

plaintiff's land by excavating done by the defendants or one of them on the adjoining land, whereby the plaintiff's soil was deprived of lateral support.

The County Court Judge gave judgment for the plaintiff against the defendant Walter J. Brown for \$200 and costs, but dismissed the action as against the defendant Albert E. Brown.

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

W. A. McMaster, for the appellant.

J. M. Ferguson, for the defendant Albert E. Brown, respondent.

Grayson Smith, for the defendant Walter J. Brown.

MEREDITH, C.J.O., reading the judgment of the Court, said that Albert E. Brown, the respondent, and the plaintiff, the appellant, were the owners of adjoining lots, and the action was brought to recover damages caused by the appellant's land having subsided and fallen into an excavation made by the defendant Walter J. Brown, the predecessor in title of the respondent, in his land, extending to the boundary-line between his land and the land of the appellant.

It was established by the evidence that, after making the excavation, a kind of retaining wall was built by the defendant Walter J. Brown for the purpose of providing support to the land of the appellant. The wall got out of repair and failed to answer the purpose for which it was built, and from time to time, as a result of this, a subsidence of the appellant's land occurred, and the soil fell into the excavation. Owing to the condition of the wall, this occurred after the respondent became the owner of the land of Walter J. Brown.

The contention of the respondent, to which effect was given in the Court below, was that a subsequent owner of land was not answerable for the consequences of an excavation, made in it by a previous owner, which has the effect of withdrawing from his neighbour's land the lateral support to which it is entitled, with the result that his land subsides and the soil falls away into the excavation.

In support of this contention, *Greenwell v. Low Beechburn Coal Co.*, [1897] 2 Q.B. 165, and *Hall v. Duke of Norfolk*, [1900] 2 Ch. 493, were cited.

The learned Chief Justice quoted from the judgments in these cases, and explained the effect of them.

He then referred to *Attorney-General v. Roe*, [1915] 1 Ch. 235; *Gale on Easements*, 9th ed., p. 382; *Halsbury's Laws of England*, vol. 11., p. 325, para. 634; *Banks on the Law of Support*, p. 5; *Mitchell v. Darley Main Colliery Co.* (1884), 14 Q.B.D. 125;