

agent of defendants, for the purpose of buying, taking care of, and shipping live and dressed hogs.

The appeal was heard by BOYD, C., MAGEE, J., MABEE, J.

M. Wilson, K.C., and R. L. Gosnell, Blenheim, for defendants.

J. H. Rodd, Windsor, for plaintiffs.

BOYD, C.:—Witherford opened an account with plaintiff bank by means of money supplied chiefly by defendants—the object being that Witherford should buy and ship hogs to defendants and pay himself out of these moneys. The account was kept in the name and for the benefit of Witherford, and by degrees he began to overdraw, and then the bank said they could not let the overdrafts go on unless defendants should guarantee their payment.

The bank supplied a printed form of general guarantee for all liabilities incurred by Witherford up to \$2,000. This defendants refused to sign, but gave a limited obligation on 27th November, 1903, directing the bank to cash Witherford's cheques to farmers for hogs (live and dressed) each week, and to draw on defendants for the amount at sight till further notice.

It is admitted by the bank that this direction and method of dealing was not acted on, but that, on the contrary, the manner of doing business went on as before as between the bank and Witherford. The upshot was that both the bank and defendants appear to have trusted Witherford overmuch, so that on 17th September, 1904, he absconded, being indebted to the bank on overdrawn account to the amount of \$650, and to defendants in the sum of \$72. The bank now seek to collect this overdraft of Witherford from defendants. Upon the first overdraft, which led to the call for a guarantee, the bank appear to have had no right of action against defendants, and, the manner of dealing remaining unchanged, the onus is on the bank to make out that this situation is bettered as to the last overdraft.

The claim was at first based upon the limited guarantee, but that was abandoned, and the action is now based on the statement that Witherford was agent for defendants, and that advances were made to Witherford to carry on the business at the request of defendants, who undertook to repay the