

SUPREME COURT OF CANADA.

OTTAWA, Jan. 16, 1884.

Before RITCHIE, C. J., STRONG, FOURNIER, HENRY
and GWYNNE, JJ.

TREACY et vir (defts.), Appellants, and LIGGETT
et al., (plffs.) Respondents. (9 S. C. Rep.
Can. 441.)

C. C. P. 803, 1034—*Donation in marriage con-
tract—Proof of insolvency of donor at date
of donation necessary to set aside.*

On the 28th June, 1876, the plaintiffs sold to T., a property for \$12,250, of which price \$3,789 were paid in cash. On the 16th June, 1879, T.'s daughter married one K., and in the contract of marriage T. made a donation to his daughter of real estate of considerable value, the only property remaining to him being that sold to him by the plaintiffs. In July, 1881, the plaintiffs brought an action to set aside the gift in question, claiming that the property sold had become so depreciated in value as to be insufficient to cover their claim for the balance remaining due to them and secured only by the property so sold; that the gift in the marriage contract had reduced T. to a state of insolvency, and had been made in fraud of the plaintiffs, and that at the time the gift was made T. was notoriously insolvent. T. pleaded, *inter alia*, denying averments of insolvency, fraud, or wrong-doing. The only evidence of the value of the property still held by T. at the date of the donation was the evidence of an auctioneer, who merely spoke of the value of the property, in November, 1881, and that of a real estate agent, who did not know in what condition the property was two years before but stated that it was not worth more than \$6,000 in November, 1881, adding that he considered property a little better then than it was two years before, although very little changed in price.

Held, reversing the judgment of the Court of Queen's Bench, (Montreal, 22nd May, 1883,) that in order to obtain the revocation of the gift in question, it was incumbent on the plaintiffs to prove the insolvency or *déconfiture* of the donor at the time of the donation, and that there was no proof in this case sufficient to show that the property remaining to the donor at the date of his donation was inade-

quate to pay the hypothecary claims with which it was charged.

Doutre & Joseph for appellants.

Judah & Branchaud for respondent.

U. S. CIRCUIT COURT, N. D. ILL.

THE LONDON GUARANTY AND ACCIDENT CO. V.
GENDES. (17 Chic. L. N.)

*Surety—Rights of Company insuring employer
against loss by misconduct of employé.*

1. Under the Constitution and statutes of Illinois, which authorize the issuing of a *capias ad respondendum*, upon the filing of an affidavit, showing that the defendant fraudulently contracted the debt or incurred the obligation respecting which the suit is brought, where a guaranty company issued its policy guaranteeing for a consideration an employer, against any losses it might sustain by reason of the want of integrity, honesty and fidelity of an employé, and received from the employer a written agreement in which he stipulated that he would save such company harmless against any loss it might sustain by reason of the issuance of said policy. *Held*, that such company would have the right, in case of an embezzlement of the employé from the employer, and the payment of the loss by it, to arrest and hold to bail such employé.

2. In such case the obligation sued on is contracted and incurred when the embezzlement takes place, not when the agreement to pay is executed.

3. The insurance company stands in the shoes of the employer, and it has a right to be subrogated to all the rights of the employer, in the prosecution of dishonest employés, and the common dictates of public policy would give to the sureties of such employés the same remedy that the defrauded employer would have.

BLONGETT, J. This is a motion to quash the *capias* and discharge on common bail, upon the ground that the affidavit filed does not show a case which authorizes the issue of a *capias*.

The facts set out in the affidavit are briefly these: The plaintiff is a corporation, created in England, with authority to insure employers against loss by reason of the want of integrity, fidelity or misconduct of employés. It is stated in the affidavit that the defendant was an employé of the Grand Trunk Railway Company, as their outside ticket agent at Orillia, Province of Ontario; that, at the request of the defendant, the plaintiff issued