

As to damages, however, for that which is not yet a wrong, other considerations arise. The statute does not create any new cause of action, or enable the Court to reach to that which it could not otherwise include as a basis of relief—it changes only the character of the relief.

The removal of lateral support is not in itself a cause of action, and *Arthur v. Grand Trunk R.W. Co.* (1895), 22 A.R. 89, is not a guide to the decision of this case. There the wrongdoing was complete upon the building of the embankment and the diversion of the stream; and the Court found that it was permanent, and the loss to the plaintiff immediate and continuous, and his whole cause of action had accrued. See also the cases of *Kine v. Jolly*, [1905] 1 Ch. 480, at p. 504, affirmed on appeal in *Jolly v. Kine*, [1907] A.C. 1, and *Colls v. Home and Colonial Stores Limited*, [1904] A.C. 179, at p. 212.

Even where the statute can be invoked, as in the case of a continuing nuisance, it is a jurisdiction to be cautiously and sparingly exercised: *Shelfer v. City of London Electric Lighting Co.*, [1895] 1 Ch. 287.

There are undoubtedly cases in which the beneficial provisions of sec. 18 of the Judicature Act can be given a wider range than in a case of the class I am dealing with. The basis upon which the Court can act, as I understand it, is well-defined, and is not of recent origin. The limitation of its powers results from the fact that it is the actual subsidence or falling away of the plaintiff's property, and not the excavation, however close it may approach, which constitutes the defendant's wrongdoing and gives a cause of action. I have not here to consider the possible right of a land-owner to obtain an injunction *quia timet*—no such question arises here. But the slightest invasion of the plaintiff's property is a wrong. To cause his property to subside or fall away, even to the slightest degree, is an invasion of his rights, and gives a right of action without proof of actual loss: *Attorney-General v. Conduit Colliery Co.*, [1895] 1 Q.B. 301. And, whatever may be the law as to the right to an injunction to prevent probable or impending damage, apprehension of damage gives no cause of action for damages, of itself: *Lamb v. Walker* (1878), 3 Q.B.D. 389. *Backhouse v. Bonomi* (1861) 9 H.L.C. 503, makes it clear that the resultant injury, and not the excavation which causes it, is the cause of action, by declaring that the Statute of Limitations runs not from the time that the work complained of was done, but from the time that the actual injury to the plaintiff accrues. And there is a new