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tion was ordered in *Anderson* v. *Bank of British Columbia*. Production must be ordered. Costs to be costs in the cause.

BAYLEY, J. :—I entirely concur.

Order accordingly.

Attorneys for the plaintiffs :—*Messrs. Craigie, Lynch, and Owen.*

Attorneys for the defendant :—*Messrs. Jefferson and Payne.*

[APPELLATE CIVIL.]

Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice Melvill.

1877. December 12.

SATKU VALAD KADIR SAUSARE (ONE OF ORIGINAL DEFENDANTS), APPELLANT *v.* IBRA'HIM AGA' VALAD MIRZA' AGA' (ONE OF ORIGINAL PLAINTIFFS), RESPONDENT.*

Obstruction to a public road—Public nuisance—Right of suit—Indian Penal Code (Act XLV. of 1860), Chapter XIV—Injunction.

Plaintiffs, who were Mussulmans, sued to establish their right to carry *tabuts* in procession along a certain road to the sea, and alleged that the defendants (also Mussulmans) obstructed them in doing so. The plaint, however, did not allege any personal loss or damage to the plaintiffs, arising from the obstruction. Both the lower Courts found, as a fact, that the road along which plaintiffs desired to carry their *tabuts* to the sea was a public road.

Held in special appeal that plaintiffs could not maintain a civil suit in respect of such obstruction, unless they could prove some particular damage to themselves personally in addition to the general inconvenience occasioned to the public. The mere absence of the religious or sentimental gratification arising from carrying *tabuts* along a public road, is not any such particular loss or injury as would be sufficient, according to English and Indian precedents, to sustain a civil action.

Authorities as to what constitutes special damage sufficient to sustain a civil suit in such cases, referred to.

THIS was a special appeal from the decision of C. B. Izon, Acting District Judge of Ratnágiri, in appeal No. 85 of 1877, reversing the decree of T. Moore, Subordinate Judge of the same place, in original suit No. 957 of 1873.

This suit was instituted by Ibráhim Agá and two others against Satku and fifteen others. The persons, other than those named, did not appear in special appeal.

* Special Appeal No. 230 of 1877.

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SATKU VALAD KADIR SAUSARE v. IBRA'HIM AGA' VALAD MIRZA' AGA'.

The principal question argued in special appeal was whether the action was maintainable.

Shámráv Vithal with *R. S. Tipnis* appeared for the appellant.

Pándurang Balibhadra appeared for the respondent.

WESTROPP, C.J.:—The plaintiffs, who are Mussulmans, sue to establish their alleged right to carry *tabuts* in procession along a certain road for immersion in the sea. They aver that the defendants have obstructed them in so doing, and that the Magistrate, at the instance of the defendants, has made an order prohibiting the plaintiffs from using the road for that purpose.

This claim is resisted by the defendants, also Mussulmans, who allege that the road, along which the plaintiffs wish to carry their *tabuts*, passes through the *mohola* (quarter of the town) of the defendants, and close to their musjid, and that the plaintiffs have no right of way along that road, but that there is another and a public road, whereby the sea is accessible to them, which road they have hitherto used for the same purpose.

The defendants also relied upon the law of limitation.

The Subordinate Judge found that the suit was barred by that law. The District Judge reversed his decision, and held that the suit was not so barred.

The present appeal is against that reversal. It is, for the appellant, contended that not only is the suit barred by lapse of time, but that the plaintiffs have not any cause of action. We deem it unnecessary to decide the question of limitation.

Both of the Courts below have found, as a fact, that the road, along which the plaintiffs desire to convey their *tabuts* to the sea, is a public road.

There cannot be any doubt that Her Majesty's subjects at large, as well in India as in England, have the right to pass and repass along a public highway, whether it come under the denomination of *regia via* or *communis strata*,[1] so long as they do so peaceably and properly.

(1) As to the various kinds of highway or public passage, see Co. Lit. 56 (a) and *R.* v. *Saintiff*, 6 Mod. pp. 255, 256, S. C, 2 Lord Raymond 1174.

