

Harold,  
and  
The Mayor,  
Aldermen, and  
Citizens of the  
City of  
Montreal.

time, causing loss of custom from passengers through it, which has been referred to in argument and which is now mentioned by reason of the observations of Lord Chief Justice Tindal which are very suggestive, he said: "The complaint was of obstruction by something done by the defendant under the general right to effect the object of the Act of Parliament, and that right the jury found was exercised to an unreasonable extent; the grievance was that the obstruction had continued for an unreasonable time, and the plaintiff had a right to complain of the immediate and proximate cause of his loss. Is this such a peculiar and private damage to plaintiff beyond that suffered by the rest of Her Majesty's subjects, as to enable him to sustain an action against the defendants?" His Lordship answers: "It is in conformity with the greater number of the decisions. The injury to the subjects generally is that they cannot walk in the same track as before, which is a common inconvenience, and for that cause alone an action would not lie, but the injury to the plaintiff is the loss of a trade, which but for this obstruction to the general right of way he would have enjoyed, and the law has said from the year books downwards, that if a party has sustained any peculiar injury beyond that which affects the public at large, an action will lie for redress." Is this injury of that character or not? The plaintiff in addition to a right of way which he enjoyed in common with others, had a shop on the roadside, the business of which was supported by those who passed. All who passed had the right of way, but all had not shops. Indeed, for the most part, the only question is whether the injury to the individual is such as to be the direct, necessary, natural and immediate consequence of the wrongful act." Bosanquet, J., after concurring in the principle, observes: "It may be that others have also been injured in the same way, and a case has been put in argument of every shop keeper in a long line of streets suffering a like injury from the same cause, but it does not resemble this of a peculiar injury to one."

Upon this latter point, Hilliard on Torts, p. 79, observes: "It need hardly be said that the rule in question against multiplicity of suits is not so strictly construed as in all cases to preclude a private action, merely because other persons than the plaintiff experience the same annoyance or injury from the act complained of which is sustained by him," and in a note at p. 77, the author refers to an old case in Lord Raym., Rep. 938, decided by Chief Justice Holt, *Ashby vs. White*, in which it is said "if men will multiply injuries, actions must be multiplied too, for every man that is injured must have his compensation."

The instance mentioned by Chief Justice Tindal, of the common inconvenience suffered by the public in the usage of a public way rightfully obstructed, finds its coincidence in our French law, as follows: "*parce qu'il n'y aura d'atteinte portée qu'à de pures facultés ouvertes à tous d'une manière générale, à la différence des droits proprement dits que la loi établit, reconnaît et garantit. Les premières ne sont garanties positivement à personne, tel est l'usage des voies publiques; tant qu'elles subsistent, chacun a le droit d'en jouir, d'en tirer tout l'avantage que cet usage conforme aux lois et aux règlements, peut procurer; leur abandon, leur suppression ne peut donner lieu à des réclamations fondées.*"