

same by drafts made upon the bank from time to time therefor. There was no arrangement as to the transactions other than that evidenced by the course of dealing; the bank dealt entirely with Witherford, who, in his turn, settled accounts with defendants in his own figures—shewing what he had bought and his expenses therefor, and to the extent to which he had expended money in the purchase of hogs received by defendants they honoured the drafts made by him through the bank. Defendants knew nothing of the method of accounting or of dealing as to details between Witherford and the bank, and, besides the moneys received by him through drafts, it appears that large sums were sent Witherford by express. . . . Defendants refused to honour the last draft for \$2,000 on 31st August, because they had not received hogs in respect of it—but upon Witherford agreeing to send on and actually sending on to them 3 shipments, equal in value to over \$1,400, defendants then, on 8th September, sent a cheque to take up the draft. That was the last transaction between defendants and Witherford before his disappearance, but the bank appear to have paid money on Witherford's cheques after this, and till a notice came from defendants (who had been advised by Witherford's wife that he had gone) not to pay his cheques pursuant to the agreement of November, 1903. Defendants' position is, that they have in fact paid Witherford for more hogs than they received (this Witherford admits . . .), and that the overdraft in the bank was expended by Witherford in some other way than in hogs for defendants. The bank repudiate the proposition that an account should be taken as to the expenditure of Witherford's drawings, and claim to hold defendants as principals and responsible for all moneys paid to their alleged agent in the course of his agency, no matter how expended by Witherford. I think the bank have not satisfactorily established this relationship of general agency, and that, though it may be true that Witherford was buying hogs for defendants, and was agent in that respect, he was not a general agent as between him and the bank so that his drawings are to be made good by defendants, without evidence that the moneys went into the purchase of hogs, and that these hogs came into the hands of defendants.

I do not think either action or counterclaim should be successful, and I would reverse the judgment—leaving both