

See *Lewis v. Dalby*, 3 O. L. R. 301, where at p. 304, it was said by Meredith, C.J.: "It seems to me that by your having to admit the necessity of giving notice of action, you cannot successfully contend against the giving of security. If you wish to avoid giving security why not proceed against the defendants in their private capacity and not as police constables?"

HON. SIR JOHN BOYD, C.

FEBRUARY 28TH, 1913.

REICHNITZER v. EMPLOYERS' LIABILITY ASSURANCE CORPORATION.

4 O. W. N. 875.

Insurance—Guarantee—Honesty of Employee—Defalcation—Evidence—Technical Defences—Reference.

BOYD, C., gave judgment for plaintiff for \$2,000 and costs in an action upon a policy of insurance under which defendant company insured plaintiff from loss by reason of the defalcations of defendant Munns, the employee and agent of plaintiff.

Reference if desired to Local Master.

Action upon a policy of insurance for \$5,000 in favour of plaintiff, insuring him against loss by reason of the default of his employee the defendant Munns.

Sir George C. Gibbons, K.C., for the plaintiff.

T. G. Meredith, K.C., for the defendants.

HON. SIR JOHN BOYD, C.:—The justice of the plaintiff's claim commends itself, not so the defences raised by the corporation, which savour of technicality. For value paid by the plaintiff the defendants undertook to guarantee the honest dealing of the defendant Munns in his conduct of the business of the plaintiff in Europe and at Berlin. The agent of the defendants who made the contract knew that the essence of the transaction was to protect the plaintiff and that the Dressed Casing Company was substantially a synonym for the plaintiff who had put all the capital in and merely shared profits with his employee Munns to encourage him to greater exertion and faithfulness. The guarantee company had no reason to suppose or understand that their engagement was other than this.