

RECENT ENGLISH DECISIONS.

thing that happens subsequently. Therefore, it was held that the excavation was not the cause of action; it was only the cause of the cause of action, the cause of action was the subsidence and that alone. The defendant had so used his property as to make the plaintiffs' property subside, and it was the making their property subside which was the cause of action." In the words of Bowen, L.J., at p. 136, in *Blackburne v. Bonomi*, "it was decided that the true character of the right of support is this, not that the person who had the land which was supported, and which demanded support from his neighbour, had an absolute right to support, the interference with which was a disturbance of property and gave a right to an action in respect of *damnum*, but that what he was entitled to was something different, the right to the ordinary enjoyment of his own land, and that the right to support was a right only to support so far as was necessary to enable him to enjoy his land in the ordinary way. From that it seemed to follow that until there was an interference with the enjoyment of the land there was nothing of which the plaintiff could complain." In accordance with what was decided in that case, and as a logical result thereof, the Court now held that each subsidence was a new cause of action, although the *causa causans* of each subsidence might be the same. But, as suggested by the judgments, it might be argued that the *causa causans* was not the same. The *causa causans* of the first was the excavation, the *causa causans* of the second was, as a matter of fact, the excavation unremedied, or the combination of the excavation and of its remaining unremedied. The result of the whole matter seems put very clearly by Fry, L.J., at p. 239: "With reference to principle, it appears to me to be plain that all damages which result from one and the same cause of action must be recovered at one and the same time, and therefore we are

driven to the inquiry what is the cause of action in a case of this description. As has been pointed out by Bowen, L.J., very clearly, there are two possible ways of stating that cause of action. It may be said that the subsidence attributable to the defendants is itself an interference with the plaintiff's enjoyment of his property, and as such is the cause of action in itself, or it may be said that the cause of action is the defendants' allowing the cavity to continue without giving proper support to the super-adjacent land, and the damage which follows from that circumstance to the plaintiff. To my mind it is not very material to inquire which of the two is the more accurate way of stating the cause of action. Like Bowen, L.J., I incline to consider that the more simple and more correct mode of statement is to say that the subsidence of land, attributable either to the acts or default of the defendants, is itself an interference with the plaintiff's enjoyment of his own property, and as such constitutes the cause of action. But even if the other point of view may be the more just one, it appears to me that the cause of action for the second subsidence is really not the same as the cause of action for the first subsidence. Because what is the cause of action in the case of the first subsidence? I think withdrawing the stratum of coal without leaving or placing proper supports. It is really the act of omission to leave or place proper supports which gave rise to the cause of action. The mere withdrawal of the stratum of coal in itself is a perfectly legitimate and lawful act, and it is only because it is done without doing something else which would prevent the injury to the plaintiff that the cause of action arises."

CAUSE OF ACTION—SEPARATE ACTIONS IN RESPECT OF SAME—WRONGFUL ACT—DAMAGE OF PROPERTY AND INJURY TO PERSON.

The second case, above alluded to, is *Brunsdon v. Humphrey*, p. 141. Here the