

D. C. Ross, for the defendants.
A. C. McMaster, for the plaintiff.

The judgment of the Court was delivered by 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. . . .

[Review of the cases, including the two mentioned above; *Brown v. Robins* (1859), 4 H. & N. 186; *Stroyan v. Knowles* (1861), 6 H. & N. 454; *Attorney-General v. Conduit Colliery Co.*, [1895] 1 Q.B. 301, 312, 313; *Banks on the Law of Support* (1894), pp. 36-38, 71; *Mitchell v. Darley Main Colliery Co.* (1884), 14 Q.B.D. 125, 137; *Chapman v. Day* (1883), 47 L.T. N.S. 705; *Jordeson v. Sutton Southcoates and Drypool Gas Co.*, [1899] 2 Ch. 217, 239; *Cabot v. Kingman* (1896), 166 Mass. 403; *Gale on Easements*, 8th ed. (1908), p. 415, note.]

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 subsidence, by the withdrawal of lateral support resulting from the trenching operations in the street. It does not matter as to the sort of soil which was found below . . . ; the removal of it caused the disturbance in the plaintiff's land. . . .

It was not necessary to prove negligence in the methods of work adopted by the defendants; the work must be done so as not to disturb the soil of the frontagers. . . .

No objection was made to the Judge's charge or as to the questions submitted to the jury. It would be a proper course in cases of this kind to ask the jury whether buildings added to