

Insolvent Act. When an official assignee is continued in office by the vote of the creditors, the bond given for the performance of his duties as official assignee still applies. The law allows the creditors to exact additional security, implying that the security already given still applies. The practice had been, where an official assignee was appointed creditors' assignee, to rely upon the bond given by him as official assignee.

RAMSAY, J. (*Diss.*) The only question that arises on this appeal is whether the defalcation took place while the assignee was acting as official assignee or not.

It appears one Perry became insolvent, and his estate was placed in the hands of an official assignee. The creditors of the insolvent, at a regular meeting, appointed the assignee, assignee of the estate. After this the assignee died, leaving a balance due to the estate. By this action it is sought to recover from the Guarantee Company the amount of the deficiency on their bond as security for the assignee as official assignee. The Guarantee Company contend that they are not his securities, as he was not acting as official assignee.

This question has come up on several occasions, and has been differently viewed by the judges. The whole question must turn on the interpretation to be put on the words of statute.

The argument put forward amounts to this: The Act by section 28, having dealt with the official assignee and his security, proceeds by section 29 to provide for the appointment of an assignee who may or may not be an official assignee, and it is provided by that Act that he shall give security "in manner, form and effect as provided in the next preceding section." Therefore it is said he is not an official assignee, and the law has specially provided how the estate shall be protected against his wrong-doing.

On the other hand it is said that by section 28 it is expressly provided that the official assignee's security is for the benefit of Her Majesty and for the benefit of the creditors of any estate "which may come into his possession under this Act." The estate came into his possession under this Act, and it was under this Act he always held it.

Notwithstanding the strength of this second proposition, I think the force of argument is in

favor of the first proposition. When it says the bond of the official assignee shall be for the benefit of the creditors of any estate that comes into his possession under this Act, it naturally means, acting in the capacity then referred to. Now it is plain he did not act as official assignee after the appointment by the creditors. It was not in virtue of his official position he acted, but in virtue of his appointment. It was entirely the fault of the creditors if they did not exact security.

We have not to decide what would be the effect of a continuance of the official assignee by a failure on part of creditors to appoint. C. J. Hagarty has given a decision on that point, which at first view appears to me to be supported by the terms of the Act.

I am to reverse.

DORION, C.J., also dissented.

The majority of the Court were of opinion to hold the surety liable, and the judgment was therefore confirmed.

Hatton & Nicolls, for Appellant.

R. & L. Laflamme, for Respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, September 27, 1883.

DORION, C.J., MONK, RAMSAY, CROSS & BABY, JJ.
QUEBEC STEAMSHIP COMPANY & MORGAN.

Jurisdiction—Cause of action—Action of damages for failure to perform contract.

Where the action is in damages for failure to perform a contract, the debtor may be sued at the place where the contract was made, though the failure to perform occurred in another district.

Wurtele v. Lengan et al. (1 Q. L. R. 61), and *Conroy & Ross*, (6 L. N. 154) commented on.

Motion by the defendant, the Quebec Steamship Company, for leave to appeal from a judgment dismissing a declinatory exception.

The action was for damages, by a traveller who had taken a return ticket at Montreal for himself and family to go and return from Metis. The plaintiff alleged that the defendant's steamer did not stop at Metis as was promised, that he had suffered by this.

The defendant pleaded by declinatory exception that its domicile was in the district of Quebec, and that as the whole cause of action