

In *Phillips v. Foxall* (L. R. 7 Q. B. 666) it was held that a surety was discharged when an obligee continued the party, whose honesty was guaranteed, in his service after knowledge of his dishonesty, without communication of the discovery of his dishonesty to the surety; while in *Sanderson v. Aston* (L. R. 8 Ex. 73) it was held that a plea stating that the obligee of a bond who has continued in his service a clerk and traveller who had failed to pay over sums received by him, contrary to the condition of the bond that he should well and satisfactorily account for and pay over to the plaintiff all sums received for the plaintiff's use, and that the plaintiff, though well knowing the said defaults, wholly omitted and neglected to inform the defendants thereof, and continued to employ the clerk in his service, was a good plea to an action on the bond for the breaches subsequent to the time when the plaintiff knew of the previous defaults. *Sanderson v. Aston*, however, was so decided upon the supposed authority of *Phillips v. Foxall*, but certainly goes much beyond what that authority would justify, and the Court now found it impossible to reconcile the decision in *Sanderson v. Aston* with the cases already cited. "But," added Denman, J., "even assuming it to be a binding authority on an undistinguishable state of facts, we think that it is not an authority that in the present case there was evidence for the jury of such a defence as that which was held to be valid in that case. It was a decision only on demurrer, and decides only that the plea stated facts of non-payments which were *prima facie* a breach of duty which would have entitled the obligee to discharge the person employed. It by no means follows that if all the facts of that case had been set out there would upon the whole matter have been any case for the jury in support of the defence in question. Even if the cases of *Phillips v. Foxall* and *Sanderson v. Aston* were applicable in other respects, we think that they are distinguishable in principle from the present case on a ground upon which the Court of Common Pleas in Ireland held the surety liable in the case of *Lawder v. Lawder and others*. That was an action on a bond given to the plaintiff, a county treasurer, by a high constable as barony cess collector. The defaults consisted of lodging moneys in his own bank instead of the county bank, and retaining in his hands more than £100 at a time, in violation of the conditions of the bond. The Court held that, though *Phillips v. Foxall* would have applied if the plaintiff had been a private individual, the sureties were liable because the treasurer merely sued in his official capacity, and no personal equity could be set up against him. It was no doubt there said: 'He does not appoint the high constable; he cannot dismiss him. *Phillips v. Foxall* and all such cases are grounded on privity existing between the plaintiff and defendant.' Still we think that where the parties taking the bond are mere trustees for ratepayers, as the corporation here were, and the collector also a person who owed a duty to the ratepayers, the sureties who had guaranteed the proper discharge of his duties have no right to shelter themselves under the neglect of its duty by the corporation in not insisting on the fulfilment of the very conditions of the bond to which they are parties. The corporation may themselves be looked upon 'as public officers' as much as was the treasurer in *Lawder v. Lawder and others*." And in the result it was held, accordingly, that the defendants were not discharged from their liability as sureties.—*Irish Law Times*.