

railways in England do not apply, as there only the "undertaking" is involved, which is something exclusive of the land: p. 501. . . . And he concludes, for the same reasons which guided Esten, V.-C., in an earlier case respecting the rights of judgment creditors of a railway company (*Peto v. Welland R. W. Co.*, 9 Gr. 455), that the railway should not be sold by the Court because the vendee could not exercise the franchise, i.e., conduct and operate the railway.

[*Drummond v. Eastern R. W. Co.*, 24 L. C. Jur. 276, and *Stephen v. La Banque Nationale*, M. L. R. 2 Q. B. 491, referred to.]

The statute passed by the Parliament of Canada in 1883 (46 Vict. ch. 24) applies to this road and to these bonds, though they were made the year before. It provides for the sale of a railway to a purchaser not having corporate powers, when (1) the sale is under the provisions of any deed of mortgage, or (2) at the instance of the holders of any mortgage bonds or debentures for the payment of which any charge has been created thereon, or (3) under any other lawful proceeding. This enactment does not enlarge the contract in the way of giving new rights, but is of a remedial nature, which may well be applied for the benefit of existing engagements. The effect of a judicial sale of the road is thus not to work destruction to the concern, but to continue its operation by a new owner under sanction of Government license or legislative authority. See *Shepley v. Atlantic R. R. Co.*, 55 Me. 406, and *Bickford v. Grand Trunk R. W. Co.*, 1 S. C. R. at p. 738.

These sections were commented on by Lord Watson in *Redfield v. Wickham*, 13 App. Cas. 476, as clearly shewing that the Dominion Parliament has recognized the rule that a railway may be taken in execution and sold in ordinary course of law. The reason of this decision rests on the fact that "the Legislature had made provision for the transfer of their undertaking:" per Lord Watson in *Grey v. Manitoba, etc.*, R. W. Co., Shorthand notes in Privy Council, p. 14.

In brief, the legislation permits a mortgage of the lands of the company. The right of such a mortgage is to enforce his security by a sale of the land. There is now no countervailing right on the part of the public, based upon the policy of the Legislature, to prevent a sale being had; for, upon and after the sale, the road will still run its course and serve the public as when in the hands of the original corporation.

For these reasons, . . . I find no error in the judgment to sell the road. But, because of the importance of the