

declare war against Russia. But certain expressions which have recently appeared in journals of both Russia and the United States show that a different anticipation is entertained in some quarters, and it is well known that in the midst of war, points of international compact are easily strained by those who are eager to escape from all restraint. A learned correspondent of the LEGAL NEWS, directing our attention to the above correspondence, remarks: "For myself, I believe that (treaties to contrary, alleged, notwithstanding) Russia might in time of war not unlawfully issue letters of marque to subjects of her own, and so set afloat from the shores of any country, if they get chance, ships to cruise against Russia's enemies, and that the marines and officers on board such cruisers could not be treated as pirates. But I agree that Russia could not issue such letters to all the world;" and he refers to Wheaton and the notes by Lawrence.

SALE OF MORTGAGED SHIP.

The decision in the case of *Kelly & Hamilton*, 16 L. C. Jurist 320, seems to have created an impression that a mortgaged vessel could not be sold under execution. In a recent case of *D'Aoust v. McDonald*, and *Norris*, opposant, the Superior Court, at Montreal, maintained an opposition by a mortgagee on this ground. The opposant went to Review, and there the judgment has been reversed by a majority of the Court. The reasons of judgment, which will be found in the present issue, hold that the decision in *Kelly & Hamilton* merely went to this extent: That a Sheriff's sale does not purge a mortgage, but conveys only the defendant's rights. The Court decided, therefore, that the mortgagee had no right to stop the sale.

AUTHORITY OF SHIPPING AGENTS.

A case of considerable interest to the shipping trade, *Leaf et al. v. The Canada Shipping Company*, was decided by the Superior Court, at Montreal, Johnson, J, on the 30th ultimo. The question was as to the liability of goods to the carriers, not for the freight thereon, but for a previous debt of the intermediate shipping agents. The carriers in this instance, the Canada Shipping Company, claimed a lien on certain goods for a debt due to them by Win-

gate & Johnstone, the agents through whom the goods were shipped. The bill of lading under which this extraordinary pretension was urged, stipulated that "the owners or agent of the line have a lien on these goods, not only for freight and charges herein, but for all previously unsatisfied freights and charges due to them by the shippers or consignees." The freight claimed from Leaf & Co., and paid by them under protest, was not due for goods owned or shipped by them at all, but which had been shipped by the same agents for other parties. The Court held that in the absence of specific proof of a particular mode of dealing between Leaf & Co. and the carriers, the former could not be held liable for the debt of other people under the stipulation of the bill of lading. And reference was made to Story, who, speaking of a lien for a general balance of accounts, says, "it is so little favored, as a matter of public policy, that if disputed, it must be shown to exist in the particular case, either by a general usage, or by a special agreement, or by a particular mode of dealing between the parties."

REPORTS AND NOTES OF CASES.

COURT OF REVIEW.

Montreal, April 5, 1878.

Present: TORRANCE, DORION, RAINVILLE, JJ.
D'Aoust v. McDonald, and Norris, opposant.
[From S. C. Montreal.]

*Sale of Mortgaged Vessel—Rights of Mortgagee
Creditor—Privilege for Wages under C. C.
2383—"Last Voyage."*

Held, 1. That although C. S. C. cap. 41 was repealed by 37-38 Vict. c. 128, s. 3, (1874), a bill of sale by way of mortgage of a vessel registered under the former statute, made after the passing of the repealing Act in the form usual under the former statute, created a valid mortgage.

2. That it was not necessary to the validity of a mortgage on such vessel that she should first be re-registered under the Imperial Merchants' Shipping Act of 1854.

3. That the form I, given in the Merchants' Shipping Act, need not be strictly adhered to, in the case of a vessel registered under c. 41, C. S. C.

4. That the privilege accorded by C. C. 2383 for the wages of master and crew of a ship for the "last voyage," does not apply to a balance of wages for a season's continuous navigation on the St. Lawrence and Lakes, though the master and crew signed articles for the season, and were paid by the month and not by the trip.