to the Grand Trunk Railway Company its policy, wherein it guaranteed the Grand Trunk Railway Company against any losses it might sustain by reason of the want of fidelity or honesty of the defendant as such employé of the railway company, to the extent of $800; that, before the issue of this policy, the defendant signed a written agreement, by which he stipulated that he would himself save the plaintiff harmless against any loss plaintiff might sustain by reason of the policy, and also that any account stated by the general accounting officer, or auditor of the railroad company, should be conclusive against the defendant as to the amount of any defalcation of defendant that the plaintiff might be compelled to pay. The affidavit further states that the defendant, after the issue of this policy, embezzled money to the amount of $546, which came into his hands as such agent and employé of the Grand Trunk Railway Company, and that the plaintiff paid the same, and now seeks to recover, or is about to bring a suit to recover that amount from the defendant.

The only question raised is, whether this shows such a case of fraud as justifies the issue of a capias. It is very clear there would be no liability for the amount claimed in this case, but for the embezzlement of the defendant as charged. If this defendant had faithfully and honestly performed his duty to the railway company, the plaintiff would have had no cause of action against him; and I take it, there can be no legal difference in the relation which this guaranty company sustains to the defendant, and the relation which a surety on his bond would have sustained. If he had asked a person to become surety on his bond and then embezzled the money of his employer, and the surety had been compelled to pay it, it would not lie in the mouth of the defendant to say that the liability to the surety did not arise out of a fraud. I find no special authority on this question. This class of contracts is new, and I do not find that they have been very much before the courts as yet, but it seems to me so clear there is hardly room for a doubt that there would have been no right of action but for the fraud of the defendant, and, it seems to me, his surety should have the same remedy as the original employer would have. He stands in the shoes of the employer, and has a right to be subrogated to all the rights of the employer in the prosecution of dishonest employés. The case is largely analogous to the very numerous class of cases that occur in our Admiralty Courts, where insurance companies are subrogated to the place of the insured, in cases of fraud or negligence on the part of other parties whereby losses occur to ships for which an insurance company is liable and compelled to pay under its policies.

Further than that, it seems to me, there is a principle of public interest involved in this question that should entitle this plaintiff to all remedies that the employer would have. We all know that in cases of large corporations, whose sole business it is to make, handle and disburse money for the benefit of their stockholders, or parties interested in their earnings, if they get their money from the sureties of their dishonest employés, they will not prosecute the employé either civilly or criminally. They will simply stand on their bond, and, if they get the money from the surety, they leave the punishment of the dishonest servant to the man who has suffered, rather than spend their money in prosecutions which either directly or indirectly may punish the wrongdoer; and inasmuch as we know that it is almost the universal custom for bankers, railroad companies and all large corporations, employing numerous agents and servants who handle their funds in one capacity or another, to exact a bond whether it may be such a policy as this, or the ordinary bond, it seems to me the common dictates of public policy should give to the sureties of such employés the same remedy that the defrauded employer would have. The Constitution and statutes of Illinois authorize the issue of a *capias ad respondendum* upon the filing of an affidavit showing that he defendant "fraudulently contracted the debt or incurred the obligation" respecting which the suit is brought, and there seems to me no room for question, as the record now stands, that defendant fraudulently incurred the obligation he is now under to make good this defalcation to the plaintiff.