

SECOND ACTION FOR NEW DAMAGE.

IT is plain law that for one cause, there can be but one action; but, although that statement seems to want nothing in clearness, difficulty often arises in its application.

In case of an assault there can be but one recovery of damage, although in after years a disease, theretofore unsuspected, is developed from the injuries. Here there is a well defined cause of action settled by a judgment; and no further damages can be sought.

The question seems, however, not always to be so easy of solution. A recent case in England, *Mitchell v. Darnley Main Colliery Co.*, 52 L. T. N. S. 675, illustrates the difficulty upon which learned judges have differed.

The owner of a mine by excavation causes a subsidence of the soil which is owned by another; damage for the subsidence is recovered and paid; and subsequently a further subsidence takes place. In such case can a new action be brought for the new damage? The mine-owner has done no new act. The second subsidence seems to be a development of the damage at first done, just as the disease in the assault case. But although it appears at first sight to be strictly analogous, it in reality is not so.

Let us take another case by way of illustration. Let us suppose that a drain is constructed which has the effect of improperly throwing water upon an adjoining owner. It is plain that for the mere construction of the drain no action will lie. A man has a right to build as many drains upon his own property as he likes, provided he does not permit them to become a nuisance to his neighbours. After the first flood an action is brought and damages recovered and paid. During the next year a similar flood occurs. And now the question arises,—Can a second action be brought? The answer seems to be sufficiently easy. Of course it can.