
Province of Ontario.

HIGH COURT OF JUSTICE.

Divisional Court.]

[March 16.

BOYD v. CITY OF TORONTO.

Easement—Lateral support—Withdrawal by operations in street adjoining plaintiff's land—Subsidence—Injury to buildings—Right to support independent of prescription—Compensation—Appreciable disturbance—Absence of negligence.

Appeal by the defendants from the judgment of RIDDELL, J., upon the findings of a jury, in favour of the plaintiff, for the recovery of \$600 damages and costs. The action was for damages for the injury caused to the plaintiff's land and house by the operations of the defendants, the city corporation, in digging a trunk sewer in Wyatt avenue, without taking proper precautions for shoring up the sides, whereby a subsidence of the plaintiff's land fronting on Wyatt avenue resulted and the walls of his house were cracked, etc.

BOYD, C.:—For the law in this case (in view of the doubt raised by *Smith v. Thackerah* (1866), L.R. 1 C.P. 564), I would be content to rest on the authority of Page Wood, V.-C., in *Hunt v. Peake* (1860), Johns. 705. He holds that a land-owner has a right, independent of prescription, to the lateral support of the neighbouring land owned by another so far as that is necessary to uphold the soil in its natural state as its normal level, and also to compensation for damage caused either to the land or to buildings upon the land by the withdrawal of support.

The unsatisfactory character of the case of *Smith v. Thackerah*, as reported, is incisively discussed in Banks, pp. 36-38, and the view of Bowen, L.J., in *Mitchell v. Darley Main Colliery Co.*, 14 Q.B.D., at p. 137, is quoted. Bowen, L.J., is evidently of the opinion that the true view is, that, if a substantial or appreciable subsidence can be proved, the plaintiff is entitled to nominal damages, quite apart from the amount of actual damages; and that, I think, is the correct result, as manifested by the general trend of the cases, with the sole exception of *Smith v. Thackerah*.

Here the plaintiff's scheme was disturbed and changed to a visible, appreciable, and substantial extent by cracks and subsi-