

tribunals in Canada through which a case may be dragged, and in which the same facts and arguments are repeated *ad nauseam*. If the proposition should be carried out, of having four Judges of the Queen's Bench sitting in appeal in Montreal from day to day, we think the intermediate tribunal might be dropped out, and a great economy of judicial labor effected. Some modification of the costs in Appeal might be expedient. However, at present we simply wish to direct attention to the observations made by Mr. Justice Johnson on the 29th ultimo, with regard to the conduct of business before the Court. The Judges are desirous that the factums of the parties shall be filed not later than the 12th of the month in which the cases are to be argued. This is so reasonable a requirement that it needs no explanation. If the case is one of any complication, the argument before Judges who have made themselves familiar with its difficulties, by a perusal of the factums, is really as valuable as a rehearing. Attention was also once more directed to the illegible character of many of the documents put into the record. Only a few days ago, Mr. Justice Torrance was forced to send down a record, in order that an illegible paper might be replaced by one that did not require the services of an expert to decipher it. So much of the day time is spent in hearing cases that Judges are forced to examine records by artificial light, and unless Mr. Edison can give us something better than that supplied by the Gas Company, it is desirable that the papers forming the record should be written in a clear hand, and with a fluid superior to much that passes in these days under the name of ink.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, Dec. 20, 1879.

SIR A. A. DORION, C. J., MONK, RAMSAY, TESSIER and CROSS, JJ.

CORPORATION OF COUNTY OF DRUMMOND (plffs. below), Appellants, and SOUTH EASTERN RAILWAY Co. (defts. and opposants below), Respondents.

Railway—Right of hypothecary creditor to bring the property to sale.

This case raised the important question, whether a railway owned by an incorporated

company may be seized and brought to sale by bondholders to whom a hypothec on the property has been granted under authority of a statute. The appeal was from a judgment of the Superior Court, Dunkin, J., for which see 1 Legal News, p. 137; 22 L.C.J., p. 25.

TESSIER, J., (*diss.*) said there was no doubt that a railway constructed by a private corporation, or by individuals, may be seized. But in this case the railway was constructed under a public statute which authorized the opening of the railway with a servitude of passage. In expropriating the land required for the railway they paid the value of the part expropriated, taking into account the improvement in value of the remainder. This was a property different from an ordinary immoveable. The Company obtained its privileges subject to the obligation of keeping the road in operation. To permit the sale of a part would be to prevent the working of the line as a whole. The jurisprudence of England and France did not allow such seizure. His Honor, in an opinion of some length, supported the view that the judgment was correct, and ought to be confirmed.

SIR A. A. DORION, C.J., said the majority of the Court were of opinion that the railway could be seized. The Richelieu, Drummond and Arthabaska Railway Company were authorized by statute to issue bonds, and a hypothec was given on the railway to secure the holders of these bonds. On the amalgamation with the South Eastern, the rights of the bondholders were specially reserved, so that the bondholders of the R. D. & A. Company were in the same position with respect to the South Eastern. The bondholders were, by law, granted a hypothec, and this gave the right to seize the property, if they were not paid, and to cause it to be sold. In England, railways could not be sold, but the English mortgage was a different thing from our hypothec. The mortgagee was allowed to take possession of the property; but the hypothec only gave the creditor the right to bring the property to sale and to be paid out of the proceeds. A railway was not the property of the public. It was subject to municipal taxes, and had been made to pay *lods et ventes*. It might be compared to a toll bridge. As to the argument that the property was in different jurisdictions, there were special provisions applicable to the seizure of pro-