

9 December, 1896.

NIAGARA DISTRICT FRUIT GROWERS CO. V. WALKER.

Ontario.]

*Principal and surety—Guarantee bond—Fidelity of principal—
Principal's default—Duty of creditor to disclose.*

W. was appointed in 1891 by instrument in writing, agent of a company to sell its fruit, giving a bond with sureties conditioned for the faithful discharge of his duties, and prompt return of monies collected on sales. At the end of the year, the bond was given up and a new bond executed by W., and the same sureties for the next year's business, and the same course was pursued for three years more. W. was in arrears to the company every year, and represented that it was due to slow collections, although by the terms of his appointment he could only sell for cash. The arrears were always made good by W. giving an indorsed note which the company accepted. At the end of 1894 the company discovered that the default had not been caused by slow collections, but that W. had received monies which were not remitted, and for the balance due on that year's business, an action was brought against the sureties.

Held, reversing the judgment of the Court of Appeal (23 Ont. App. R. 681), that the appointment of W., as agent for each of the four years was an independent appointment; that the position of the sureties for 1894 was the same as if other persons had been sureties in the preceding years; and that the company was under no obligation to disclose to the persons signing the bond for 1894 the default of the preceding year, nor was the non-disclosure a representation that W. had punctually performed his undertakings in respect of such previous employment.

Moss, Q. C., & Meyers, for appellants.

Armour, Q. C., for respondents.