But, speaking generally, no action can, in England, be maintained for a public injury.(1) Therefore, an action does not lie for obstructing a man's passage in a highway, because, ordinarily, he has no more damage than others of the Queen's subjects; but the party causing the obstruction must be proceeded against by indictment. If, however, the person has sustained more particular damage by the nuisance than the public in general, as if any accident occur to him, or he be obliged to go to a greater distance and be thereby put to an expense in the conveyance of his goods or otherwise, then he may sue the party causing it. Lord Coke says with his accustomed quaintness: "But here is to be observed a diversity between a private way, whereof Littleton here speaketh, and a common way. For if the way be a common way, if any man be disturbed to go that way, or if a ditch be made overthwart the way so as he cannot go, yet shall he not have an action upon his case; and this the law provided for avoiding of multiplicity of suits; for, if any one man might have an action, all men might have the like. But the law for this common nuisance hath provided an apt remedy, and that is by presentment in the leet or in the tourn, unless any man hath a particular damage: as if he and his horse fall into the ditch, whereby he received hurt and loss, there, for this special damage, which is not common to others, he shall have an action upon his case; and all this was resolved by the Court in the King's Bench."(2) For both of these propositions of Lord Coke, authority, so early as the Year Books (3) exists. In *Fineux* v. *Hovenden* (4) Lord Coke (then Attorney General), as counsel for the defendant in an action on the case for an obstruction in a street in Canterbury, succeeded in convincing Popham, C. J., Gawdy and Fenner, JJ., in the Queen's Bench in Easter Term 41 Eliz., that "without a special grief shown by the plaintiff the action lies not." There is a general concurrence of authorities that there must be some particular damage to the

(1) See *Robert Mary's Case*, 9 Rep. 113 (a) (Fraser's edn., p. 205); *William's Case*, 5 Rep. 72 (b) (Fraser's edn., p. 145).

(2) Co. Lit. L. I., ch. 8, sec. 68, 56 (a), Har. and But. edn.—See also note (c) in Thomas' edition of Co. Lit., vol. I., 643; *William's Case*, 5 Rep. 73 (a) (p. 145-6 of Fraser's edn.); 5 Bac. Ab. Tit. Nuisance D.

(3) 5 Edw. IV. 2 (b) and 27 Hen. VIII., p. 27. (4) Cro. Eliz. 664.

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plaintiff more than to the public in order to render the action maintainable. There is, however, some conflict as to what constitutes a sufficient particular damage.

Amongst the instances in which the damage alleged has been held insufficient, are the following:—An anonymous case in Moore, p. 180, pl. 321; Easter T. 26 Eliz.; and *Stone* v. *Wakeman*, (1) in neither of which cases does any particular damage appear to have been alleged. *Paine* v. *Patrick* (2) was an action for not keeping a ferry-boat, and no damage was alleged, except that the plaintiff thereby lost his passage across the ferry. There all of the Judges "agreed that a passage over the water was of the same nature as a highway, and that a ferry is for the common good," (Carthew 193)—"And as concerning special damages sufficient to maintain an action on the case, it was resolved, that if a highway is so stopped that a man is delayed in his journey a little while, and by reason thereof he is damnified, or some important affair neglected, this is not such a special damage for which an action on the case will lie; but a particular damage to maintain this action ought to be direct, and not consequential; as, for instance, the loss of his horse, or by some corporal hurt, in falling into a trench in the highway" (Carthew 194). In *Hubert* v. *Groves*(3) an action for obstructing a highway (Dean Street) by laying several cart-loads of soil and rubbish upon it, and thus impeding the plaintiff, a coal and timber merchant, who had a house in the street, in "enjoying his premises and carrying on his trade in so advantageous a manner as he had a right to do, and by which the plaintiff was obliged to carry his coals and timber, &c., by a circuitous and inconvenient way," Lord Kenyon, C.J., non-suited the plaintiff, being of opinion that "the grievance was not of that description which entitled the party to maintain an action; that it was an injury to the king's highway, a public nuisance, and the party's remedy by indictment only." A new trial was refused by the Court *in banc*.

