

fording at the same time means of relief and indemnification, the owner of the property destroyed or injured would undoubtedly have his action at common law against those who should cause the injury, for his damages. For although it might be lawful to do what the legislature might authorize, yet to enforce the principles of the constitution for the security of private property it might be necessary to consider such a legislative act as inoperative so far as it trenched on the rights of individuals. And this judgment is at once an answer to all the English authorities which seem to contradict the notion of responsibility, an answer growing out of our peculiar original institutions. But there is one circumstance in which I think none of the English cases resembles this case. They are suits against trustees for the public, or their servants acting for the benefit of the people at large, and the trusts were undertaken gratuitously, in the execution of which they had no other interest than that which every subject of the nation had; and in the very strongest case upon this subject, *Sutton v. Clark*, the judge (Chief J. Gibbs) says the case differs in this important particular from a nuisance committed by an individual, for that is done for *his own benefit and emolument*. If this be the point of distinction and the true criterion, it settles this question for the plaintiffs. For who are the defendants? They are trustees for the public; but what public? Themselves. They are trustees of public interests *for their own benefit*, and ought to answer as an individual to the person at whose expense they are benefited. A contrary doctrine would lead to this result, that every chartered company for private emolument might under color of law inflict the most serious injuries without the possibility of being compelled to make reparation, if indeed we could suppose the legislature could authorize them to commit such invasions. There is no case which goes to this extent unless it be some observations in 2 Johnson, not called for by the case, and the remarks of Lord Kenyon in the glass plate case. Such doctrines are in my judgment utterly untenable, and are in violation of first principles.

Such being the views governing this case, I might here stop, and content myself by refusing the defendants' prayer, but I beg leave to look at the consequences of these doctrines as they affect the city. As regards individuals, they certainly give security to their property; as regards the city, they restrain it of no right. If this corporation had before the right to divert