

arrangements to take freight space for and load with cattle four steamships leaving Boston in the month of September, 1883; that having engaged the space he arranged with the claimants to purchase for him the necessary cattle to fill the four steamships, the claimants to be paid cash by cheque drawn against letters of credit to be given in his favor by the bank and addressed to claimants. The first and second shipments were made in due course, McShane in both cases giving claimants a letter of credit in his favor, signed by the bank to claimants to the extent of \$40,000, and then McShane giving claimants a cheque for the precise amount of the purchase of the cattle, which was in each case about \$39,000. The cattle for the third shipment was purchased and weighed in presence of McShane, letter of credit produced and delivered to claimants, and cheque given on Monday, September 17, 1883; then news came that the Exchange Bank had suspended; and it was decided, at the request of McShane, to ship the cattle, as the ship was ready to sail on the morning of 18th September, consign them, and take proceeds on account. The necessary cattle had also been previously secured for the fourth shipment, for 25th September, 1883, and on enquiry at the bank as to what should be done, a telegram was sent by the president of the bank, instructing the shipment and that the bank would guarantee the loss; that the shipment was made; that it was in the interest of the bank; that they had property and security of McShane; and the telegram was sent, and letter of credit given, in connection with engagements between claimants and McShane, in which the bank had an interest, and from which it might have derived a profit, and could not now repudiate a loss.

The court below maintained the contestation on several grounds. It was held that the claimants had failed to prove that the alleged loss occurred; the only witness examined on that point being Arthur E. Jackson, who had no personal knowledge of the loss, and only testified from the account sales received by claimants from their Liverpool agents. That, moreover, the bank suspended payment on the 15th September, 1883; that the claimants were aware of the suspension; and that Thomas Craig, who signed the telegram, had no authority to give the guarantee in question, and the bank was not bound by it. In Appeal the court held that the claim must be dismissed, on the ground that it was not sufficiently proved. It was not necessary to pronounce on the other points. Judgment confirmed, Cimon, J., dissenting.