Amongst the instances in which it has been ruled that a sufficient particular damage has been shown are the following:—

(1) Noy. R. 120; Easter 5 Jac.
(2) 3 Mod. 289; T. C. Carthew 191, 194; Comberbach 180.
(3) 1 Esp. 148.

Fowler v. *Sanders*,[1] where logs of wood had been placed by the defendant in the highway, and the plaintiff's horse in the evening stumbled, and the plaintiff was thrown to the ground and thereby much hurt—*Everard* v. *Hopkins*,[2] where it was resolved that if a man dig a trench in the highway, and the servant of another fall into it and break his leg, whereby his master loses his services for a long time, the latter shall have an action on the case against him who dug the trench—*Maynell* v. *Saltmarsh*,[3] where the defendant had stopped the highway with posts and thereby prevented the plaintiff from conveying his corn to market, and his corn in his close became "corrupted and spoiled"—*Hart* v. *Bassett*,[4] in which the defendant had stopped up the highway by a ditch and gate, and the plaintiff, a farmer of tithes, was thus prevented from carrying away his tithes along that road, and was compelled to take them by a longer and more difficult way. The Court said "that the common rule, that no one shall have an action for what every one suffers, ought not to be taken too largely. But in this case the plaintiff had particular damage, for the labour and pains he was forced to take with his cattle and servants, by reason of the obstruction, may well be of more value than the loss of a horse or such damage as is allowed to maintain an action on the case." In *Chichester* v. *Lethbridge*[5] the Court followed *Hart* v. *Bassett*, and said that the case before them was stronger in two circumstances: "first, because it is expressly laid that the plaintiff was attempting to travel this road several times with his coach, but could not, by reason of these obstructions; secondly, it is also laid that the defendant in person stood and opposed him, and prevented him from removing the obstruction, which by law he might do." *Greasly* v. *Codling*,[6] where the plaintiff, who was in the habit of carrying coals along the road, was by the obstruction delayed for four hours in conveying his coals, and could, on the road which had been stopped by the defendant, perform the journey with coals three times a day, but not so after by the circuitous route. Best, C. J., in holding a sufficient damage shown, said: "In the case in Carthew *(Paine* v. *Patrick)*,[7] indeed, there is an expression

(1) Cro. Jac. 446. (2) 1 Rolle Ab. 88, pl 5, Hil. T., 12 Jac. 1.
(3) 1 Keble 847, Hil T. 16 and 17 Car. 2.
(4) Sir T. Jones' Rep. 156, T. T. 33 Car. 2.
(5) Willes 71. (6) 2 Bing. 263. (7) 3 Mod. 289.

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in favour of the defendants, namely, that the action will only lie for a personal injury and not for a mere injury by delay. I cannot see the difference, because injury from the one cause may be quite as prejudicial as injury from the other; but the ground of decision in that case was that no special damage was stated." Burrough, J., said in *Greasly* v. *Codling* there was "an obvious loss of time and profit." Park, J., said that the expressions of the Judges in *Paine* v. *Patrick*, referred to by Best, C.J., were "only put by way of instance," and that the plaintiff in that case "had suffered no particular injury." In *Blagrave* v. *The Bristol Waterworks Company* [1] there was a public footway from a field of the plaintiff to another field of the plaintiff which the defendants were averred to have obstructed, whereby the plaintiff and his servants, employed in the management of his lands and in tending his cattle, were compelled to go by a longer route, and thereby the work and labour of the plaintiff and his servants were necessarily consumed to a greater extent, and the plaintiff was prevented from employing his servants during such excess as he otherwise would have done, and the tending and feeding of his cattle was rendered more troublesome and laborious and expensive. This was deemed a sufficient averment of particular damage to maintain the action, although the colouring is but slightly higher, and the statement but a little more definite, than in *Hubert* v. *Groves*,[2] where Lord Kenyon non-suited the plaintiff. *Iveson* v. *Moore*[3] is a leading case of admitted authority. The plaintiff there complained of the stopping up, for a time certain, of a public highway leading to and from his colliery, so that his carts and carriages for carrying coals could not pass, &c., "whereby the plaintiff, for the whole time aforesaid, totally lost the benefit and profit of his colliery; and his coals, dug out of his said colliery, became greatly depreciated and deteriorated for want of buyers, by reason of the aforesaid obstruction, to his damage to the amount of £500." The Court of King's Bench was equally divided on the question whether the action was maintainable—Gould and Turton, JJ., being of opinion in the affirmative, and Rokeby, J., and Holt, C. J., being of opinion in the negative. Gould, J., expressly rested his judgment on the

