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mackerel, along with a quantity of other fish to W. M. Richardson at \$8 a barrel. Richardson paid half in cash and gave Shaw a note for the balance at four months. This note was given to appellants by Shaw on account of his general indebtedness. On the 4th of March, 1878, Richardson became insolvent, and the respondent was subsequently appointed assignee, and demanded and brought an action to recover the 236 barrels of mackerel. After issue was joined, the appellants proved against the estate of Richardson on the note, and received a dividend on it. The Chief Justice at the trial gave judgment for \$1,888, less \$46.19 for one month's insurance and six months storage, and found that the defendants had knowledge that the fish sued for were included by insolvent in the statement of his assets, and made no objection thereto known to the assignee or creditors at the meeting.

Held, (affirming the judgment of the court below, STRONG, J., dissenting) that the defendants failed to prove the right of property in themselves upon which they relied at the trial; that the property was in the respondent, who had, as against the appellants (no claim for lien having been set up) a right to the intermediate possession of the fish.

2. That as the fish had not been stored with appellants by way of security for a debt due by insolvent, appellants would at the same time make a claim on the estate for the whole amount of insolvents note, receive a dividend thereon and retain possession of the fish.

Thompson, Q.C., for appellants.

Rigby, Q.C., for respondent.

Appeal dismissed with costs

DOMINION TELEGRAPH CO. V. SILVER ET AL.
Libel—Slander—Telegraphic message—Liability of telegraph companies—Special damage—Evidence—Excessive damages—43 Vict., ch. 37., sec. 5—New trial.

This was an action brought by the respondents as partners in trade for defamation of the respondents in their trade. In the declaration it was alleged: 1. That respondents were wholesale and retail merchants at Halifax, and that appellants wrongfully, falsely, and maliciously, by means of their telegraphic lines, transmitted, sent and published from their office at Halifax to their office in St. John, and there caused to be

printed, copied, circulated, and published the false and defamatory message following: "John Silver & Co., wholesale clothiers of Greenville Street, have failed, liabilities heavy." 2. That same message was published elsewhere. 3. That the appellants promised and agreed with the proprietor or publisher of the *St. John Daily Telegraph* newspaper, and entered into an arrangement with him whereby the defendants agreed to collect and transmit by means of their telegraphic lines, news despatches to said newspaper from time to time, and that such publisher should pay for all such messages and should publish them in his newspaper, and that in pursuance of said agreement the appellant wrongfully, maliciously, and by means of said telegraph, transmitted, sent and published from their office, &c., &c., the said message, whereby many customers who had heretofore dealt with them ceased to do so, and their credit, business &c., were thereby greatly damaged.

The appellants denied the several publications charged, and also denied the entering into the agreement mentioned in the 3rd count, and the forwarding of the message as alleged. At the trial it was proved that the telegram which was published in the morning paper was contradicted in the evening edition, and that the publisher's agreement was with one Snyder, an officer of the company, to furnish him news at so much for every hundred words, but that he only paid for such as he used. The original despatches were not produced. The only evidence as to damage was the evidence of two witnesses, who proved that by reason of the publication they ceased to do business with respondents, as they had previously been accustomed to do. This evidence was objected to as inadmissible, but was received. The dealings of these witnesses with the plaintiffs consisted in selling their exchange, and sometimes discounting their notes. The counsel for the defendants moved for a non-suit, which was refused, and the case was submitted to the jury, who, upon the evidence, rendered a verdict for the plaintiff, with \$7,000 damages.

On appeal to the Supreme Court of Canada it was

Held, 1. (Sir W. J. RITCHIE, C.J., *dubitante*, and HENRY, J., dissenting), that the damages were excessive, and that under the Act further to amend the Supreme and Exchequer Court Act, 43 Vic., ch. 37, sect. 5, this Court in the exer-