

redemption. In these circumstances, whatever might be his rights against the interest remaining in the Company, the property of the railway could not be attached by any judgment creditor of the Company who was affected by the provisions of 43 & 44 Vict., chap. 49. But Sect. 11 of that Act expressly provides that nothing therein contained shall in any manner affect suits then pending in any court of law; and the respondents are within the exception, because the action in which their decree was obtained was actually in dependence at the time of its passing. It was argued for the appellants that the exception is limited to suits during their dependence, and does not apply to proceedings taken in execution of a judgment after the suit is at an end. That construction of the clause would deprive it of all meaning. None of the provisions of the Act could by possibility affect the conduct of a suit instituted against the South Eastern Company, although they are calculated to impair the plaintiff's recourse against its property after he has obtained a decree. According to the provisions of the Civil Code (Art. 2034), a judgment ordering payment of a specific sum of money carries a hypothec upon the real as well as upon the moveable estate of the debtor; so that, apart from the provisions of the Act of 1880, the respondents' judgment against the South Eastern Company made the principal sum decreed, with interest and costs of suit, a charge upon the railway, enforceable in terms of law.

In the course of the argument, the appellants maintained that the sheriff's seizure ought to be annulled, and proceedings stayed, on the ground that the railway, assuming it to be the property and in the possession of the company, was not liable to attachment for judgment debts of the company. That plea does not appear to have been taken, or discussed, in either of the Courts below; but, seeing that it involves considerations of public interest, and is sufficiently raised by the proceedings submitted to them, their Lordships conceive that they are bound to dispose of it.

The appellants relied upon the authority of *Gardner v. London, Chatham & Dover Railway Co.* (2 Ch. App. 201), and *In re Bishops*

*Waltham Railway Co.* (2 Ch. App. 382). These cases, which were decided by Earl Cairns (then Lord Justice) and Lord Justice Turner, establish conclusively that, in England, the undertaking of a railway company, duly sanctioned by the Legislature, is a going concern, which cannot be broken up or annihilated by the mortgagees or other creditors of the company. The rule thus settled appears to rest upon these considerations,—that, inasmuch as Parliament has made no provision for the transfer of its statutory powers, privileges, duties, and obligations from a railway corporation to any other person, whether individual or corporate, it would be contrary to the policy of the Legislature, as disclosed in the general Railway Statutes, and in the special Acts incorporating railway companies, to permit creditors of any class to issue execution which would have the effect of destroying the undertaking or of preventing its completion.

A different result was arrived at by the Court of Queen's Bench for Lower Canada in *The Corporation of the County of Drummond v. The South Eastern Railway Co.* (24 L. C. J. 276). In that case the corporation, who were the holders of a bond issued to them by the Richelieu, Drummond & Arthabaska Railway Company, before the amalgamation, obtained judgment against the South Eastern Company, and proceeded to take in execution, with a view to sell, a section of their railway. The Judge of the Superior Court quashed the proceedings, on the ground that the railway of a company incorporated by statute could not be seized in execution of a judgment, or sold at a sheriff's sale; but his decision was reversed by a majority of the Queen's Bench (Tessier, J., *dis.*), who allowed the sale to proceed. Apparently, the Court did not in that case require to consider whether a judicial sale could have been permitted of such part of the railway property as would necessarily have had the effect of breaking up the undertaking, or of resolving it into its original elements. Mr. Justice Cross said (24 L. C. J. 289):—"I can see no serious cause to apprehend that a change of proprietorship would interfere with the obligations which the road owes to the public, and which the