

APRIL 21ST, 1914.

REICHNITZER v. EMPLOYERS' LIABILITY ASSUR-  
ANCE CORPORATION.

*Fidelity Guarantee Policy—Defalcation of Partner—Evidence—Non-disclosure of Indebtedness—Answers of Person Insured to Questions of Insurer—Non-fulfilment of Promises—Change in Salary and Position of Partner without Notice to Insurer—Concealment of Defalcation—Duty to Supply Information not Asked for—Failure to Give Prompt Notice of Defalcation—Extent of Liability—Reference.*

Appeal by the defendant corporation from the judgment of BOYD, C., 4 O.W.N. 875.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

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

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

The judgment of the Court was delivered by MACLAREN, J.A.:—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 corporation was fully aware of the relation of Mumme to the respondent before the issue of the policy, and that it was intended to secure the respondent against loss in that relation. After some discussion, counsel for the appellant corporation stated that he did not intend to press technical objections to the form of action, and was content to treat the question of indemnity as if the relation of the parties were the same as that of employer and employee.

The action was brought upon a fidelity guarantee policy issued by the appellant corporation, whereby it agreed to reimburse the Dominion Dressed Casing Company of London, Ontario, to the amount of \$5,000, for the pecuniary loss, amounting to embezzlement or larceny, that it might sustain by the fraud or dishonesty of Martin Mumme, its manager at Hamburg, Germany.

The casing company was composed of the respondent and Mumme, the latter being the agent for the sale of sausage casings shipped to him from London. The policy was issued on an