

jury from the same cause, Lord Macnaghten adds: "But if depreciation caused by apprehension of future mischief does not furnish a cause of action by itself, because there is no legal wrong, though the damage may be very great, it is difficult to see how the missing element can be supplied by presenting the claim in respect to depreciation tacked to a claim in respect to a wrong admittedly actionable.

Lord Ashbourne, at p. 31, says: "The fear of a subsidence . . . cannot give any cause of action, even although there may have been already a subsidence." . . . And at p. 32, his Lordship quotes with approval from the judgment of Cockburn, L.J., in *Lamb v. Walker*, as follows: "Taking the view I do of the leading case of *Backhouse v. Bonomi*, I am unable to concur in holding that in addition to the amount to which he may be entitled for actual damage sustained through the excavation of the adjacent soil by the defendant, the plaintiff is entitled to recover in respect of prospective damage, that is to say, that is anticipated damage expected to occur, but which has not actually occurred and which never may arise."

Lord Atkinson, at p. 33, says:

"In my view, to give damages for depreciation in the market value due to the apprehension of future injury by subsidence is to give damages *for a wrong which has never been committed*, since it is the damage caused by subsidence, and not the removal of minerals, which gives the right of action." The italics are mine.

Based then upon the authorities thus far referred to, I find the plaintiff entitled to damages as follows:

Damage to dwelling house	\$550
" " store and annex	350
" " cottage	200
" " land by excavations to date	250

Total actual damage to date\$1,350

I have not overlooked the cave-in which occurred after the evidence had closed. This is the amount, \$1,350, for which I would give judgment if the matter rested here. But I am unable to distinguish this action in principle from the principles governing the decision of my brother Middleton in *Ramsay v. Barnes*, 25 O. W. R. 289; and, as well because of the respect I entertain for the opinion of the learned Judge, as of the provisions of sec. 32 of the Judicature Act, I will