

*The Teller of a Bank endorsed on a parcel of bank notes the amount which it was supposed to contain. It was subsequently discovered that the parcel was \$6,300 short, and it was ascertained that a deficiency of the same amount existed in the Teller's accounts, and had been during several years skilfully covered up and concealed from the knowledge of the authorities of the bank, who had made the usual inspections.*

*Held, that a Guarantee Insurance Company which had guaranteed the fidelity of the Teller was liable for the deficiency, but only to the extent which occurred after the contract was made.*

PER CURIAM. The defendant, Lesperance, was a teller in the Banque Nationale, and the other defendant (the Canada Guarantee Company), guaranteed his fidelity. The first policy was granted on the 1st of May, 1878, for a year; and when that expired, it was renewed for another year. In December, 1879, the Bank took the present action against both of the defendants, alleging a defalcation of \$6,300 by Lesperance, and the joint and several liability of both of them under the bond.

The declaration specially avers that on the 23rd May, 1879, while the policy subsisted, Lesperance, at the close of his day's work, locked up the cash and securities under his control in the usual manner, and went to his home, which appears to have been at Longueuil. That the 24th and 25th of May were both of them holidays, one being the Queen's Birthday and the other a Sunday; and the Bank only opened its doors again on the Monday morning, and Lesperance being unable to come, sent his keys to the Manager. That amongst the values in his cash box, the defendant had tied up a parcel of bank notes to be sent to the principal office at Quebec, and had endorsed on it what were supposed to be its contents, viz., \$10,363; that this parcel was sent off by the express to Quebec on that same afternoon, and it was there discovered that instead of containing \$10,363, as shown by the writing on the back of it, the parcel only contained \$4,063, making a deficiency of \$6,300. That after referring to the Express Company and making a minute inspection, the Bank came to the conclusion that he was a defaulter to that amount, and had been so for some time previous to this discovery. That the Bank forthwith gave notice to the Insurance Company, offering to give them commu-

nication of the books and accounts, and to do everything that might be desired of them in order to ascertain the facts; and they, the Insurance Company, actually made a minute examination of the thing for themselves, and convinced themselves that the defalcation really existed. That the Bank further, in pursuance of a stipulation in the policy to that effect, caused Lesperance to be arrested on a criminal charge at their request, and alleging that they have done everything they were bound to do, they conclude for a joint and several condemnation of the defendants for the missing sum.

The defendant, Lesperance, pleading for himself, answers in effect by telling the plaintiffs to prove their case. He says there is no deficit; that when he left the Bank on the 23rd of May his cash and securities were all right, the \$6,300 included, and if the money has disappeared, it must be by the fault of the Express Company, the Quebec branch or the Manager here. The Guarantee Company pleads, firstly and secondly, certain conditions of the bond requiring preliminary proof before action brought, and that the plaintiffs should prosecute criminally. The third plea denies the guilt of Lesperance, and alleges that when he left the Bank on the 23rd, he left the money and securities under his control in the coffers of the Bank intact; and that, meeting with an accident on the 24th, and not returning to the Bank on the 26th, he sent his keys to the Manager, who received them, counted the cash and securities, and certified them as correct in the Bank's books, which was true, and he (Lesperance) is thereby relieved from all further responsibility.

The Guarantee Company's fourth plea is, that if any loss has been sustained by reason of Lesperance's acts, it was sustained previous to the execution of the bond. That the Bank's claim is based on error in ascertaining the result of entries in the Bank's books, which have been irregularly kept for years prior to the bond. There was a motion made at the hearing to add to the other averments, to the effect that any such deficiency could only have occurred by the gross negligence and carelessness of the Bank, and was concealed from the assurers at the time the risk was first taken. I think this addition may be made without injustice or inconvenience, and will be sufficiently met by the general answer.