

SUPREME COURT OF CANADA

Niagara District Fruit Growers' Stock Co. v. Walker*

Principal and Surety

The judgment of the Court of Appeal in this case, reported on p. 222 of the current volume of the JOURNAL, has been reversed by the Supreme Court. The facts briefly were as follows:

An agent was engaged by the plaintiffs from year to year for four years to sell fruit on their behalf on commission, one of the terms of the engagement being that he was to sell only for cash and that all moneys should be paid in from day to day to their credit in a named bank. The agent got into arrears with his remittances, which he attributed to slow collections, and a large balance was due by him to the plaintiffs at the end of each of the first three years, and the plaintiffs, at the end of each year, took his note for the amount due, payable in the next year. In each year he gave a new bond to the plaintiffs with the same sureties, to secure the faithful performance of his duties and the prompt payment of moneys received. The notes for the arrears were retired each year before the new bond was executed. The defendants, the sureties, entered into the contract of suretyship without making any enquiries from the plaintiffs. After the fourth season the Company discovered that the agent had lected moneys of which he had made no returns, and brought action to recover the same from the sureties.

The Court held that each year there was an employment of the agent distinct from and independent of those of preceding years; that the position of the sureties upon reappointment was the same as if other persons had signed the bond of the preceding year; and that the Company was under no obligation, on taking a new bond, to inform the sureties that the agent had not punctually performed his undertakings in respect of previous employment, nor did the non-disclosure imply a representation to the sureties when they signed a new bond that they had been punctually performed.

In the course of the judgment the important question as to

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