

# REPORTS OF CASES

DECIDED IN THE

QUEEN'S BENCH, CHANCERY, AND COMMON  
PLEAS DIVISIONS

OF THE

HIGH COURT OF JUSTICE FOR ONTARIO.

[QUEEN'S BENCH DIVISION.]

THE CORPORATION OF THE VILLAGE OF GANANOQUE V.  
STUNDEN.

*Principal and surety—Innocent misrepresentation—Discharge of surety.*

S. had been treasurer of a municipal corporation, and a bond which he had given having been mislaid, the council being under the impression that he had given no security, required him to furnish it. The council having examined his books concluded that they were in his debt, as the books shewed, and the reeve, believing this was the case, represented to defendant that S., defendant's son, "was all right on the books." Defendant, on this, signed a bond, as surety for the due performance by S. of his duties, which he said he would not have done but for the reeve's statement. The reeve also said that if defendant did not go his surety S. would lose his position. Afterwards, as S. had been drinking, defendant wrote to the council desiring to have his bond annulled, but he withdrew this letter at the request of S. After S. had been dismissed, and the deficiency in his accounts discovered, defendant said he would pay whatever had occurred since he signed the bond.

Upon the first trial no plea of fraud was put in, and a new trial was granted on affidavits not raising this defence; but defendant gave notice that he would at the trial move to add such a plea. The learned Judge at the trial refused the application, holding that the plea could not be supported on this evidence; but he found that the bond was given upon the assumption and statement that the treasurer was not then in arrear.

*Held*, HAGARTY, C. J., dissenting, that the plea should have been added, and that defendant was entitled to a verdict upon it.  
*Per* HAGARTY, C. J.—There was no false statement and no fraud, and therefore the plea was not sustained.

Action on a bond, tried at Brockville before Osler, J., without a jury. The defendant pleaded eight pleas, all