

parties where they were—and give no costs of action, counter-claim, or appeal.

I am not able to concur with my brother Magee's view that there should be a limited investigation of accounts as to the application by Witherford of moneys paid after 31st August, 1904, by the bank on his cheques. It is against the wish of the bank to have any general investigation of the dealings ab initio on the footing of the written obligation of 27th November, 1903, and it does not seem to me competent to introduce that document as of force after 31st August, 1904, when its terms were all along disregarded by the bank. Let it control all through or not at all.

MABEE, J., concurred, giving reasons in writing.

MAGEE, J., dissented, also giving reasons in writing.

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OSLER, J.A.

MAY 7TH, 1906.

C.A.-CHAMBERS.

PLAYFAIR v. TURNER.

*Appeal to Court of Appeal—Leave to Appeal from Judgment at Trial—Final Judgment—Reference as to Damages.*

Motion by defendants for leave to appeal from the judgment at the trial directly to the Court of Appeal.

R. McKay, for defendants.

F. E. Hodgins, K.C., for plaintiffs.

OSLER, J.A.:—I think an order may properly be made giving leave to appeal per saltum from the judgment at the trial.

The trial Judge has held that plaintiffs are entitled to recover damages amounting to upwards of \$4,000, though I am told that, defendants not having elected to accept a judgment for that amount, the sum for which judgment will be entered—more than the above sum being claimed in the action—must now be ascertained by a reference.