(1) 1 H. & N. 369. (2) 1 Esp. 148.
(3) 1 Ld. Raymond 486, S. C. 12 Mod. 262.

ground that a sufficient special damage was shown by the declaration (plaint). The case was afterwards argued by consent of Holt, C. J., before all of the Justices of the Common Pleas and the Barons of the Exchequer at Serjeants' Inn, and, they being all of opinion for the plaintiff that the action well lay, he had judgment. In a note by Mr. Durnford to *Chichester* v. *Lethbridge*(1) it is said of *Iveson* v. *Moore* : "But the Court (the King's Bench) being divided, the matter was reserved for the opinion of the rest of the Judges, who all agreed in the opinion of Turton, J., and Gould, J., that the action lay. The reason the Judges went upon was principally this, that it sufficiently appeared that the plaintiff must and did suffer a special damage more than the rest of the King's subjects by the obstruction of this way ; because it was set forth that the only way to come to the coal-pits from one part of the country was through this way, by which it must be understood without any allegation of loss of customers that the plaintiff did suffer particularly in respect to his trade by the plaintiff's (*quære* defendant's) wrong."

In *Wilkes* v. *The Hungerford Market Company*(2) the plaintiff, a bookseller, having a shop by the side of a public thoroughfare, suffered loss in his business in consequence of passengers having been diverted from the thoroughfare by defendants continuing an authorized obstruction across it for an unreasonable time ; the Court of Common Pleas held that this damage was of a sufficiently particular nature to form the subject of an action. An earlier case, very much resembling that case, was *Baker* v. *Moore*, decided in Hil. T. 8 William III. in the Common Pleas, and mentioned by Gould, J., in *Iveson* v. *Moore*.(3) It *(Baker* v. *Moore)* was an action on the case for erecting a wall across a common way at Lambeth, in consequence of which the tenants of certain houses of the plaintiff departed, and the plaintiff lost the profits of his houses, and the Court held that to be a sufficient particular damage to support the action.

These two last-mentioned cases of *Baker* v. *Moore* and *Wilkes* v. *The Hungerford Market Company* cannot, however, any longer be regarded as precedents to be followed, having been over-ruled

(1) Willes 71 ; see p. 74. (2) 2 Bing. N. C. 281, S. C. 2 Scott 446.

(3) 1 Ld. Raymond 486, S. C. 12 Mod. 262

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by the House of Lords in *Ricket* v. *The Metropolitan Railway Company* (1) on the ground that the damage suffered was too remote—Lord Chelmsford saying: "As far as I have been able to examine the cases, in all of them except two, in which an individual has been allowed to maintain an action for damage which he has specially sustained by the obstruction of a highway, the injury complained of has been personal to himself, either immediately or by immediate consequence. The two excepted cases are those of *Baker* v. *Moore*, mentioned by Mr. Justice Gould in *Iveson* v. *Moore*, and *Wilkes* v. *The Hungerford Market Company*." After describing those cases, Lord Chelmsford continues: "The case of *Baker* v. *Moore* appears to me to be even more doubtful than that of *Wilkes* v. *The Hungerford Market Company*; and, as to this latter case, Chief Justice Erle, in delivering the judgment of the majority of the Judges in the present case (*Ricket* v. *The Metropolitan Railway Company*), observed (2): 'If the same question were raised in an action now, we think it probable that the action would fail, both from the effect of the cases which preceded *Wilkes* v. *The Hungerford Market Company*, and also from the reasoning in the judgment in *Ogilvy* v. *The Caledonian Railway Company*.' (3) In this observation upon Wilkes' case I entirely agree. An endeavour was made by Lord Denman to reconcile that case with the judgment which he pronounced in the case of *The King* v. *The London Dock Company*, (4) but, in my opinion, not very successfully. It is impossible to discover any distinction between the consequential damage which constituted the cause of action respectively in the two cases." Lord Cranworth also said of *Wilkes* v. *The Hungerford Market Company*: "I confess that I have great difficulty in agreeing with that decision—a difficulty which, as I collect from the language of Sir William Erle in delivering the judgment of the Exchequer Chamber in the case now before us, was felt by him and the Judges (Pollock, C.B., Channell and Pigott, BB.) who concurred with him." The facts in *Ricket* v. *The Metropolitan Railway Company*, in which Lords Chelmsford and Cranworth made the foregoing observations, were these:—Ricket was the occupier of a public house situated by the side of a public footway.

