

TEETZEL, J.

JULY 12TH, 1911.

McDONALD v. LONDON GUARANTEE AND ACCIDENT
CO.

Guaranty—Fidelity Bond—Dishonesty of Servant—Embezzlement of Money—Untrue Statement of Employer in Declaration Forming Basis of Contract—Materiality—Cheques Signed in Blank Given to Servant—Avoidance of Contract.

Action upon a guarantee agreement, under which the defendants, for the consideration or premium of \$40, and upon the terms and conditions therein mentioned, agreed, during one year from the date thereof, and during any year thereafter in respect of which the company should accept the said premium and renew the said agreement, to make good and reimburse to the plaintiff, to the extent of \$10,000, such pecuniary loss as he might sustain by reason of embezzlement or theft of money on the part of one Douglas B. Findlay, who was then and had been for seven months a bookkeeper in the plaintiff's employment.

The agreement extended from the 1st May, 1906, to the 1st May, 1907, and was renewed for another year.

The plaintiff alleged that Findlay, during the two years, embezzled from him various sums, aggregating much more than \$10,000.

R. McKay, K.C., for the plaintiff.

J. B. Clarke, K.C., H. H. Dewart, K.C., and C. Swabey, for the defendants.

TEETZEL, J.:—It was agreed at the trial that specific proof of embezzlement should be limited to a few items, and that, if I were satisfied that the plaintiff had suffered loss through embezzlement by Findlay, and if I determined that the defendants were liable under the agreement, there should be a reference to ascertain the amount up to \$10,000.

The evidence offered satisfies me that Findlay embezzled \$1,000 on the 21st March, 1907, and \$240.75 on the 16th September, 1907, so that, if the defendants are liable for anything under the agreement, there should be a reference to the Master in Ordinary.

The agreement recites that the employer (the plaintiff) has delivered to the company certain statements and a declaration setting forth, among other things, the duties and remuneration of