

character of the road in question. The common law rule applies, "once a highway, always a highway," until by legal means its character is destroyed, although the long-continued existence of an obstruction may tend to shew that there never was a highway: see Halsbury's Laws of England, vol. 16, sec. 103.

The question remains, did the plaintiff suffer such damage peculiar to himself as entitles him to bring this action?

In the view of the trial Judge, he did not. He points out that the evidence was almost wholly directed to the question of highway or no highway, and the plaintiff "omitted to prove, if he could prove, either the particular damage to himself by the defendant's obstruction, or to prove an assault," so as to bring the case within *Drake v. Sault Ste. Marie Pulp and Paper Co.*, 25 A.R. 256, and *Fritz v. Hobson*, 14 Ch. D. 542. One of the instances of acts which may be found to be nuisances at common law is that of erecting a fence or building across, or so as to encroach upon, the highway: Halsbury's Laws of England, vol. 16, sec. 266, and cases cited in note (n). The remedy is by indictment or an action at the suit of the Attorney-General for an injunction to restrain the commission of the nuisance or for a mandatory injunction directing its abatement, and in such action no actual injury need be proved; "but a member of the public can only maintain an action for damages or an injunction in respect of such nuisance, if he has sustained therefrom some substantial injury beyond that suffered by the rest of the public, such injury being direct and not merely consequential:" *ib.*, sec. 269; and in such cases the Attorney-General is not a necessary party: *Wallasey Local Board v. Gracey* (1887), 36 Ch. D. 593; *Tottenham Urban District Council v. Williamson*, [1896] 2 Q.B. 353 (C.A.). . . .

[Reference to *Cook v. Mayor of Bath*, L.R. 6 Eq. 177; *Spencer v. London and Birmingham R.W. Co.*, 8 Sim. 193.]

It is important to consider the peculiar circumstances of this case in deciding the question whether or not the plaintiff sustained a substantial injury beyond that suffered by the rest of the public. . . .

The defendant by his pleadings denies that the road in question was a highway. The evidence shews that the defendant maintained a fence across it, and prevented the plaintiff from passing along the highway by such obstruction, and by his refusal to permit him to go through. He says: "I stopped him going through with a buggy;" and that the threshing machine had gone through prior thereto from time to time.

It would appear that until the occasion referred to, the plain-