

struction. Giving the bond the most liberal construction in favour of plaintiffs, I think the past indebtedness must be limited to that created during the then current agreement between plaintiffs and R. L. Duncombe, and that no advance to him, even if made under some former agreement for agency, is covered, any more than a private debt to plaintiffs owed by R. L. Duncombe as an individual and not as an agent can be recovered by plaintiffs from defendant T. H. Duncombe. The agreement of 29th January, 1906, cancels all previous agreements between plaintiffs and R. L. Duncombe for agency. The only part of the past indebtedness of R. L. Duncombe to plaintiffs for which defendant T. H. Duncombe is liable, if liable at all, is what R. L. Duncombe owed as agent under the only agreement of agency in force on date of execution of bond. . . .

Upon the second branch of the case. It may be conceded that the contract of suretyship is not one of those spoken of as being *uberrimæ fidei*, but the creditor or employer owes a duty to the intending surety.

In *Davis v. London and P. M. Ins. Co.*, 8 Ch. D. 469, it was held that the change of circumstances between the company and their agent ought to have been stated to intending sureties. . . .

[Reference to *Hamilton v. Watson*, 12 Cl. & F. 108.]

In this case there was the evidence of an existing bond, with plaintiffs' third vice-president and general counsel as surety, which bond was to be given up upon getting a new one with defendant as surety. R. L. Duncombe was to get pay for stock owned by him, but standing in the name of this same officer of plaintiff company, but no attempt was made to keep out of the proceeds of stock R. L. Duncombe's indebtedness to plaintiffs, but the whole, by manifest intention, was to be thrown upon defendant, who was in entire ignorance of the real state of affairs between R. L. Duncombe and plaintiffs. . . .

[Reference to *Lee v. Jones*, 17 C. B. N. S. 482; *Railton v. Matthews*, 10 Cl. & F. 934; *North British Ins. Co. v. Lloyd*, 10 Ex. 523.]

I think what the surety would naturally expect was that the contract between the principal debtor and the plaintiffs was that of agency upon a new appointment; that the agent was to give security for work and faithful discharge of duty