a fraud, because the party is bound to make the disclosure; a the omission to make it under such circumstances is equivalent to an affirmation that the facts do not exist." In sec. 324 Story says: "Any undue advantage taken of the surety by the creditor either by surprise or by withholding proper information, will undoubtedly furnish a sufficient ground to invalidate the contract."

In the case before the Exchequer Court, the principal, in his lifetime, was a postmaster in the Province of Quebec, and had entered into a bond to the Crown with two sureties, for the faithful performance of his duties. At the date of his appointment it was one of his duties as such postmaster to receive all deposits for remittance to the central Savings Bank, established as a Branch of the Post Office Department at Ottawa. During his continuance in office and the existence of the bond, several defalcations occurred in the savings bank department of his office which came to the knowledge of the Post Office authorities, and in respect of which his excuses were accepted by them, and he was allowed to make the shortages good and remain in office. There was at one time an investigation by the Post Office authorities into the affairs of his office when a shortage was discovered on the part of a clerk, and this amount was also allowed to be made good and no notice given to the sureties.

After the postmaster's death still larger defalcations on his part were found, and suit was brought against the sureties. They defended the action upon the following ground, amongst others, viz.: that the postmaster having without the consent of the sureties been continued in office after it had been discovered that he had been guilty of dishonesty, the sureties were discharged as to any subsequent losses arising from his dishonesty, in other words, they sought to bring themselves within the principle enunciated by *Phillips* v. *Foxall* and cases similarly decided between subject and subject.

Burbidge J. while doubting that the principle of *Phillips* v. *Foxall* had any place in the law of the Province of Quebec, adhered to the opinion that in any event that principle could not be invoked against the Crown. Speaking of the doctrine above enunciated by Story the learned judge says: "I think that the rule is not applicable to cases arising upon bonds given for the faithful performance of their duties by officers or servants of the Crown, because fraud cannot be imputed to the Crown, and the