extent that these securities were lost by reason of the plaintiff placing them in Gorman's hands for collection.

In such a case as this the creditor holds the collaterals for all the parties interested, and is bound to use ordinary diligence in the care of them, and upon payment by the surety to assign them to the surety, and if the creditor has, without the knowledge or consent of the surety, negligently suffered the securities to be diverted from the purpose of the pledge, to the prejudice of the surety's right to be subrogated, the surety will be discharged to the extent of the actual loss: De Colyar on Guaranties, 3rd ed., p. 321; Taylor's Equity, para. 250; 32 Cyc. 217.

The questions for decision seemed to be:—

(1) Was it negligence on the part of the plaintiff to employ Gorman, the principal debtor, as his agent to collect premium notes deposited as collateral security?

(2) Did Coran, the surety, assent to such a course?

Reference to authorities, especially Crim v. Fleming (1884), 101 Ind. 154.

What is reasonable or what is negligent depends on the circumstances adduced in evidence in the particular case. The circumstances here were peculiar. The collateral security consisted of 25 premium notes, for amounts ranging from $16 to $145, all made by foreigners unable to speak English, and all obtained by Gorman, or his sub-agent, Coran. It was not suggested that the plaintiff had any reason to suspect the honesty of Gorman. The nature of the transaction, the character of the notes and the makers thereof, indicated that something out of the ordinary would be required to insure the collection of the notes as they matured, and that it would be advisable, if not necessary, to make use of both Gorman and Coran in effecting collections. There was evidence that, before Coran endorsed the last renewal and the waiver and guarantee, he knew that Gorman was collecting the notes or some of them. In Coran's affidavit, made part of the record, he deposed that he was induced to sign the note on the representation of the plaintiff and Gorman "that no risk or liability would attach to me by so doing, as the notes taken for the insurance would be collected *by them*."

The learned County Court Judge had found that the plaintiff was not negligent; and, after a careful perusal of the evidence and consideration of all the circumstances, the learned Justice of Appeal was not prepared to say that the trial Judge was wrong.

The proper conclusion as to the second question was, that the defendant Coran knew of and acquiesced in the employment of Gorman for the purpose of making the collections.

Appeal dismissed with costs.