The Legal News.

VOL. I. MARCH 23, 1878. No. 12.

## *SEIZURE OF A RAILWAY.*

We noticed in a recent issue the case of *Wyatt* v. *Senecal*, in which the rights of railway bondholders, with respect to the removal of rolling stock from the road, were in question. In the case of *The County of Drummond* v. *The South Eastern Railway Company*, decided recently by Judge Dunkin, another point of railway law of considerable importance was discussed. Part of the South Eastern Railway having been seized under execution of a judgment in the ordinary course, the question came up, whether a railway, or part of a railway, held by an incorporated company could be seized, and sold at Sheriff's sale, like an ordinary property. The Court, in an elaborate judgment, a short report of which appears in the present issue, decided that such seizure was not permitted by the law, and that it was not in the interest of creditors themselves to possess the right sought to be exercised. The Legislature might do something to amend the existing law, but his Honor intimated that caution was necessary. We quote in this connection the concluding remarks of the learned Judge :—"It may be objected—in effect it was so at the argument—that under the view here taken the active means of recourse of mortgage bondholders are less than they may probably have been led to fancy them, perhaps than they had some ground for thinking them, perhaps even than they ought to be. But with this a Court of law has no concern. Possibly enough, the law might have been put into better form, or yet may be. A Court can deal with it only as it is. At present anything in the nature of what was done in the Carillon and Grenville Railway matter can be done here (even though by consent of parties) only subject to revision, as each case presents itself, by the legislative power. It may well be a far less evil to leave things even in that state than to subject railways, to such end, to any judicial process not thoroughly hedged round with all needed safeguards, and this not merely with a view to protection of the various overt interests more immediately involved, but also to the requisite continuance (after sale, as before) of a corporate body duly organized to hold, and bound to work, each as a public institution. And whenever attempt so to legislate shall here be made, it is obvious to remark, that the fact of our railway system falling partly under Dominion and partly under Provincial control, is one suggestive of only so much the more of caution in this behalf."

## *INDICTMENTS FOR LIBEL.*

The prosecution in the Bradlaugh-Besant case in England, for publishing an obscene book, has failed before the Court of Appeal on a technical difficulty. The defendants were tried before the Court of Queen's Bench on indictment for unlawfully publishing an obscene book called "Fruits of Philosophy." Among the objections taken by the defendants at the trial was one that the indictment was defective, because it did not set forth the book or any passage thereof. The motion to quash the indictment on this ground was, however, overruled by the Court, reference being made to a case decided in the United States, *Commonwealth* v. *Holmes*, 17 Mass. 336, in which Parker, C. J., said :—"It can never be required that an obscene book should be displayed upon the records of a Court, for this would be to require that the public itself should give permanency to indecency." The reasons given by the Court of Queen's Bench for overruling the motion to quash were that setting out the whole book would be inconvenient, that it would be more reasonable that the objection should be taken by demurrer before the trial, and that the publication was a public nuisance. The Court of Appeal considered, however, that it would hardly ever be necessary to set forth a whole book in the indictment, and as to the objection against putting obscenity on the record, the Court very properly pointed out that the same reasoning would apply to other cases. It seems perfectly clear that indictments must be framed with sufficient precision to enable the accused to see what is charged against him, even though in so doing it may be necessary to employ language which offends the ear.

## *PUBLICATION OF LIBEL.*

Mr. Justice McCord has given a decision at Quebec in the case of *Irvine* v. *Duvernay et al.*,