to seize or bring to sale a vessel on which there is a duly recorded mortgage, without getting the consent of the mortgagee, or an order of a competent Court. Apparently, the nature of the debt for which the vessel is seized, whether it be for work done, or for supplies or equipment furnished, does not affect the question of the right to seize and sell.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, Oct. 31, 1879.

Ross et al. v. SMITH, and CANTIN, opposant.

Vessel — Seizure by judgment creditor without consent of first registered mortgagee—Mortgage executed in presence of one witness.

In January, 1875, the plaintiffs, alleging that that they were the *derniers équipeurs* of the steamer "Cantin," caused it to be seized before judgment, as in the possession of defendant, for a sum of $198.98. On the 25th January, 1876, judgment was rendered against the defendant for this sum by default, and on the 26th February, 1876, the vessel was advertised for sale under a writ of execution in satisfaction of this judgment.

The opposant intervened, and alleged that in May, 1875, the defendant mortgaged the ship to him for $10,000, which defendant was to pay on the 15th June, 1876, the opposant agreeing not to exercise before that date the mortgagee's right of sale under the Merchant Shipping Act of 1854. The opposant further alleged the registration of the mortgage, and said that the vessel could not now be seized and sold without his consent. He concluded, therefore, by praying that the seizure be set aside.

The plaintiffs contested the opposition, saying that at the time of the seizure, the defendant was proprietor and in possession of the vessel, and that the only right which the opposant had was, not to prevent the sale, but to ask that the sale be made subject to his mortgage. The plaintiffs further urged that the opposant had himself caused the vessel to be seized as in defendant's possession, since the plaintiffs' seizure; that at the time of the plaintiffs' seizure nothing was due to opposant, the term accorded for the repayment of the $10,000 not having expired; and lastly, that plaintiffs' claim should take precedence of that of opposant, being for repairs and necessaries for the ship.

The last allegation was held by the Court not to be proved, but the other facts were either admitted, or appeared by the documents produced.

JETTÉ, J., in rendering judgment, disposed first of a question raised at the argument only,—that the opposant's mortgage was null, the document not being passed before a notary, or made in duplicate in the presence of *two* witnesses, as C.C. 2380 requires, but was signed in the presence of a single witness. The answer to this was that Art. 2380 had been repealed by 36 Vict. (Canada) ch. 128, passed in 1873. Not only Art. 2380, but all the articles from 2356 to 2382 inclusively (27 in all) have been repealed by the Act of 1873, except such parts of 2356, 2359, 2361, 2362, 2373 and 2374, as are not inconsistent with the Act in question. At the same time chapters 41 and 42 of the Consolidated Statutes of Canada, on which the above mentioned articles of the Code were founded, were also entirely repealed. The result was to revive the provisions of the Merchant Shipping Act of 1854 as modified by our Act of 1873. Now, according to the form given in the Imperial Act of 1854, which is not changed by the Canadian Act of 1873, one witness is sufficient. The mortgage of opposant was given after the repeal of Art. 2380 C.C., and therefore the pretention of the plaintiffs on this point was unfounded.

The second question was as to the right of the mortgagee, Cantin, to oppose the seizure. In the case of *Kelly & Hamilton*, 16 L. C. J. 320, it was decided by the Court of Appeal in 1872, that a registered mortgagee, who is also holder of the certificate of ownership, can revendicate the vessel in the hands of an *adjudicataire* thereof by judicial sale, even when the mortgagors have at all times prior to the delivery to the *adjudicataire* been in actual possession. This judgment was rendered by Duval, Caron, Drummond, Badgley and Monk, JJ., but by a majority of one only, Drummond and Monk, JJ., being in the minority.

In April, 1878, in *Daoust* v. *Macdonald*, & *Norris*, opposant, 1 Legal News, p. 218, the Court of Review decided that a mortgagee