(1) L. R. 2 Eng. and Ir. App. 175.
(2) 5 B. & S. 161.
(3) 2 Macq. Sc. App. 229.
(4) 5 Ad. & E. 163.

A company obtained powers under certain Acts of Parliament (with which the Lands Clauses Act and the Railway Clauses Act were declared to be incorporated) to make a railway. The company, in carrying these powers into execution, obstructed streets leading to this footway so as to make access to the public house inconvenient. The obstructions were not permanent, and, after some time, the streets were restored to their original condition. It was found by the jury that there was no structural damage to the premises, but that Ricket had sustained damage in respect to the interruption to his business. The House of Lords (Lord Westbury dissenting), affirming the decision of a majority of the Judges in the Exchequer Chamber, held that, even if the company had not statutory powers to construct the railway, the damage occasioned by the obstruction to the plaintiff's business was too remote to sustain a civil action, and, further, did not come within the purview of the 68th section of the Land Clauses Act, or the 6th or 16th sections of the Railway Clauses Act. The grounds upon which that case was decided, were very clearly stated in the Exchequer Chamber by Erle, C. J.,[1] thus :—"Here there has been no obstruction to the exercise of the right of way by or on behalf of the plaintiff; neither he himself, nor any one standing in a legal relation to him, such as servant, agent, tenant, or any other legal relation, which gives to the plaintiff a legal interest in their use of the way, has been obstructed. But some unknown travellers, having a free option to pass from north to south, either by Crawford Passage or any other pass, have chosen some other pass, because they did not like the steps at *Coppice Row;* the plaintiff has no cause of action by reason of any obstruction direct to himself. The travellers, who have chosen to turn out of their path to avoid the steps, have no cause of action against the defendants in respect of the obstruction; and it seems unreasonable that an obstruction, which created no cause of action either for the plaintiff or for the travellers separately, should, by indirect consequence, become a cause of action to the plaintiff, because the travellers exercised their choice as to their path, and as to their refreshment—a choice in which the plaintiff had no manner of legal right." Previously, after referring, apparently with approbation, to *Iveson*

[1] 5 B. & S. 160.

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v. *Moore*,(1) *Maynell* v. *Saltmarsh*,(2) *Hart* v. *Bassett*,(3) *Greasly* v. *Codling*,(4) *Chichester* v. *Lethbridge*,(5) and *Rose* v. *Miles*,(6) to which we shall presently again advert, he had said: "In all these cases the plaintiff was exercising his right of way, and the defendant obstructed that exercise, and caused particular damage thereby directly and immediately, to the plaintiff."

