

And yet the defendant has done no new act. He has, however, omitted to do something. The second flooding is the result of *not removing* the drain. And for every subsequent flood a new action can be brought.

To return to *Mitchell v. Darnley Main Colliery Co.* Is it analogous to the assault case, in which the new damage, the disease, cannot be sued for, or to the drain case in which it can? Undoubtedly, we think, to the latter. No action could be brought for the mere excavation. The mine-owner could excavate as much as he liked, provided he did no damage to the owner of the soil. Until a subsidence took place there could be no action at all, for no damage had accrued, and the mine-owner might at any time put in supports and prevent the happening of any damage at all. After a subsidence an action may be brought for the *subsidence*, not for the *excavation*. In this action it would be just as impossible to recover for an anticipated further subsidence, which might be prevented by the defendant shoring up the soil, as in the drain case to recover for subsequent years of floods, which might also be prevented by the removal of the drain. And so it has at last been decided, but not without overruling. *Lamb v. Walker*, 3 Q. B. Div. 389; and *Nicklin v. Williams*, 10 Ex. 259.

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