

Darley Main Colliery Co. v. Mitchell (1886), 11 App. Cas. 127; and Corpus Juris, vol. 1, p. 1221.

Continuing, the learned Chief Justice said that he shrank from holding that the law was as laid down in the two cases relied on, which were decided respectively by Bruce, J., and Kekewich, J.; and he saw no reason why, if a person who is in possession of land in which is an excavation which is a source of danger to the public, although not made by him but by a predecessor in title, is liable for the consequences of permitting the dangerous condition to continue, the same rule should not be applied where a lateral support has been withdrawn by a predecessor in title, and the condition so caused has been permitted to remain and to cause injury to his neighbour, the owner of the land at the time the injury occurs should not be liable for it.

Upon the whole, the learned Chief Justice said, he had come to the conclusion that, in the circumstances of the case at bar, the respondent was liable for the damages which the appellant had sustained; and, if that conclusion was inconsistent with the decisions of Bruce, J., and Kekewich, J., he declined to follow them.

The appeal should be allowed with costs, and there should be judgment for the appellant against the respondent for the damages assessed, with costs.

*Appeal allowed.*

FIRST DIVISIONAL COURT.

JUNE 11TH, 1920.

REX v. COUNTY OF LENNOX AND ADDINGTON.

*Highway—Nonrepair—County Corporation—Conviction—Penalties—Orders of Court of General Sessions—Irregularity—Jurisdiction—Motion for Direction to Inferior Court to State a Case—Undertaking not to Enforce Penalties—Costs.*

Motion by the defendants for a direction to the Court of General Sessions of the County of Lennox and Addington to state a case for the opinion of the Court.

The motion was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and FERGUSON, JJ.A.

E. G. Porter, K.C., for the defendants.

W. S. Herrington, K.C., for the prosecutor.

MEREDITH, C.J.O., reading the judgment of the Court, said that the defendants were indicted and convicted for not repairing a highway which it was their duty to keep in repair.