Fidelity, Court and Contract Bonds

Paper Read before the Insurance Institute of Vancouver, by Mr. William Thompson, British Columbia and Alberta Manager of the London and Lancashire Fire Insurance Company.

I have the privilege tonight of reading to you a few notes I have put down, dealing with those interesting subjects—Fidelity, Court and Contract Bonds.

Personal Bonds are known to have existed for several centuries back—but in these cases, they were nearly all connected with the loaning of money, or its equivalent.

In the year 1720, an additional feature was considered at a meeting held at the Devil's Tavern, Charing Cross, London, at which a corporation was formed, with a capital stock of $5,000.00, to insure masters and mistresses against losses sustained by thefts of servants, who had to be ticketed with, and registered by, the Society.

Then about the year 1840, the Guaranty Society of London was organised—the public taking quite an interest in its contemplated field of operations, which it did not approve because the business was regarded as "speculative"—the fallacy being expressed "that a master would hesitate to accept an employee, who could only give corporate surety for his honesty."

Canada, even in the old days, was progressive, because in the year 1851, the Guarantee Company of North America was incorporated.

So far as the United States was concerned, in about 1865, realizing the limitations and disadvantages of personal suretyship, some unknown, but enterprising individuals, considered the question of forming a company, to go into this field as a business, and cnarge a fee for their services.

In the year 1865, the legislature of the state of New York, authorised the formation of corporations to guarantee the fidelity of persons holding place of private trust.

Possibly a company was formed in 1865—but the first American Office that really entered the surety field was the Fidelity and Casualty Company of New York, which was incorporated in 1876, and commenced operations in 1879.

Both the Canadian and American companies confined their acceptances to guaranteeing the fidelity of persons in private trust—this being all they could legally do at the time.

It was not until 1881, that the New York Legislature authorised any head of department, surrogate, judge, sheriff, district attorney or any other officer who was required to approve the sufficiency of any bond, in his discretion, to accept the same whenever the conditions of such bond were guaranteed by a Bonding Company.

In 1884, the American Surety Company of New York was formed, and that company issued bonds to guarantee the fidelity, not only of private employees, but also of executors, administrators, guardians, trustees, and other fiduciaries.

Then in 1890, the Fidelity & Deposit Company of Maryland was formed, who in addition to writing all the above classes, included bonds of public officers.

From that time on, many companies have been incorporated, until there are now some 25 companies, with an aggregate premium income of about $25,000,000 annually.

Corporate surety is rapidly replacing personal surety for the following reasons, viz:-

1. It places a man in an embarrassing position to have to ask anyone to go his bond—and further it creates an obligation which the surety may feel entitles him to ask favors.

2. An individual usually objects, and rightly so, to assuming a very definite and important liability, when he does not receive any remuneration for the risk he incurs.

3. The surety might be financially responsible—but his assets may have been impaired after going on the bond—and in fact have ceased to exist when the claim arises—hence the inadequate protection offered.

4. For business and other reasons, it might not be prudent to force a personal surety to reimburse an employer for his loss. Indeed he could assign, and in this way render collection almost impossible.

5. Personal sureties have been known to move away, and to be lost sight off—also to die—the death only to be revealed when the claim arises.

Some of the advantages of a corporation surety bond are:-

1. The principal is under no obligation in the securing of the bond.

2. In the event of a claim occuring, the employer is at liberty to promptly ask that the surety obligations be completed—and that he be indemnified for his loss.

3. The bonding company enquires very closely into the principal's past record, and the employer gets the full benefit of the guarantee companies' organisation. If any defect is found, the bond will not be issued. This usually gives the employer food for thought.

4. The knowledge that he is bonded by a surety company has a restraining influence upon an employee—because he knows he will be called upon to indemnify the bonding company to the fullest extent for any monies they may pay out on his behalf.

Bonds.

Bonds are cold blooded documents, that set out in explicit phraseology the particulars of certain agreements, involving certain obligations, which, if satisfactorily carried out, void the bond.

If, however, the provisos in the agreements are not lived up to—there is a default under the bond, which pays to the obligee the monetary loss, not exceeding its face value, and in turn the principal or obligor, is under indemnity to reimburse the surety company, not only for the obligee's claim, but also for all costs incurred, of whatever nature.

Nothing can be implied, or read into a bond, it means precisely what it says—nothing more, nothing less—and its stipulations have to be observed both in spirit and letter or it is void.

To illustrate exatcly what I mean—we have not a better example than that given in Shakespeare's "Merchant of Venice," (written about 1594 A.D.)—where Bassanio borrows money from Shylock, the agreement being drawn, we are told, by a notary, with Antonio as surety. Shylock says:-

"If you repay me not on such a day,
"In such a place, such sum or sums as are
"Expressed in the condition, let the forfeit
"Be nominated for an equal pound
"Of your fair flesh, to be cut off and taken
"In what part of your body pleaseth me—"

It will be recalled that Shylock hated Antonio, the Merchant of Venice, who lent money without charging interest, which, to Shylock's dismay, had the effect of "bring down the rate of usance here with us in Venice."

Owing to a run of bad luck, Antonio could not pay the borrowed 3000 ducats when due, and the bond became forfeit, the Jew later refusing to accept 9,000 ducats, and release Antonio, insisting that he could legally claim "a pound of flesh, to be by him cut off, nearest the Merchant's heart."

The court, to whom the case was referred, reluctantly granted Shylock his pound of flesh,—nearest his heart—in accordance with the very words of the bond—Shylock in his eagerness for his victim's life, having the scales ready.

Bassanio's wife, Portia, dressed as a man, defended Antonio, and just as Shylock was going to cut the flesh—

Portia said :

"Tarry a little—there is something else.
"This bond doth give thee here no jot of blood
"The words expressly are 'a pound of flesh.'
"Take then thy bond, take thou thy pound of flesh
"But, in the cutting it, if thou does shed
"One drop of Christian blood, thy lands and goods
"Are, by the laws of Venice, confiscate
"Unto the State of Venice.
"Therefore prepare thee to cut off the flesh
"Shed thou no blood, nor cut thou less or more
"But just a pound of flesh, if thou cut'st more
"Or less than just a pound, be it but so much
"As makes it light or heavy in the substance
"Or the division of the twentieth part
"Of one poor scruple, nay, if the scale do turn
"But in the estimation of a hair,
"Thou diest, and all thy goods are confiscate."

Shakespeare records that Shylock lost his pound of flesh, his 3000 ducats—also his estate.

This interesting case is quoted at length to show the keen, analytical mind that Portia possessed that was able, even in those old days, to define the precise liability under the bond, which was prepared to pay exactly what is called for—no more, no less.

It is not quoted to show that even in ancient times, bonding companies successfully disputed liability—an opinion frequently expressed by the uninformed and irresponsible man in the street, who reads in the papers an isolated case where there is a question of liability, without knowing, or being sufficiently interested to find out, anything of the other 999 cases that are satisfactorily adjusted and promptly paid.

There are two or three interesting differences between Insurance and Suretyship, viz:-