

The judgment of the Court (BOYD, C., ANGLIN, J., MAGEE, J.), was delivered by

BOYD, C.:—This appeal turns entirely on matters of evidence. The witnesses give contradictory accounts of the state of the house, and the trial Judge, to appreciate the situation to better advantage, viewed the premises in person. The chief dispute is, whether the east wall of plaintiff's house has gradually settled in a slanting direction over on the premises and buildings of defendants—or was originally constructed out of the plumb line. Two witnesses who are provincial land surveyors, one called for the plaintiff (Sewell) and one for the defendants (Speight), agree in the opinion that the slant to the east was in the wall 18 years ago, when the building of defendants was first erected. And two of the witnesses, one called for the plaintiff (Sewell) and the other for the defendants (Froude), a bricklayer, agree in the opinion that plaintiff's house, when originally built over 40 years ago, was put up carelessly with a slant to the east in the east wall of the house, as it stands very much in the same condition to-day. There is other evidence of old witnesses who say that the house and the wall to the east are in about the same condition as they always have been, and that there are no perceptible indications of any recent subsidence.

Three witnesses called for defendants think that the wall has settled to the east on account of decayed sills on that side—but the obvious evidence on the ground that the slant must have existed 18 years ago, as pointed out by defendants' witness Speight, and that defendants' building was put up so as to conform to that slant, rejects the theory of recent decay of the sills.

It is a case of conflicting evidence; the Judge has seen and heard the witnesses and has examined the place, and I am not able to say that the weight of evidence is not in favour of the conclusion that he has reached, viz., that the east wall has slanted over the land now held by defendants from the original erection of the building, and that defendants are wrongdoers in attaching their gate to that wall and so using the gate as to shake the house and otherwise annoy the inmates.

I would, therefore, affirm with costs.