger. Que le Demander n'a pas pris les précautions nécessaires, et que c'est par sa faute et négligence que le dit accident est arrivé, qu'il conduisait un cheval fougueux, et qu'il n'a pu éviter l'accident avec les soins ordinaires." By the statement of facts filed in the Court below, after issue joined the Appellant particularly undertook to prove. That in consequence of the lacunabance of the street by the materials placed upon it, as well as by their not being enclosed, and there being no light upon them, an accident occurred, whereby two of the legs of the Appellant's horse came to be broken, his carriage and harness destroyed, and he himself severely bruised and injured, and that this accident occurred solely by the fault and negligence of the Respondent, in permitting the street to be so incumbered with materials enclosed, and not lighted, contrary to their duty, while the intervening parties on the contrary alleged: That with the consent of the Defendants, and according to law, they occupied such portion only of the street as to leave a sufficient passage for the public. That the Appellant did not take necessary precaution, and that it was by his own fault and negligence the mischief was done him, because he was at the time conducting a fiery and unruly horse, "cheval fougueux," and might have avoided the disaster by ordinary care. Evidence having been adduced by the Plaintiff and Intervening parties, it was consented to by the Defendants, that the said evidence should be considered as taken against them ex parte. After this, the cause being argued on the merits, the final judgment rendered in the Court below was in these terms:—"The Court considering that the plaintiff hath failed to establish in evidence the material allegations of his declaration, more particularly that it was by the fault and negligence of the Defendants, that the property of the Plaintiff was destroyed in the manner by him complained of, and considering on the contrary that it is fully proved in evidence that the injury to the property and person of the Plaintiff, which forms the subject matter of this suit, was caused by the running away of his horse, occasioned, as far as the evidence accounts for the same, by the Plaintiff's vehicle coming into collision with another carriage then passing in the street, doth dismiss the Plaintiff's action with costs, and on motion to that effect *distriction de frais* is awarded to U. Tessier, Esquire, the Attorney of the said Defendants."

This judgment of which the Appellant now complains he believes to be erroneous as to the fact on which it purports to be based, and as to the law; and also to be contradictory in its motives and reasons, contradictory inasmuch as it states that the Appellant has failed to establish in evidence the material allegations of his declaration, because it was fully proved that the injury which gave rise to the damage suffered by him was caused by the running away of his horse, occasioned by his coming in collision with another carriage then passing in the street, while this is in reality one of the material allegations of the Appellant's declaration and is also precisely the fact which the judgment asserts was fully proved, though, at the same time it also declares the material allegations of this declaration not to have been proven; again erroneous in fact and in law, because it declares that it was not established that the accident that happened to the Appellant was occasioned by the fault and negligence of the Respondents, which the Appellant submits was an incorrect conclusion arrived at as to the fact for want of a right appreciation of the law respecting evidence, and the legitimate presumption to be drawn from it whereby facts come to be sufficiently established.

It appears to the Appellants, the main enquiry in the cause is this; is the evidence which has been adduced sufficient in law to entitle him to have the casualty by which he suffered imputed to the acts and defaults of the Respondents? and this enquiry necessarily leads to the consideration of what amount of testimony the law exacts of the Appellant to establish that the mischief done him was caused by the fault of the Respondents, so as to render them responsible for the injuries which attended upon and followed such faults.

If some of the witnesses had deposed one way and others the contrary; if the testimony on either side as to the cause of the disaster had evinced discrepancy, the case under investigation would have been one of greater difficulty; and taking it even as it presents itself, with but few contradictions in the statements of the witnesses it is still not by a hasty off-hand perusal of the record and the assuming of the facts at issue one way or the other that the litigant parties are likely to obtain justice, but such a desirable end is only to be attained by a careful and minute consideration of the entire evidence and by patient investigation and comparison of all the circumstances of the case; it is by these means only that the Court, holding the scales of justice, will be enabled to form a correct estimate upon the question, in whose favor does the balance of the evidence weigh? and such