

(\$5,255.92) by \$96.97. The sum of \$4,890.29 is made up of the following items: amount of debt to Mrs. McDonald, \$2,160.10; note for \$1,200 in bank, less rebate of interest, \$1,184.65; admitted payments \$1,545.64. The learned Judge allowed in addition three other items, amounting in the aggregate to \$120.93, thus making the total payments of the principal \$5,011.22, which, with the item of set-off for stone, \$269.60, without considering the other items of set-off, would be more than sufficient to cover any liability of the defendant. That the defendant would be entitled to avail himself of any set-off which the principal had against the plaintiffs does not seem to admit of doubt. The case cited on the argument of *Bechervaise v. Lewis*, L. R. 7 C. P. 372, is directly in point; and the case of *Duncan Fox & Co. v. The North and South Wales Bank*, L. R. 6 App. Cas. 1, is an instructive case as to the extent to which equity will go in giving a surety the benefit of securities held by creditors or co-sureties belonging to the principal.

The learned Judge at the trial was right in restricting the plaintiffs' claim to the moneys received by the treasurer after the execution of the bond, and not allowing them to claim in respect of the moneys received between the date mentioned in the bond and the time of its execution, there being nothing in the bond itself or in the evidence to shew it was the intention of the parties it should have a retrospective operation. The plaintiffs must therefore be refused the order they have applied for to increase the verdict in respect of moneys so received, even if the bond was not altogether void.

The defendant not having raised the defence of misrepresentation before or on the first trial, he should have no costs of that trial or the proceedings to set aside the verdict obtained thereat. The costs to be allowed to the defendant will be the general costs of the cause and the costs in Term of setting aside the last verdict or judgment, and each party will bear his and their own costs of the first trial and the proceedings to set the same aside.