giving no particulars, and stating no reasons for his belief The councillor mentioned the matter at a meeting of the council, and got a resolution passed appointing a committee to inquire as to the solvency of the treasurer's sureties. If Mr. Grey's opinion excited the suspicion of this councillor, it did not seem to have destroyed the confidence of the other members of the council; nor did the confidence which both the council and the sureties had placed in the treasurer's integrity appear to have been destroyed even when, in February or March, 1869, he acknowledged his inability to pay the balance due from him as treasurer Either at the instance or with the approval of the sureties, the council abstained from removing him from his office, until he absconded in the month of May following.

The case came on for examination of witnesses and hearing at the sittings of the court at Woodstock, in the spring of 1870.

The facts above stated were those which the court considered to be deducible from the evidence.

Mr. *Crooks*, Q. C., and Mr. *John Hoskin*, for the plaintiffs.

Mr. *Blake*, Q. C., and Mr. *Richardson*, for the defendants Douglas and Dunlop.

The bill was *pro confesso* against defendant Kintrea.

MOWAT, V. C. [after stating the facts as above set forth]—With reference to the points urged by the learned counsel for the defendants, I may say that I am satisfied that when the defendants became sureties the council believed Kintrea to be honest, and to have been faithful to what was mutually considered his duty as treasurer; that it was from no apprehension as to what might be discovered that they had at any time refrained from inquiry as to the specific existence, in money or on deposit, of the balance of the treasurer's receipts; that, at or before the execution of the bond in question, the members of the council, with possibly one exception, did not suspect that the treasurer was insolvent, or that the debt or fund was in danger; that the council had no fraudulent motive in calling for new sureties, and did not fraudulently withhold from the sureties any information which the members had. So far, therefore, as the defence of the sureties is founded on the fraud of the council, I think that the defence is not sustained by the evidence.

The answer does not rest the defence on fraud only; but without proof of fraud it is clear that the defence cannot be sustained. There was a dictum of Lord Truro's, in *Owen* v. *Homans* (3 McN. & G. 378), followed in *Cashin* v. *Perth* (7 Gr. 340), the effect of which was, that the rule which prevails in insurance cases was applicable as between a creditor and an intending surety: that as all material circumstances known to the insured must be communicated on his application to insure, a creditor was under an obligation to be equally full in his communications to an intending surety; and that neglect of this obligation, though without fraud, vitiates the surety's contract. But this opinion was corrected by *The North British Insurance Company* v. *Lloyd* (10 Exch. 523), where all the previous cases were reviewed; and the doctrine was distinctly laid down, that a surety cannot get rid of his obligation on the ground of want of information, unless he can show that the information was fraudulently withheld. The same view has been maintained in all the late cases.

It appears by the treasurer's cash-book that his balance on the 7th May, 1858 (the date of the bond in question), was $1,392 38. This balance was largely increased by his subsequent receipts, so that after making all payments the balance on the 21st December amounted to $3,391 03½, according to the treasurer's account of that date as audited and printed. The treasurer's subsequent payments seem to have exceeded his receipts for the township. The money received after the 7th May, 1868, was, like all the money received previously, allowed to be mixed up by the treasurer with his other money, and was used by him; so that when, in February, 1869, the balance was called for, he was unable to pay it; and it is now clear that he had been insolvent for some time—probably for several years. The bill does not complain of the conduct of the council after the execution of the bond. If the allowing of the treasurer to mix up township money with his own, and to use the whole in common, as a banker might, does not relieve the sureties from their obligation, like conduct before the bond certainly cannot affect the sureties' liability. Now, in *Black* v. *Ottoman Bank* (8 Jur. N.S. 893), it was held by the Privy Council to be clear, "that the mere passive inactivity of the person to whom the guarantee is given, his neglect to call the principal debtor to account in reasonable time, and to enforce payment against him, does not discharge the surety; that there must be some positive act done by him to the prejudice of the surety, or such degree of negligence as, in the language of Sir W. P. Wood, V. C., in *Dickson* v. *Lawes*, to imply connivance, and amount to fraud. The surety guarantees the honesty of the person employed, and is not entitled to be relieved of his obligation because the employer fails to use all the means in his power to guard against the consequences of dishonesty."

In *Dickson* v. *Lawes*, Kay, 306, which is referred to in this extract, Lord Hatherley, then Vice-Chancellor, referred to the argument of a surety that there was a step which the creditor might have taken that would have led him to the discovery of the debtor's fraud, and that the fraud remained undiscovered solely on account of the creditors having neglected to take that precaution; and the learned judge answered the argument by saying: "No authority has yet been producee which goes anything like to the extent that, in such circumstances, the surety would be discharged; and all the analogy to be derived from the cases which have been hitherto decided by the court is the other way. Nothing can exceed the negleet of parties, who, for ten or twelve years, fail to call upon a clerk for an account. They have a high opinion of his honesty, and they trust him; the surety can know nothing of it; all of a sudden they find out a default in his accounts; and they have been allowed to sue the surety; and the surety never has escaped on account of that species of negligence. It is possible te put the doctrine higher than this. that there must be, as Lord Brougham expresses It, such an act of connivance as enables the party to get the fund into his hands, or such an act of gross negligence as to amount to a wilful shutting of the person's eyes to the fraud