logs, which was made by the government collector for arrears of slide dues, owed by one R. S., for the logs seized and other logs, be removed, and that the sum of $5,267, which had been paid by the appellants to the Crown under duress, be refunded to them.

R. S., being indebted to the appellants in a large sum of money, had given them, as collateral security for the amount of his debt, two chattel mortgages on certain logs and timber. These mortgages were executed, the first on 12 December, 1867, and the second on 11 May, 1877. On 15 May, 1877, R. S. became insolvent, and in 1878 the equity of redemption of the insolvent in the chattel mortgages was duly released to appellants by R. S.'s assignee. In June, 1877, R. S., who owed also a large sum of money to the Government for slide dues for several years back, agreed to pay $2 per 1000 feet, B. M., on all lumber to be shipped by him through the canals. The dues recoverable by statute for each log were 4⅓ cents, equal to about 26 cents per 1000 feet, B. M. The appellants claimed that this arrangement was unknown to them. The evidence of its ratification by the appellants was contradictory.

In 1878, when the appellants began to ship the lumber in question on barges, the collector of slide dues refused to allow the barges to pass through the canals until the appellants paid the $2 agreed upon between R. S. and the Government. They paid a certain amount under protest, but finally the collector seized and took possession of all the logs and timber on R. S.'s premises, on behalf of the Government.

GWYNNE, J., in the Exchequer Court held that R. S. was agent for the appellants and that he had created a general lien or charge on the lumber mortgaged to the appellants, in favor of the Crown, for the dues he owed them, and that the appellants had knowledge of and ratified such arrangement.

On appeal to the Supreme Court,

Held, (STRONG and TASCHEREAU, JJ., dissenting), that the relation between appellants and R. S., was in no sense that of principal and agent, and that there was no evidence whatever of any contract, express or implied, of a general lien or charge on this timber, so as to bind or affect this timber in the hands of the appellants, to whom the same had been conveyed for valuable consideration, while not cognizant of or parties to such contract.

That all the Government were entitled to on the said lumber, under the statute and the regulations was the sum of 4⅓ cents per log passing through the slides, equal to 26 cents per 1000 feet, B. M., which sum appellants offered to pay. And that R. S., after the execution of the chattel mortgages in favor of appellants, had no right to create in favor of the Crown a lien or charge on the lumber in question, to secure the payment of his own indebtedness.

Bethune, Q.C., and *Gormully*, for appellants.
Lash, Q.C., and *Hogg*, for the Crown.

MCCALLUM V. ODETTE.

"THE M. C. UPPER."

Appeal from the Maritime Court of Ontario—Cross appeal—Collision with anchor of a vessel—Contributory negligence—Damages, apportionment of—Court equally divided.

On the 27th April, 1880, at P. K., on Lake Erie, where vessels go to load timber, etc., and where the *Erie Belle*, the respondent's vessel, was in the habit of landing and taking passengers, the *M. C. Upper*, the appellant's vessel, was moored on the east side of the dock, and had her anchor dropped some distance out, in continuation of the direct line of the east end of the wharf, thus bringing her cable directly across the end of the wharf from east to west, without buoying the same or taking some measure to inform incoming vessels where it was. The *Erie Belle* came into the wharf safely, and in backing out from the wharf she came in contact with the anchor of the *M. C. Upper*, and was damaged.

On a petition, filed by the owner of the *Erie Belle*, in the Maritime Court of Ontario, to recover damages done to his vessel by the *M. C. Upper*, the judge who tried the case found, on the evidence, that both vessels were to blame, and held that each should pay one half of the damages sustained by the *Erie Belle*.

On appeal to the Supreme Court by owner of the *M. C. Upper*, and cross-appeal by owner of *Erie Belle*:

Held, per RITCHIE, C. J., FOURNIER, and TASCHEREAU, JJ., that the evidence shewed that the damage was caused solely by the fault and negligence of the owner of the *M. C. Upper* and therefore the owner of that vessel should