

REPORTS AND NOTES OF CASES.

SUPERIOR COURT.

Quebec, Feb. 8, 1878.

MEREDITH, C. J.

WYATT V. SENECAI.

Railway Bondholders, Rights of—Saisie-Conservatoire.

Held, that a holder of railway bonds has the right, by conservatory process, to prevent rolling stock which is hypothecated for the payment of the bonds, from being removed from the road.

MEREDITH, C. J. This case comes before the Court upon a motion to quash the writ of *saisie-revendication* therein issued.

The declaration alleges that the plaintiff is the holder of certain bonds duly issued by the Levis & Kennebec Railway Company in virtue of various acts of the Legislature of this Province; that by law, and by the tenor of the said bonds, the railway belonging to the said Company, and all the rolling stock, and equipment thereof, became, were, and are mortgaged and hypothecated in favour of the said plaintiff, for the amount of the said bonds, and of the interest due, and to become due thereon.

The declaration further alleges, that for some time previous to the institution of this action, the defendants were in possession of the said railroad, and of all the rolling stock belonging to the same,—and that the defendants, with intent to defraud the plaintiff and to deprive him of his just rights as a mortgagee of the said road, had caused part of the rolling stock, to wit, nine platform cars, to be moved from the said railway, and to be placed on the Grand Trunk Railway at the St. Henri Station, with the intention of causing them to be sent to the Acton Station, on the Grand Trunk Railway, at a distance of more than 100 miles from the Levis & Kennebec Railway.

Upon an affidavit alleging these facts, the plaintiff obtained a writ of *Saisie-Revendication*, under which the said platform cars have been seized; and the defendants now move that the writ, so obtained, may be quashed, on the ground that, even according to the allegations of the plaintiff's declaration, the plaintiff was not entitled to a writ of *Saisie-Revendication*, and more particularly that the present case is not one of those in which a writ of *Saisie-Revendication* is allowed by Article 866 of the Code

of Procedure, which is in the following words: "Whoever has a right to revendicate a moveable, may obtain a writ, for the purpose of having it attached, upon production of an affidavit, setting forth his right and describing the moveable so as to identify it. This right of attachment in revendication may be exercised by the owner, the pledgee, the depositary, the usufructuary, the institute in substitutions, and the substitute."

The plaintiff, it must be admitted, is not an "owner, depositary, usufructuary, institute or substitute" within the meaning of that article. It is true, however, that under the Quebec Railway Act of 1869, railways have the power of pledging their property; but the plaintiff never had possession of the platform cars now seized, and therefore cannot, either under the Common Law or under the Code, have the rights of a pledgee.

On the other hand, there can be no doubt that the plaintiff has a hypothec for his bonds; and I believe it is not denied that hypothec extends to the rolling stock. Moreover, under the 4th Section of the 36th Victoria, Chapter 45, the bonds "constitute a privileged claim on the moveable property of the said Company."

Such being the case, the plaintiff contends he must have some means of protecting the privilege and hypothec which he holds under the law.

The defendants answer that the plaintiff can protect his hypothecary right now sought to be enforced by a writ of *capias* under Article 800. But the plaintiff replies that the effect of a writ of *capias* would be simply to keep the defendants within the Province, and that that would be of no advantage to him,—and that, at any rate, any remedy he may have against the defendants' persons ought not to interfere with his remedy for the protection of the property in which the law gives him an interest.

This is the first case, so far as I know, in which the question now to be decided has been discussed; and it is certainly by no means free from difficulty. It does, however, appear to me that the right which in the present case the plaintiff has as an hypothecary creditor, was in effect very nearly the same as the privilege which an unpaid vendor who had sold on credit was allowed under the 177th Article of our Custom.