unfenced? The utmost that could be said would be that he was from time to time trespassing thereon, but an action of ejectment does not lie against an occasional or even an habitual trespasser.

RESTRAINTS ON ALIENATION.

In the recent case of *Re Gooderham*, 47 C.L.R. 178, it seems to have been concluded both by counsel and the Court that a restraint on alienation, except by will, is an invalid restraint and null and void. No authorities are cited on this point which seems strange especially as there are several decisions in Ontario to the contrary. There is for instance the decision of the Divisional Court: *In re Winstanley* (1884), 6 Ont. 315, followed by Boyd, C., *Re Northcote* (1889), 18 Ont. 107; and by Street, J., *Re Bell* (1899), 30 Ont. 318; and see *Martin* v. *Dagineau* (1906), 11 O.L.R. 349. In *Heddlestone* v. *Heddlestone* (1888), 15 Ont. 280, MacMahon, J., came to a contrary conclusion, but *Re Winstanley, supra*, was not cited to him, and he clearly had no authority to overrule a decision of a Divisional Court expressly in point; and in the subsequent case of *Re Porter* (1907), 13 O.L.R. 399, Britton, J., refused to follow the decision of MacMahon, J., and followed *Re Martin* v. *Dagineau, supra*, and his decision was affirmed by a Divisional Court. So that there appear to be two decisions of Divisional Courts, viz., *Re Winstanley* and *Re Porter* in favour of the proposition that a restraint of alienation, except by will, is a valid and effectual restraint.

In England there appear to be two fundamentally conflicting decisions, viz., *Re Macleay* (1875), L.R. 20 Eq. 186, where Sir Geo. Jessel, M.R., held that there may be a valid limited restraint on alienation; and *In re Rosher, Rosher* v. *Rosher* (1884), 26 Ch. D. 801, where Pearson, J., in effect held that all restraints against alienation are repugnant, and null and void. The Courts of Ontario as a rule have preferred the former to the latter decision.

We conclude therefore that the assumption that a restraint of alienation, except by will, can hardly be said to be so clearly invalid as not to be open to debate.