

BRITTON, J.

JANUARY 15th, 1906.

## TRIAL.

## MERCHANTS BANK v. STERLING.

*Principal and Agent—Moneys Advanced by Bank to Agent—Liability of Principal—Evidence—Letter of Authority—Construction.*

Action to recover money advanced by plaintiffs to one E. J. Witherford, the agent of defendants, for the purpose of buying, taking care of, and shipping live and dressed hogs in and about the village of Wheatley and town of Leamington, in the county of Essex.

T. H. Rodd, Windsor, and W. T. Easton, Leamington, for plaintiffs.

A. H. Clarke, K.C., and R. L. Gosnell, Blenheim, for defendants.

BRITTON, J.:—Defendants reside at Blenheim. Witherford, at the time of the transactions in question, resided at Wheatley. Plaintiffs had a branch at Leamington, and a sub-agency at Wheatley. Defendants at first sent money direct to Witherford. Sometimes it was sent by express and sometimes to the bank for Witherford. Witherford used to get the money from the bank upon his own cheque, and at times the account was overdrawn. The account with plaintiffs was opened on 18th December, 1902. Witherford then got \$5,000 from defendants, and deposited it with plaintiffs to his own credit, and drew cheques against it. So far as appears, this account was not overdrawn until about 10th February, 1903, when there was an overdraft of \$58. This was paid, and the account continued, and from March, 1903, the practice was for Witherford to get what he wanted and have the overdraft paid by his drawing through plaintiffs upon defendants for any debit balance.

On 27th November, 1903, defendants gave to plaintiffs' manager at Leamington a letter as follows: "Please cash E. J. Witherford's cheques to farmers for live and dressed hogs each week and draw on us for the amount at sight each week until further notice."

The account was continued until 10th September, 1904, when it was overdrawn to the amount of \$650.30. On that