

and accounting and payment over under this new appointment; and not that the appointment had been made months before; that advances had been made and had not been accounted for under that appointment; that the third vice-president and general counsel of plaintiffs had been surety and was being released upon getting the new bond; and that the contract between plaintiffs and the agent called for security to the amount of only \$1,000, that being the amount of bond of H. S. Duncombe. These seem to me to be most important matters for the surety to know, and things that plaintiffs were bound to communicate to the surety, and, in my opinion, the way this bond was received from defendant should be considered as fraudulent on the part of plaintiffs as against him, plaintiffs being affected by the knowledge and conduct of the third vice-president in this matter. . . .

[Reference to *Sanderson v. Aston*, L. R. 8 Ex. 73. *West Zorra v. Douglas*, 17 Gr. 466, distinguished.]

There may be dealings between (existing relations between) the creditor and the principal debtor, the withholding of which from the intending surety would, in my opinion, be fraudulent as against him. It is very significant that, notwithstanding the modification in many of the terms of the agreement, R. L. Duncombe did no work or business as agent for plaintiffs after the bond was obtained. A witness said that R. L. Duncombe ceased active work in June, but it is not shewn that he did anything as such agent after the day of the date of the bond.

Action dismissed as against T. H. Duncombe with costs.

DECEMBER 22ND, 1906.

DIVISIONAL COURT.

JARVIS v. JARVIS.

Husband and Wife—Land Purchased by Husband—Conveyance Taken in Name of Wife—Gift or Settlement—Intention—Evidence—Improvidence—Absence of Relation of Confidence—Undue Influence not Shewn—Want of Independent Advice.

Appeal by defendant from judgment of MAGEE, J., in favour of plaintiff in an action by husband against wife to