In *Winterbottom* v. *Lord Derby*(7) the plaintiff, in an action for obstructing a public way, proved no damage peculiar to himself beyond being delayed on several occasions in passing along it, and being obliged, in common with every one else who attempted to use it, either to pursue his journey by a less direct road, or else to remove the obstruction. His action was held unmaintainable. Kelly, C.B., said (p. 321):—"But if we were to hold that everybody who merely walked up to the obstruction, or who chose to incur some expenses in removing it, might bring his action on the case for being obstructed, there would really be no limit to the number of actions which might be brought," and, again, (p. 322): "Upon the authorities then, and especially relying on *Iveson* v. *Moore* and *Ricket* v. *The Metropolitan Railway Company*, I am of opinion that the true principle is, that he and he only can maintain an action for an obstruction who has sustained some damage peculiar to himself, his trade, or calling. A mere passer-by cannot do so, nor can a person who thinks fit to go and remove the obstruction. To say that they could, would really, in effect, be to say that any of the Queen's subjects could."

The rules applicable to a highway on land are so also to a highway across or along water. We have already mentioned what was said of a public ferry in *Paine* v. *Patrick*.(8) In *Rose* v. *Miles*(9) the plaintiff declared that he was navigating his barges laden with goods along a public navigable creek, and that the defendant wrongfully moored a barge across, and kept the same so moored, from thence hitherto, and thereby the plaintiff was prevented from navigating his barges so laden, whereby the plaintiff was

(1) 1 Ld. Raymond 486, S. C. 12 Mod. 262.
(2) 1 Keble 847.
(3) Sir T. Jones Rep. 156.
(4) 2 Bing. 263.
(5) Willes 71.
(6) 4 M. & S. 101.
(7) L. R. 2 Ex. 316.
(8) 3 Mod. 289.
(9) 4 M. & S. 101.

obliged to convey his goods a great distance over land, and was put to trouble and expense in the carriage of his goods over land. This was held by Lord Ellenborough, C.J., Bayley and Dampier, JJ., to disclose such a particular damage as would uphold an action on the case.

It has been said that to support such an action there must be no want of ordinary care on the part of the plaintiff to avoid the obstruction—*Butterfield* v. *Forrester*,(1) *Marriott* v. *Stanley*.(2)

The Indian Courts have adopted the English law on this subject. In *Barodá Prasád Mostáfi* v. *Gorá Chand Mostáfi*,(3) Peacock, C.J., and Mitter, J., held that even a person, who was one of several who had dedicated a road to the public, could not maintain a civil suit, in respect of an obstruction of that road, unless he had sustained some particular inconvenience in consequence of that obstruction. To the same effect are *Bhugeeruth Dáss* v. *Chundee Churn*,(4) and *Ráj Luckhee Debiá* v. *Chunder Kant Chowdry*.(5) In *Káhánji Jethá* v. *Manor Chatoor* (6) the plaintiff complained of the erection, by the defendant, of a step on a public road. The High Court here, on the 5th December 1870, directed an issue as to whether the existence of the step caused such special injury to the plaintiff as to give him a cause of action. It was found in the negative, and accordingly, on the 20th March 1871, Lloyd and Kemball, JJ., dismissed the plaintiff's appeal. In *Gehanáji and others* v. *Ganpati and others*, (7) the plaintiffs complained of the building, by the defendants, of a wall upon land used by all of the villagers as a market and play-ground, and which the plaintiffs alleged to be public. They did not aver any particular inconvenience to themselves beyond what the other villagers suffered. A Division Court here, consisting of Mr. Justice Nánábhái Haridás and one of the members of this Court, affirmed the decrees of the Courts below dismissing the suit.

In the recent Yerangal fishery case, *Baban Mayácha* v. *Nagu Shrávucha* (8) the plaintiffs complained of being obstructed in their

(1) 11 East 60 (per Lord Ellenborough). (2) 1 Scott N. R. 392.
(3) 3 Beng. L. R. 295, A. C. J.; S. C. 12 Calc. W. R. 160 Civ. Rul.
(4) 22 Calc. W. R. 463 Civ. Rul. (5) 14 Calc. W. R. 173 Civ. Rul.
(6) Special Appeal 378 of 1870.
(7) Special Appeal No. 3 of 1875; see note, *post*, p. 469. (8) I. L. R. 2 Bom. 19.

