HON MR. JUSTICE MIDDLETON. NOVEMBER 17TH, 1913.

RAMSAY v. BARNES.

5 O. W. N. 322.

Injunction—Interference with Neighbouring Landowner's Right of Lateral Support—Tortious Act Admitted—Injunction Oppressive to Defendant—Award of Damages—Quantum of.

MIDDLETON, J., *held*, that where one landowner had admittedly interfered with the lateral support of an adjoining landowner by the digging of a gravel pit, and the damages were capable of estimation in terms of money, and an injunction or mandatory order would be oppressive to the defendants, that damages and not an injunction should be awarded.

Shelfer v. *London Electric Co.*, [1895] 1 Ch. 287, followed.

Action for damages to the plaintiff's land by reason of excavations made by defendant, an adjoining landowner, alleged to deprive plaintiff's land of lateral support, tried at Hamilton on 7th November.

G. Lynch-Staunton, K.C., for the plaintiff.

C. W. Bell, for the defendant.

HON. MR. JUSTICE MIDDLETON:—The parties are adjoining land owners. The defendant excavated a gravel pit upon his lands, going to a considerable depth, practically up to the boundary line. The sides of this pit are almost perpendicular. At the time of this excavation no particular harm resulted, as the gravel was firmly lodged; but the wall of the pit has now fallen in to some extent and will undoubtedly fall in more.

The action came on for trial at the Hamilton sittings on the 17th June, 1913. Each party then appeared, submitting plans for the construction of retaining walls, which it was submitted would be sufficient to protect plaintiff's land; the defendant not setting up anything that would justify his interference with the plaintiff's lateral support. After some discussion it was arranged that the case should stand over and that in the meantime I should consult an expert engineer and place his views before the parties, who should be at liberty to challenge his report in any way, if they felt inclined to dissent from it. I accordingly placed the situation before Mr. C. H. Mitchell, a well known consulting engineer. He made a careful examination of the