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HON. MR. JUSTICE LENNOX.

APRIL 14TH, 1914.

GAGE v. BARNES.

6 O. W. N. 232.

Damages—Injury to Land by Subsidence—Depreciation in Value by Probable Future Subsidence—Right to Recover—Judicature Act, Secs. 18, 32—Injunction — Separate Defendants—Apportionment of Damages between.

Defendants had by reason of their excavations caused plaintiff's land to subside and there was probability of a future subsidence from this cause.

LENNOX, J., gave judgment for plaintiff in respect of both past and future damage.

Ramsay v. Barnes, 25 O. W. R. 289, followed but doubted.

Semble, that depreciation in the marked value of property, attributable to the risk of future subsidence, is not a legal item of damage.

West Leigh Colliery Co. v. Tunnicliffe & Hampson Ltd., [1908] A. C. 27, referred to.

Action for injury to plaintiff's lands from excavations by defendants on adjoining land.

W. A. Logie, K.C., for plaintiff.

Geo. Lynch-Staunton, K.C., and W. Bell, for defendant Barnes.

H. D. Petrie, for defendant Simons.

HON. MR. JUSTICE LENNOX:—The plaintiff may amend by adding Stephen Simons a party defendant if he desires to do so. The excavations have been completed to the south of the plaintiff's land. Also for a good way north along the west side, and it is not now apprehended that subsequent excavating will be done in a way to invade the plaintiff's rights. The statement of claim only asks for damages, and general relief, but in argument plaintiff's counsel insisted that damages should be awarded upon the basis of the estimated future depreciation in the value of the plaintiff's