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exercise, as members of the public, of the right of fishing in the open sea off Yerangal, the defendants having, contrary to the custom of the locality, planted their fishing stakes and nets thereon extended so near to those of the plaintiffs as to prevent fish from getting into the nets of the plaintiffs extended on their fishing stakes, which had been fixed previously to those of the defendants, and that the defendants had thus occasioned to the plaintiffs considerable pecuniary loss, viz., to the extent of Rs. (3,000) three thousand. A Division Court here, consisting of Mr. Justice Nánábhái Haridás and one of the members of the present Court, held that to be a sufficient allegation of particular damage to render the plaint *primâ facie* sustainable.

A Court of Equity, when private individuals suffer an injury quite distinct from that of the public in general, in consequence of a public nuisance, will grant an injunction and such relief as may compel the wrong-doer to take active measures to discontinue the nuisance—*Spencer* v. *London and Birmingham Railway Company*,(1) *Crowder* v. *Tinkler*,(2) *Soltau* v. *De Held*,(3) *Attorney General* v. *Forbes*, (4) and see the cases cited in 2 Story Eq. Jur., 11th edn., pp. 110 to 114, pl. 923 to 925 *et in notis*.

Although a civil action is not open to a person not sustaining particular damage from an obstruction of a public highway on land or water or other public nuisance, he may, if the circumstances justify it, have recourse to the criminal law: *ex. gr.*, he may charge the guilty party under such section of chap. XIV of the Indian Penal Code as may be applicable to the case; or, if the obstruction has been accompanied by hurt, criminal force, or criminal intimidation, resort may be had to the sections in the same Code applicable to such cases.

We do not, however, gather from the plaint that any personal violence has been inflicted on the plaintiffs by the defendants.

There is not in the plaint any allegation of personal loss or injury to the plaintiffs arising from the obstruction. The mere absence of the religious or sentimental gratification arising from

(1) 8 Sim. 193. (2) 19 Ves. 617.
(3) 2 Sim. N. S. 133, S. C. 21 L. J. Ch. N. S. 153.
(4) 2 My. & Cr. 123.

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carrying *tabuts* along a certain public road is not any such particular loss or injury as the precedents, English or Indian, would justify us in pronouncing to be such a damage as would sustain a civil action.

We must, accordingly, reverse the decree of the District Judge, and make a decree for the defendants. The parties, respectively, must bear their costs of the suit and of both appeals. While regretting that they should both be deprived of the pleasure of annually carrying their *tabuts* in procession for immersion in the sea according to their wonted custom, we must counsel obedience to the discreet orders of the Magistrates—issued, no doubt, under section 518 of the Criminal Procedure Code, in order to prevent the occurrence of any riot or breach of the peace, which, so long as the parties are animated with hostile feeling towards each other, is possible, if either party be permitted to indulge in a public ceremonial in a particular quarter of the town objected to by the other. We further advise the parties to come to some mutual understanding on the subject, and we have no doubt that, when they have satisfied the Magistrate that the *tabuts* may be carried peacefully along the public roads, he will withdraw the inhibition which he has felt it necessary to issue.

Decree reversed.

[APPELLATE CIVIL.]

Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice Nánábhái Haridás.

1875. August 12.

GEHANA'JI BIN KES PATIL AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS *v.* GANPATI BIN LAKSHUMAN AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Public obstruction—Right of suit.

In all civil suits for the removal of a public obstruction the plaintiff must show that he himself has suffered some particular inconvenience or injury resulting from the obstruction.

THIS was a special appeal from the decision of A. Bosanquet, District Judge of Ahmednagar, affirming the decree of Hari Kanhere, Subordinate Judge of Sangamner.

This suit was brought by Gehanáji and four others against Ganpati and two others for the removal of a wall erected by the defendant Ganpati on a piece of land situated at Kolhávádi, in Taluka Sangamner. The plaint stated that the land was public property used by all the villagers as a market place and play-ground, and that some time ago there had been an *otá* thereon which had been used by the villagers as a public seat. The plaint, however, did not allege any special damage or inconvenience to the plaintiffs themselves, beyond that which the other villagers sustained. Ganpati, by whom the suit was principally defended, alleged that the land in question

* Special Appeal No. 3 of 1875.