knowing that, if he had not been thus misled, he would not have entered into the contract."

The cases are very numerous.

The general law is fully stated in *Brandt* on Suretyship, secs. 365, 6, 7; *Baylies* on Sureties, 214, *et seq.* *Municipal Corporation of East Zorra* v. *Douglas*, 17 Gr. 466, reviews a number of the authorities. See also *Peers* v. *Oxford*, *Ib.*, 472; *County of Frontenac* v. *Breden*, *Ib.*, 645.

I see very serious objections to allowing defendant to raise the question as to the invalidity of the bond at the time and in the manner he has chosen to select.

He had the fullest knowledge of all the facts connected with his defence, and could have urged it as readily at the first trial as at the second. After hearing all the evidence (including that of the reeve, Mr. Taylor, his chief witness on this head) he applies to re-open the case and obtain another trial, still in no way suggesting such a defence as this.

There is no evidence that any mistake was made by his legal adviser, or otherwise, as to why such a defence, if it existed, was not urged at the proper time.

If he had urged it at the usual time, the Court would have considered and pronounced judgment on it, and if in his favour, no second trial would have been required.

But he allows a new trial to be granted on the general question of the accounts, with costs to abide the event, and now raises this previously neglected defence, going to the root of the claim.

This seems to me to be exceedingly unfair to the plaintiffs, after all the very heavy expense previously incurred in a very small matter, as the result of the last verdict shews this to be.

I quite agree that if from accident or wrong advice an important matter of defence had not been urged at the proper time, and an estate or some large interest were involved, the Court would endeavour to open the defence, and allow a new trial on such terms as to costs as would