

and I think it would not have been possible to arrive, on the evidence, at any other conclusion. This was positively stated, and to confirm it, the reeve said, "We have gone through the books." The defendant was suspicious of his son, not of his being dishonest, but, by reason of his habits of drinking, that he might have got into default, and wished to be informed as to this. The reeve, to remove the suspicion, asserted that defendant's son was not in default, and to strengthen the assertion said, "We have gone through the books." This, I take it, is the effect of the evidence, and it cannot be taken to have been equivalent to saying, "We have no knowledge of the matter; your son keeps the books, and as far as we can tell, relying on the books, he is all right."

If this last construction could be put upon what was said, there would have been neither concealment nor misrepresentation, and the defendant would have been responsible as taking the risk of the correctness of the books upon himself. But without doing violence to the evidence, I do not think such a construction can be placed upon it. I am therefore of opinion the defendant should be allowed to add the plea of which he gave notice: that judgment should be given for him on such plea, and that the plaintiffs' action should be dismissed with costs. I think the misrepresentation avoided the contract altogether; but assuming it to have no other effect than to place the parties in the situation they would have been in if the representation had been true, the defendant would still be entitled to have judgment in his favour, as in that case the defendant would be entitled to any set-off that the principal had against the plaintiffs; and as the plaintiffs would then only have a claim for moneys received by the treasurer after the execution of the bond, it is clear upon the evidence and undisputed facts the moneys paid by the treasurer after the 14th of June, the date of execution of the bond, amount to \$4,890.29, which sum, with the set-off for stone, safe, and salary, amounting to \$462.60, in all \$5,352.89, exceeds the moneys received