

ants and unpaid prior to and on 26th August, 1908, upon the coal taken, and upon coal that had been consumed by the Wilbur company carried on the days mentioned, amounted to \$568.25.

The defendants made reasonable efforts to sell the coal so taken, and failed, and, as the cars in which the coal was placed were required, the coal was mixed with defendants' own coal and used by defendants for their own purposes.

The defendants assert a statutory right to follow and seize the coal in question, under sec. 345 of the Dominion Act respecting Railways.

Section 344: "In case of refusal or neglect of payment on demand of any lawful tolls or any part thereof, the same shall be recoverable in any court of competent jurisdiction."

Section 345 (1): "The company may, instead of proceeding as aforesaid for the recovery of such tolls, seize the goods for or in respect whereof such tolls are payable, and may detain the same until payment thereof, and in the meantime such goods shall be at the risk of the owner thereof.

(2) "If the tolls are not paid within 6 weeks, and, where the goods are perishable goods, if the tolls are not paid upon demand, or such goods are liable to perish while in possession of the company by reason of delay in payment, or taking delivery by the consignee, the company may advertise and sell the whole or any part of such goods, and out of the money arising from such sale retain the tolls payable and all reasonable charges and expenses of such seizure, detention, and sale.

(3) "The company shall pay or deliver the surplus, if any, or such of the goods as remain unsold, to the person entitled thereto."

This sec. 345 first appeared in substance as sec. 234, 51 Vict. ch. 29. There power was given to the agents or servants of the company to seize the goods, etc. It was, in a slightly changed form, re-enacted as sec. 280 of ch. 58, 3 Edw. VII. (1903).

The word "seize" is relied upon by defendants. That word does not appear in the corresponding section of the English Act, viz., sec. 97, 8 Vict. ch. 20 (1845). I am unable to agree with defendants' contention that by virtue of the word "seize," they are virtually given a lien on property carried, to such an extent and of so general and wide an