U. C. R. 356. That was an action for causing the overflow of plaintiff's land by obstructing a stream. *Held*, maintainable and not to be a case for arbitration. The railway was built in 1856, while the injury complained of did not take place until 1858, when on a single occasion the water was kept back for some weeks on the plaintiff's land and destroyed his crop. It was said there, that the cases of *Knapp* v. *Grand Trunk Railway Co.*, *Patterson* v. *Great Western Railway Co.*, *and Wallace* v. *Grand Trunk Railway Co.* (cited above), were all distinguishable, as the injury in those cases was complete when the act was done, and capable of an entire satisfaction. See also another case of *Vanhorn* v. *Grand Trunk Railway Co.*, 19 U. C. C. P. 264.

In *Wallace* v. *Great Northern Railway Co.*, 16 Q. B. (Ad. & E.) 643, the plaintiff's lessor had obtained an award for a certain sum for all injury and damage done to his estate by severance or otherwise by the construction of the defendant's road. This was held only to include all damage known or contingent, by reason of the construction of the road, which was apparent, and capable of being ascertained and estimated at the time when the compensation was awarded, and not such as could not have been foreseen.

The case of *Follis* v. *Port Hope, etc., Railway Co.*, 9 U. C. C. p. 50, was cited by the defendants in favour of the contention that this action was barred altogether; but, in that case, only a single act of trespass, more than six months before the action was brought, was laid in the declaration.

In *Snure* v. *Great Western Railway Co.*, 13 U. C. R. 376, brought under 16 Vict., chap. 99 (section 10 of which is almost identical with the corresponding section of the present R.W. Act), ROBINSON, C.J., says, after quoting the section:—"The effect of this is to save the right of action for the whole damage, where the suit is brought within six months after the injury has ceased, and of course the action is saved as to all damage so long as the injury continues."

In *May* v. *Ontario and Quebec Railway Co.*, 9 Ont. R. 70, the meaning of the words in the Act, "by reason of the railway," and the closing words of the section are commented on.

In *Beard* v. *Credit Valley Railway Co.*, 9 Ont. Reports 616, it was held that the six months limitation clause did not apply to a case where the defendants had taken earth from some of the plaintiff's land lying outside the siding of the line. Mr. Justice Ferguson in giving judgment, refers to the case of *Brook* v. *Toronto and Nipissing Railway Co.*, 37 U. C. R. 372, as being in point, and in favour of the plaintiff's contention, and he upheld the principles laid down in that case, where the defendants took earth from a part of the plaintiff's land which had not been taken for the purposes of their railway. The fact that the defendants did not take or profess to take any land, but only took the material they found there, is commented on.

So far then as I can judge from the above cases, and a consideration of the words of the statutes referred to, I am of the opinion that:—

1st. The plaintiff has a right to recover, not only for what has been done by the defendants since he acquired the land, but also for the injury done before that, as there is no evidence, but rather the contrary, that any compensation was made therefor.

2nd. That arbitration was not the course to be pursued, but that the plaintiff has his right of action for the trespass at common law.

3rd. That the plaintiff is not limited to the damage for the six months previous to action brought.

There remains then only the question of the injunction asked for by the plaintiff.

This court has the power to grant such an injunction, but is it expedient to do so?

In *Graham* v. *Northern Railway Co.*, 10 Grant, 259, it is said that injunction depends very much on the reality and irreparable nature of the injury complained of, and obstructing ancient lights was held to be this nature.

In *Wright* v. *Turner*, 10 Grant, 67, where an acre and a quarter of the plaintiff's land was overflowed by the defendants, annual value $7 an acre, it was held that the plaintiff was entitled to the injunction, and that he was not to be forced to exercise his common law right of bringing an action yearly, and that the court was not at liberty to refuse the ordinary relief administered by it, merely because it might think the plaintiff unreasonable in insisting on it.

The plaintiff has the right to deal with his own land as he pleases and no court could recognize a right in any stranger to deprive him of it, or the use of it, though the quantity might be but an acre, for he might thus lose his land acre by acre.

The defendants will of course appeal from the common law to the statute, and claim the right to get what they want under that statute (42 Vict. c. 9). If this were so, and the defendants could acquire the right to flood the plaintiff's land under the powers given by that Act, I do not think the injunction ought to go. But on an examination of section 7, sub-sections 38, 39 and 40 of section 9 and section 10, I do not feel satisfied that the power to flood a man's land in the manner the defendants have done in this case, is conferred by that statute, nor yet by the private act of the defendants, 38 Vict. chapter 65, section 28.