

that it should be cancelled by reason of the company not having informed the sureties of the withdrawal of the directions to arrest the agent. It was objected, on behalf of the company, that the representations made did not induce the contract, and that if there was *dolus malus*, it was not *dolus malus* of which it could be predicated that it was *dans locum contractui*; as to which Mr. Justice Fry said: "I do not think that that view is tenable. It is said, no doubt, that Evans," (the agent) "was supposed to be a rich man, and that Evans was not believed by his friends to have committed this offence. That may have been their state of mind when they began the negotiations. It certainly was not their state of mind on the 14th, still less was it their state of mind at their first interview on the 15th, and I think their state of mind was well known and appreciated by Mr. Burn," (the company's solicitor.)

I have made this extract as probably presenting an additional ground of defence; namely, the representation that there was no existing surety bond of the treasurer, and that unless he gave fresh bonds he would be deprived of his office, which, in view of the above case, might constitute such pressure as to relieve the surety, the bond having been procured without that fact having been communicated to the defendant. This point however was not taken, and I do not make it any part of the reason for arriving at the conclusion that the verdict ought to be entered for the defendant, which is based solely upon the ground that a representation false in fact, being a representation inducing a person to become surety for another, will avoid the contract of suretyship, where such representation is made by the creditor or some one acting for and in his behalf in the obtaining or accepting of such surety, although the person making the representation may believe it to be true: that an actual representation, which is a totally different thing from non-disclosure where the surety does not choose to make enquiry, will, when false, avoid a contract, though the thing represented, by reason of its existing in fact, would not from mere omission intentionally or inadver-