

HON. MR. JUSTICE MIDDLETON: — Brodrecht was a customer of the Standard Bank for many years. The action is to recover the amount of his overdrawn bank account.

The defendant sets up in answer that the bank improperly charged in his account two sums, amounting to \$406.08, as costs *Re Everatt*, and further that he deposited a number of collateral notes at the bank, which the bank has collected and not accounted for. He asks that an account be taken. At the trial the action was referred, and upon the reference the findings were all in favour of the bank; the referee reporting as due the balance, \$1,024.50, that was claimed.

Several questions were argued upon appeal.

First, it is said that the bank has charged compound interest at the rate of six and a half per cent. per annum, with monthly rests. Counsel for the bank now states that attention was not drawn to this matter upon the reference and that he does not attempt to defend the mode of computation. The difference is said to be \$107. Subject to this being checked on behalf of the bank, the appeal will be allowed to this extent.

The main controversy is over the proceeds of a certain note known as the Lake and Daniels note. This note was sued in the north-west in the name of the bank. It is said that the money was ultimately remitted to and received by Mr. Miller, a solicitor, now dead. Mr. Miller claimed the right to set this off against certain costs which he claimed Brodrecht owed him. The money never reached the hands of the bank.

The bank disclaims all responsibility for this litigation, and claims that the note was given to Miller, as Brodrecht's solicitor, at Brodrecht's request, and that Brodrecht was allowed to use the name of the bank because one of the parties to the note was a relative of his, and it was thought that the note could be more readily collected if the bank appeared to be the holder.

Miller was examined before the referee, but died before Brodrecht gave his evidence. If Miller's evidence is accepted, the bank's case is made out. Undoubtedly there are difficulties, very forcibly presented by Mr. Scellen, in the story as told by Miller. On the other hand, there are difficulties that appear to me just as great in the story told by Brodrecht, (when he knew that by reason of Miller's death he could not be contradicted). Whatever might have been