

This is a case which illustrates the principle that in a contract of suretyship for the fidelity of a servant it is necessary for the master to disclose to the proposed surety all material facts within his knowledge affecting the proposed contract. In this case the plaintiff took from the defendant a bond as surety for the fidelity of a servant of the plaintiff, and the plaintiff omitted to disclose to the surety the fact, known to the plaintiff, but not to the surety, that the servant in question had been previously found guilty of dishonesty, and it was held by the Court of Appeal (Williams, Moulton, and Kennedy, L.JJ.) that the concealment of this material fact, though not due to any fraud on the part of the plaintiff, was, nevertheless, a bar to his recovery on the bond; because there is an implied representation in such a contract that the person whose honesty is guaranteed is not, to the knowledge of the person employing him, dishonest, and the non-disclosure of the servant's dishonesty, constitutes, in effect, a misrepresentation that it does not exist. Moulton and Kennedy, L.JJ., discuss the difference between a contract of suretyship for the fidelity of a servant, and contracts of insurance or of guarantee for the debt of another person, and conclude that while contracts of insurance, and guarantees of debts are not vitiated by the non-disclosure of all material facts, yet a different rule prevails in regard to contracts of suretyship for the fidelity of servants. The judgment of Lord Alverstone, C.J., was, therefore, affirmed.

COMPANY—RECEIVER AND MANAGER—BILL OF LADING—LIEN FOR
PREVIOUSLY UNSATISFIED FREIGHT—RIGHT TO LIEN AS AGAINST
RECEIVER.

Moss SS. Co. v. Whinney (1912) A.C. 254. This was an appeal from the decision of the Court of Appeal in the case of *Whinney v. Moss* (1910), 2 K.B. 813 (noted ante, vol. 47, p. 54). The plaintiff had been appointed receiver and manager of a company in a debenture holder's action, and in that capacity he had shipped goods of the company to be delivered to the company, care of its agents, in Malta; by the bill of lading it was provided that the shipowners were to have a lien on the goods for the freight due thereon, and also for any previously unsatisfied freight due by the company to the shipowners. The shipowners having refused to deliver the goods without payment of the previously unsatisfied freight, this demand was paid under protest and this action was brought by the receiver to recover the sum so paid. The Court of Appeal held that the plaintiff was entitled