

## RECENT ENGLISH DECISIONS.

proper cultivation of the plantations, belonged to the tenant for life under the will." By a severe effort we can arrive at a faint idea of "a tree which may continue to live, but cannot grow as an ordinary tree;" but when it comes to "a tree which will have to be cut down, but yet will continue to grow," we confess ourselves beaten. If the learned reporter had been content to follow the words of the judgment he would have produced a better head-note.

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PASSING to the February number of the *Law Reports* they are found to consist of 14 Q. B. D. p. 53-227; 10 P. D. p. 5-19, and 28 Ch. D. p. 103-185. In the former there are two cases of great interest and importance, bearing some relation to each other, the first of which is *Mitchell v. Darley Main Colliery Company*, p. 125.

## CAUSE OF ACTION—ACTION IN RESPECT OF SECOND INJURY ARISING FROM SAME ACT AFTER RECOVERING DAMAGES FOR A PREVIOUS INJURY—STATUTE OF LIMITATIONS.

In this case the plaintiff was the owner of the surface of certain lands, of which there had been a subsidence in 1868, caused by excavations made about that time by the defendants who were then working a seam of coal lying under the plaintiff's land, or under adjoining land. That subsidence produced certain injuries which were repaired or paid for. The defendants never afterwards continued their excavations, and nothing further took place for twelve or thirteen years, when there was a further distinct subsidence in 1882 causing appreciable damage, and the plaintiff brought the present action to recover compensation for damages caused by the latter subsidence, whereupon the defendants pleaded that the alleged causes of action did not arise within six years before the commencement of the action, and that

the plaintiff's right to sue was barred by the Statute of Limitations.

Thus, in the language of Bowen, L.J., at p. 135, the question arose, What was the cause of action in respect to the subsidence in 1882? Was it the original excavation in 1868, or the subsidence in 1882, or a combination so to speak of the two? The Court, consisting of Brett, M.R., Bowen and Fry, L.J.J., agreed in holding that the plaintiff was entitled to maintain an action for the damage done in 1882, and that his right to sue was not barred by the Statute of Limitations. The argument of the plaintiff was that the *causa causans*, that is, the excavating by the defendants of their minerals, gave the plaintiff no right of action at all in either case; but that the two different results of it had given the plaintiff two causes of action, and that, although it is true to say that for the same cause of action successive actions for damages cannot be maintained, yet there may be any number of successive causes of action. That was the whole dispute between the parties, and the Court upheld the plaintiff. This is held to be the logical result of the decision of the House of Lords in *Blackburne v. Bonomi*, 9 H. L. C. 509. In the case of *Blackburne v. Bonomi*, says Brett, M.R., at p. 130, "The question put to the judges was, in effect, that if there is only one subsidence, the result of one excavation, is the Statute of Limitations to run from the time of the excavation or from the subsidence, the words of the Statute of Limitations being that an action must be brought within six years after the cause of action accrued? . . . The House of Lords held that the excavation was not originally a wrongful act, and because it is not originally a wrongful act, it is not made a wrongful act by something happening subsequently. An act which is right at the time when it is done cannot be turned into a wrongful act by some-