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No. 6.

SUPREME COURT OF ONTARIO.

FIRST APPELLATE DIVISION.

APRIL 21ST, 1914.

RECHNITZER v. EMPLOYERS' LIABILITY.

6 O. W. N. 248.

*Insurance—Guarantee—Honesty of Employer—Defalcation—Evidence—Technical Defence—Reference.*

BOYD, C., 24 O. W. R. 157; 4 O. W. N. 875, gave plaintiff judgment for \$2,000 and costs in an action upon a policy of insurance under which defendant company insured plaintiff from loss by reason of the defalcations of defendant Mumme, the employer and agent of plaintiff. Reference to Local Master if desired.

SUP. CT. ONT. (1st App. Div.) affirmed above judgment.

Held, that it is not incumbent upon insured to volunteer information not asked for, and that such non-disclosure does not void a policy.

*Hamilton, v. Watson*, 12 Cl. & F. 109; *Seaton v. Burnand*, [1900] A. C. 135; *McTaggart v. Watson*, 3 Cl. & F. 525; *Creighton v. Rankin*, 7 Cl. & F. 325, followed.

Appeal by the defendants from a judgment of HON. SIR JOHN BOYD, C., at trial, awarding plaintiff \$2,000.

The appeal to the Supreme Court of Ontario (First Appellate Division) was heard by HON. SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE and HON. MR. JUSTICE HODGINS.

I. F. Hellmuth, K.C., for the appellant corporation.

Sir George C. Gibbons, K.C. and G. S. Gibbons, for the plaintiff, respondent.

HON. MR. JUSTICE MACLAREN:—Counsel for the respondent at the opening of the argument asked leave to produce evidence discovered since the trial, with a view of shewing that the appellant was fully aware of the relation of Mumme to the respondent before the issue of the policy and that it was intended to secure respondent against loss in that relation. After some discussion counsel for the appellant company stated that he did not intend to press