

of the present agency of said R. L. Duncombe, or under any future agency agreement, either joint or several, for the purpose of enlarging his business or otherwise, and whether the same shall have been advanced under the terms of the agency agreement between said R. L. Duncombe and said company or any future agreement, or otherwise, or to any third person at his request, and whether said R. L. Duncombe shall have made any express promise to repay the same or otherwise."

R. L. Duncombe had been appointed agent of the appellants on 11th September, 1905, and an agency agreement of that date had been entered into between him and the appellants; that agreement was modified by an agreement bearing the same date, and another agreement similar in terms was entered into on 8th November, 1905, and still another on 29th January, 1906, and the last of these agreements was the one in force when the bond sued on was entered into.

The claim of the appellants is made up of \$75.72, premiums alleged to have been received by R. L. Duncombe, the agent, between 14th March, 1906, and 11th May, 1906, and \$900, advances alleged to have been made to him between 8th November, 1905, and 7th May, 1906 (statement A.)

This statement shews that at the date of the agreement of 29th January, 1906, Duncombe, the agent, was indebted to the appellants in \$650 for advances, that \$75 was advanced to him on that day, and \$175 in three sums of \$50, \$50, and \$75, subsequently.

Two grounds of defence are set up by the respondent, and have been given effect to by my brother Britton:—

(1) That the terms of the bond do not cover the advances made prior to 29th January, 1906.

(2) That the failure of the appellants to disclose to the respondent the fact that the person whose fidelity he was undertaking to be answerable for, was then indebted to the appellants in the sum of \$650, was a concealment of material facts which should have been disclosed, and that the respondent is therefore entitled to repudiate the obligation entered into by him.

Dealing with the first ground of defence, I am of opinion that the terms of the bond cover the amount of the claim of the appellants for the premiums and the advances made on and after 29th January, 1906.