sition *à fin d'annuller*, resting chiefly on the objections: 1. That the railway of an incorporated railway company is in the nature of a public trust inseparable from its corporate franchise, incapable of becoming an ordinary private property, and not seizable under legal process. 2. That, even if seizable at all, it must at any rate be dealt with in its entirety; whereas here, the seizure was of a part of the company's railway, and left unseized a large remainder in the districts of St. Hyacinthe and Bedford.

The plaintiff answered "that the debt, for to satisfy which the property taken in execution was seized, was a debt for which said property was specifically by law and statute of the Province made liable by first hypothec, and so declared by the judgment in this cause; and that by virtue of the premises, and of the facts of this case, and by law, plaintiffs had a right to seize and take in execution the said property as they have done."

DUNKIN, J., referred to the case of *Abbott* v. *The Montreal and Bytown Railway Company*, (1 L. C. Jurist, p. 1) as not establishing the validity of a seizure and sale by Sheriff of a railway. His Honor cited 1 Redfield 250, and held that, however acquired, the railway is a statutory whole, held for ends and under servitudes constitutive of an imperative public trust,—of a trust from which nothing short of authority by or under statute can free it, or any really material part of it. The franchise of the Company—using that term as covering the whole of that trust, the entire of what are sometimes called the various franchises of the Company—subsists in order to the railway, the railway by virtue of the franchise. The right contended for by the plaintiff was one which, if granted, would do infinitely more harm than good to railway mortgage bondholders. Imagine such goods held under peril of procedure at any moment, on default of prompt payment of all coupons, for an enforced sale, at suit of any bondholder,—not of franchise and road together, to the best possible advantage, and with all possible precaution in behalf of all interests —but of the road alone, as an immoveable that any Sheriff can sell and deed over as a thing of course, irrespectively of the franchise. Bonds, so held, of any railway ever so little liable to get into financial trouble could not, for any legitimate purpose of investment, be worth the holding.

Opposition maintained.

E. Carter, Q. C., for opposants.

N. W. Trenholme for plaintiffs contesting.

Quebec, March 11, 1878.

McCORD, J.

IRVINE v. DUVERNAY et al.

Cause of Action—Libel—Newspaper—Publication.

McCORD, J. This is an action of damages for libel, brought against the proprietor of the *Minerve* newspaper.

It is met by a declinatory exception, founded on the grounds: 1st. That the defendants are not domiciled within the jurisdiction of the Court; 2nd. That they have not been personally served within that jurisdiction; and 3rd. That the cause of action did not originate in this district, but in that of the domicile of the defendants; and the publication of the libel, if any, took place at Montreal.

The first two of these grounds suffer no contestation, and the only question arises upon the third.

The facts which give rise to this question are notorious, and are admitted in the record.

The defendants mail their paper at Montreal, addressed to a great number of subscribers and to public reading rooms in Quebec.

That they published their newspaper in Montreal is certainly true; but this is no ground of declinatory exception, because it is equally true that they also published it in the city of Quebec.

They are charged with having published a libel in Quebec. This is the real cause of action. The fact of their having caused the libel to be inserted in the newspaper at Montreal, as the plaintiff himself alleges, is an additional fact, which in no manner diminishes his right of action; for that right is complete without it—the mere publication of a libel being a sufficient cause of action.

The simple question comes to this: Does a person who mails in Montreal libellous matter to a number of individuals and to public reading rooms in Quebec, who receive and read the same, publish that matter in Quebec?

I am of opinion that he does, and am borne out by decisions in England which would seem to have been adopted in the United States.