

was so executed, and when the defect at best is of a most technical character.

The other question raised was that the contract between the principal and the city had been varied to the prejudice of the surety. This alleged variance was a matter contemplated and provided for in the original agreement of which the benefit is claimed by the fidelity company, and of which that company was cognizant.

The property had been mortgaged to the city and had come to its hands by reason of the liquidation of another manufacturing company; all the plant attached to the freehold passed under the mortgage, but there was "a claim" as to "disputed machinery," about some articles alleged to be chattels not important in value, but enough to wrangle about. There was mention in the writings about having the claim between the city and the liquidator "adjudged," but with good sense the parties adjusted the matter out of Court at an outlay of \$250 paid by the city to the liquidator. The property was sold by the city to the Jules Motor Co., subject to this claim for "disputed machinery," which was then outstanding. The word "adjudged" used by the parties in the agreement and bond is loosely used as contemplating some friendly determination, for in one of the last paragraphs of the agreement it is said that the disputed machinery shall be kept in store for the liquidator until such times as "the dispute regarding the same has been settled or disposed of."

The settlement was that the liquidator was owner of the articles and they were bought by the city for \$250 and turned over to the Jules Motor at the same price. This was no variation of the original agreement; without adjudication the claim was settled and the transaction is thus set out in the agreement of 23rd November, which is set up as a variation.

The extent of damages recoverable on the breach of the bond was fixed at the trial at \$1,370. This is to be paid with costs of action by both defendants, and the fidelity company will have the right to recover as much as it can from the Jules Motor Co.—which has since gone into liquidation.