

plaintiff knew it did not exist. But this proposition was not necessary to the decision of the case, and does not appear to be borne out by other authority. In the same case Mr. Justice Shee referred with approval to the case of *Railton v. Mathews*, 10 Cl. & F. 934, where it was held it was a misdirection to tell the jury, on an issue whether the surety was induced to sign the bond by undue concealment or deception on the part of the employers, "that the concealment to be undue must be wilful and intentional, with a view to the advantages the employers were thereby to gain."

Lord Cottenham, on page 941, said: "The learned Judge lays it down distinctly that the concealment, to be undue, must be wilful and intentional, with a view to the advantage they were thereby to receive. In my opinion there may be a case of improper concealment or non-communication of facts which ought to be communicated, which would affect the situation of the parties, even if it was not wilful and intentional, and with a view to the advantages the parties were to receive."

Lord Campbell thus expressed himself at page 942: "The question really is, what is the issue which the Court directed in this case? Whether the pursuer, Edward Railton, was induced to subscribe the said bond of caution or surety by undue concealment or deception on the part of the defenders or either of them? The material words are, 'undue concealment on the part of the defenders.' What is the meaning of these words? I apprehend the meaning of these words is, whether Railton was induced to subscribe the bond by defendants having omitted to divulge facts within their knowledge, which they were bound in point of law to divulge. If there were facts within their knowledge which they were bound in point of law to divulge, and which they did not divulge, the surety is not bound by the bond. There are plenty of decisions to that effect both in the law of Scotland and the law of England. If the defendants had facts within their knowledge which it was material the surety should be acquainted with, and