

The case was tried at a previous sitting of the Court of Assize and *Nisi Prius*, upon a record containing no plea of fraud or misrepresentation, and a verdict rendered in favour of the plaintiffs. A new trial was moved for and granted upon affidavits, without the question of fraud or misrepresentation having been raised or urged as a defence; but before the second trial the defendant gave notice to the plaintiffs that he would at the trial move to be allowed to add such a plea, and at the trial made the motion, but the learned Judge did not think, upon the evidence above set out, that the plea could be supported, and refused to allow it to be added, and found a verdict for the plaintiffs, the other pleas not having been proved in his opinion, for \$244.70.

The learned Judge disallowed the claim for salary, and some of the other items above mentioned, and did not apply the payments made after the date of the bond upon the earliest items debited against the treasurer, because, as he found, the bond was given and accepted upon the assumption and statement that the treasurer was not then in arrear.

May 28, 1881. *McMichael*, Q. C., obtained a rule *nisi*, calling on the plaintiffs to shew cause why the verdict for the plaintiffs should not be set aside, and a nonsuit or verdict entered for the defendant, or for a new trial, on the grounds that the verdict was contrary to law and evidence: that the learned Judge should have credited to the defendant payments which were made by the principal Jesse Stunden to the plaintiffs, and accepted by them, and should not have ruled that the said payments belonged to a prior period, and could not be credited to the defendant, and that the same were appropriated by the said Jesse Stunden, and the plaintiffs had no right to refuse such appropriation; and on the ground that the bond was invalid, because the fact was concealed from the defendant, at the time the bond was given, that the said Jesse Stunden was then a defaulter, and the defendant was assured to the contrary by the plaintiffs.