put in on the land injuriously affected only partly germinated, and by reason of the baking of the soil did not yield anything like the rest of the field. The crop was harvested during the last few days of August, and the plaintiff commenced his action in the middle of December, 1886.

DARTNELL, J.J.—The defendants contend that the statutory period of six months within which an action may be brought has expired, and that therefore the plaintiffs are out of court. This is a question of some interest, and calls for determination.

Sec. 46 of the Railway Act permits railway companies, on and after the 1st November in each year, to enter upon lands adjacent to the line of railway, and erect and maintain snow fences, subject to the payment of such land damages as are thereafter established. Such fences are to be removed before 1st April in the following year. In the case in question the fence was not removed until the middle of April, but no complaint is made on this score.

Sec. 27 of the same Act provides that all actions or suits for any damages or injury sustained by reason of the railway "shall be commenced within six months next after the time when such supposed damage sustained, or, *if there is a continuation of damage*, within six months next after the doing or committing of such damage ceases, and not afterwards"; and the defendants rely upon this as a defence to the plaintiffs' claim.

It is quite clear that the six months did not commence to run from the date of erecting the fence, nor from the date of its removal; for at these dates, and for the intermediate period, no actual damage was occasioned.

The erection of the fence occasioned the collection and retention of a large amount of snow on the plaintiffs' land which theretofore had been free from it. This mass of snow remained long after the rest of the land was workable and fit for crop, retarding the early sowing of the seed (barley) and injuring it during its growth. I think the damage was continuous during the whole growth of the grain; which, from the state of the land, caused by the unwonted accumulation of snow, and the gradual melting thereof, caused appreciable damages to the plaintiffs' land and crop.

It seems to me that such damages cannot be said to have "ceased" until the cutting of the grain; and as the action was brought within six months of that date, that the defendants must fail in their contention, and the plaintiffs recover the amount of the damages they have clearly proved.

N. F. Paterson, Q.C., for plaintiffs.

The defendants were not represented.

NOTES OF CANADIAN CASES.

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CHANCERY DIVISION.

Boyd, C.] [April 6.

MCINTOSH V. ROGERS.

Conditions of sale—No deeds to be produced other than those in vendor's possession—Sale of land.

By written agreement for the purchase of land it was provided "no title deeds, abstracts or evidences of title to be required other than those in vendor's possession, nor shall the vendor be required to give a covenant for the production of the same."

Held, that under this condition the vendor was relieved from the absolute obligation of making out the title to be good; while if the evidence of title coupled with the abstract, and it may be the public register did not disclose and prove a good title, the purchaser was not bound to complete.

W. W. Fitzgerald, for the vendor.

G. W. Marsh, for the purchaser.

Robertson, J.] [April 29.

RE WATSON.

Will—Restraint on alienation—Invalidity.

By his will P. T. devised lands as follows: "That T. T. do inherit the same as his property, on the conditions that he never will or shall make away with it by any means, but keep it for his heirs."

Held, the condition attached to the devise was invalid, being an absolute and unqualified restraint on alienation.

Smith v. *Faught* 45 U. C. R. 484, and *In re Winstanley*, 6 O. R. 315, distinguished.

G. H. Smith, for the purchaser.

A. H. Marsh, for the vendor.