cannot prevent the seizure and sale of a vessel at the suit of a judgment creditor, but such sale will not purge the mortgage, and conveys to the purchaser only such rights as the mortgagor had, the mortgagee retaining his rights against the purchaser. This was a reversal of Judge Mackay's judgment, and Judge Torrance dissented in Review, so that the judges were two against two. In May, 1879, Judge Sicotte, in the case of *Kempt* v. *Smith*, & *Cantin*, opposant, contrary to the decision in Review in *Norris* v. *Macdonald*, maintained the right of the registered hypothecary creditor to oppose the sale of a vessel mortgaged to him. See 2 Legal News, page 190.

The decision in *Daoust* v. *Macdonald*, though not expressly opposed to that of the Court of Appeal in Kelly and Hamilton, was in conflict with that of the Queen's Bench in England, in the case of *Dickenson* v. *Kitchen*, & *Darling*, 8th Ellis & Blackburn, p. 788, on which the judgment in *Kelly* & *Hamilton* was principally founded. It was interesting to observe that the grounds relied on by the Court of Review in *Daoust* v. *Macdonald*, and by the plaintiffs in this case, had been urged in the English case, and yet the pretension was unanimously rejected by the four Judges of the Queen's Bench. The case of *Dickenson* & *Kitchen* was better authority now than in 1872, the repeal of the articles of the Code having taken place since that date, and his honor might say, with Judge Badgley, "under these circumstances the judicial propriety is unquestionable of resorting to the English authorities and precedents as explanatory of the Provincial law." In fact, the Provincial law in this matter was not different from the Imperial law, and section 66 of the Imperial Act was law here. The opinion of the English Court of Queen's Bench, therefore, afforded the most authoritative interpretation of the law. His Honor cited the opinion of Lord Campbell in the case referred to: "To hold that any other creditor may seize and sell a mortgaged ship as against the mortgagee is inconsistent with the later part of that section (70).....There is nothing in the Act to enable a creditor of the mortgagor to seize and sell a mortgaged ship; and the exercise of such a right by him is inconsistent with the right expressly retained in favor of the mortgagee." And Coleridge, J., said: "By sect. 70, it is implied that the mortgagee of a ship, by reason of his mortgage is to be deemed the owner to an extent which is inconsistent with the alleged right of another creditor to seize and sell the ship." The text of the Federal Act of 1873, was express:—"Every recorded mortgagee shall have power absolutely to dispose of the ship, in respect of which he is recorded as such, and to give effectual receipts for the purchase money; but if there are more persons than one recorded as mortgagees of the same ship, no second or subsequent mortgagee shall, except under the order of some Court capable of taking cognizance of such matters, sell such ship without the concurrence of every prior mortgagee." It could not be supposed that the law intended to give an ordinary creditor, without privilege or mortgage, a right denied to a privileged creditor. The opposition would, therefore, be maintained, and the seizure set aside.

D. R. McCord for opposant.

T. P. Butler for plaintiff contesting.

CIRCUIT COURT.

WATERLOO, Dist. of Bedford, Oct. 1, 1879.

EASTERN TOWNSHIPS MUTUAL FIRE INS. CO. v. BIENVENU.

Cause of action—Mutual Insurance Co.—Premium Note.

The plaintiffs, having their head office in Waterloo, district of Bedford, brought an action against the defendant for $80.34, assessments on premium note given for insurance in the company. The defendant was described as of Verchères, in the district of Montreal, and service was made on him there; and it was admitted that the premium note and application for insurance were signed there.

The defendant filed a declinatory exception, on the ground that he should have been sued in the district of Montreal, where he had been served, and where the cause of action arose.

It was admitted that the head office of the Company was at Waterloo, and the plaintiffs produced notice of assessments and certificates, showing that calls were payable at the head office.

The plaintiffs relied on C.S.L.C. cap. 68, relating to Mutual Insurance Companies. The defendant, by signing the application, became a member, and as such was bound by the regu-