perties which extended beyond one district. The creditor here only seized what was in the jurisdiction. The sale would be subject to the obligations devolving on the original owners.

RAMSAY, J. Probably there is no doubt what the law ought to be in this matter. The object of granting a charter to a railway company is much more to confer a benefit on the public than to further a speculation. The powers granted to expropriate are an evidence of this. It would, therefore, have been very wise in the legislature to have made such provision as would have secured the permanence of the institution. But the question is, has this been done, or, more properly, has not the legislature done precisely the reverse? The learned Judge in the Court below has with great force shown how unwise it is to have given the right to a railway company to hypothecate its line; but I think the very clearness of his exposition shows only more abundantly how critical the position of the respondents is. To borrow the ingenious phonasm of the learned Judge, it is precisely because the railway company "has done all it has done, holds all it holds, and is all it is by virtue of" special legislation that I think it behoves the Courts diligently to enquire what that legislation has enacted. If the terms of the positive law are ambiguous, and consequently open to interpretation, then all the considerations put forth by the learned Judge might apply. But if, on the other hand, the law has expressly given to the Railway Company the power to hypothecate the realty of the road as their property, then there is an end to speculation as to whether the right to take property for public uses is derivable from the right of eminent domain, and whether the right acquired by the taker is only an easement. The learned annotator of the 1st Institute says: "Arguments from inconvenience certainly deserve the greatest attention, and where the weight of other reasoning is nearly on an equipoise ought to turn the scale. But if the rule of law is clear and explicit, it is in vain to insist upon inconveniences; nor can it be true that nothing which is inconvenient is lawful, for that supposes in those who make laws a perfection which the most exalted human wisdom is incapable of attaining, and would be an invincible argument against ever changing the law." 3 Coke, 65 a. n. 1.

If I were to be tempted into a historical dissertation, I might, perhaps, question the reference of the right of taking lands for public uses to the right of eminent domain, and show that this was only the feudal explanation of a right much more ancient, and of much wider extent than the reach of English law; and I might be further induced to try to establish that the easement theory is of still more modern invention. It was hardly the idea of William Rufus when he made his hunting grounds, or of Louis XIV. when he founded Versailles.

We have, therefore, to enquire what the appellant's title is. His claim to be an hypothecary creditor is founded on a debenture in a statutory form, in which we find the following clause: "And for the due payment of the said sum of money and interest, the said Company, *under the power given to them by the said statute*, do hereby mortgage and hypothecate the real estate and appurtenances hereinafter described, that is to say: "*The whole of the railroad from.... including all the lands at the termini of the said road, and all lands of the Company within these limits, and all buildings thereon erected, and all and every the appurtenances thereto belonging.*"

I do not see how it is possible to use stronger words, to give an hypothec, than these, and to refuse to give them effect appears to me to be simply breaking faith with the bondholders. It may be very unwise for a bondholder to press his right in this form; but with his discretion we have nothing to do. An argument was used by the Court below, that this bond gave opening to interpretation because of the use of the word mortgage along with the word hypothec. But it should be observed that the bond is only made "under the power given by the statute," and that in the statute the word "hypothec" occurs alone. This then would control the bond. But, in addition to this, it is a piece of information almost too simple to require to be insisted on, that the word mortgage has been constantly used in this country as the translation of *hypothèque*. Can it be gravely pretended that in all the English deeds where the words "doth mortgage and hypothecate" are used, the mortgagee loses his hypothecary right? If not in these cases, why in this, unless it be to give a transparently insufficient reason to defeat the law? When the title "Of Obligations" was being prepared, the incorrect