

tiff and others passed through, usually closing the gate. From the evidence, I think it established that the plaintiff was prevented by the defendant from passing along the road across lot 7 by the fence forming an obstruction between lots 7 and 8. . .

[Reference to Fritz v. Hobson, 14 Ch. D. 542; Halsbury's Laws of England, vol. 16, secs. 269 and 270, and cases cited; Spencer v. London and Birmingham R.W. Co., 8 Sim. 193; Cook v. Bath Corporation, L.R. 6 Eq. 177; Baker v. Moore (1697), cited in Iveson v. Moore (1699), 1 Ld. Raym. 486, 491; Rickett v. Metropolitan R.W. Co., 5 B. & S. 156, 2 H.L.C. 175, 188; Beckett v. Midland R.W. Co., L.R. 3 C.P. 82; Halsbury's Laws of England, vol. 16, sec. 270; Rex v. Dewsnap (1812), 16 East 194; Rose v. Miles (1815), 4 M. & S. 100; Boyd v. Great Northern R.W. Co., [1895] 2 I.R. 555; Re Taylor and Village of Belle River, 1 O.W.N. 609; Metropolitan Board of Works v. McCarthy, L.R. 7 H.L. 243.]

With great deference to the trial Judge, and notwithstanding that the plaintiff's evidence was chiefly directed to the question of dedication, and not to the peculiar loss suffered by him, yet, owing to the peculiar location of this lot and of the buildings thereon, and the drainage canal and the railway crossing it, and the fact that the evidence on both sides, in the main, agrees that the road could not have been opened without the lands first being drained, I think it fairly clear, from the evidence, that the plaintiff did suffer that peculiar and special damage which entitled him to bring this action.

I would allow the appeal, set aside the judgment for the defendant, and direct judgment to be entered for the plaintiff, and grant an injunction restraining the defendant from continuing any obstruction to the highway across lot 7.

The plaintiff is entitled to costs here and below.

MULOCK, C.J., SUTHERLAND and LEITCH, JJ., concurred.

RIDDELL, J., with some hesitation, also concurred.

*Appeal allowed.*