

the defendant Cornish as treasurer of the rural municipality of Brokenhead for a term of three years in the sum of \$3,000, and the premium for the three years' insurance was paid in advance. On March 3rd, 1905, the company gave notice, in accordance with a provision in the bond, cancelling the guarantee at the expiration of three months, whereby the liability of the company was confined to any defalcations of Cornish prior to June 3rd, 1905. This action necessitated the vacating by Cornish of his position as treasurer; but, on it being intimated to the council that the company would re-instate Cornish on the bond if they got a satisfactory counter security bond, the other defendants argued to give such security, and the council voted to re-appoint Cornish. The manager of the company for Canada, Mr. Alexander, then had prepared a form of counter security bond for the defendants to sign and, after it was returned to him signed, he sent to the municipal commissioner a document signed by himself purporting to be an indorsement on the original bond re-instating Cornish for a guarantee of \$3,000 dating from June 3rd, 1905, to May 1st, 1907. The defendants were not asked to secure the company by their counter bond against past defalcations and did not know that there were any such, and the wording of their counter bond did not clearly shew that it was intended to secure the company against past defalcations of Cornish. Shortly afterwards the company was obliged to pay the amount of its original bond to the municipal commissioner in respect of defalcations of Cornish committed prior to 3rd June, 1905. They then sued defendants upon the counter bond.

Held, that, under all the circumstances, defendants were not liable, as their bond should be held to have relation only to the liability of the company under its re-instating contract, and not to that under the cancelled bond.

Held, also, that, as there was no evidence that Mr. Alexander had authority from the company to make the indorsement he gave, the plaintiffs had failed to establish that they had continued the guarantee bond previously in existence, and consequently there was a total failure of consideration for the defendants' counter bond, and for that reason also they were not liable upon it.

Campbell, A.-G., K.C., for plaintiffs. *Ferguson, Machray, Fullerton and Manahan,* for defendants.