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THE CORPORATION OF THE TOWN OF ARNPRIOR (PLAINTIFF) ..... APPELLANT;

AND

THE UNITED STATES FIDELITY AND GUARANTY COMPANY (DEFENDANTS) ..... RESPONDENTS.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ONTARIO.

Insurance — Fidelity bond — Untrue representations—Materiality — R.S.O. [1897] *c.* 203, *s.* 141, *s.-s.* 2.

The tax collector of a town applied to a guarantee company for a bond to secure the corporation against loss by his dishonesty. The company submitted to the Mayor a number of questions which he answered in writing, one being, "what means will you use to ascertain whether his accounts are correct ?" His answer was, "Auditors examine rolls and his vouchers from treasurer yearly." The auditors never examined the rolls during the time the security continued.

Held, per Fitzpatrick C.J. and Idington and Anglin JJ., affirming the judgment of the Appellate Division (30 Ont. L.R. 618), Davies J. dissenting, that this was an untrue representation which avoided the security.

Held, per Duff J.—That the judgment of the court below could be supported on the ground that material representations made upon the application for the contract of renewal upon which the action was brought were untrue and that the effect of sub-section (*a*) is that such misrepresentations avoid the contract *ab initio*.

Per Davies J.—That the answer meant only that the "Municipality Act" required a yearly audit, which would be complied with, and that it was not the Mayor's duty to check such audit and see that it was properly performed.

The bond was renewed without fresh submission of the questions to the Mayor.

Held, that as the renewal referred to the Mayor's answers as incorporated therein, and as the latter had signed an agreement that

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*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ.

they should form the basis of the bond or any renewal or continuation of the same the answers and representations made thereby applied to such renewal.

Held, further, that sub-section 2 of section 141 of the Ontario "Insurance Act" (R.S.O. [1897] ch. 203) does not require the policy to state that any particular representation is material to the contract, its effect being only that no misrepresentation shall avoid the policy unless it is material.

Jordan v. *Provincial Provident Institution* (28 Can. S.C.R. 554) followed.

APPEAL from a decision of the Appellate Division of the Supreme Court of Ontario(1), reversing the judgment at the trial in favour of the plaintiffs.

The questions raised for decision on this appeal are: (1) Do the statements of the mayor, incorporated in the bond of 1904, form part of that issued in 1905 in continuance of the original security? (2) Was there non-compliance with the requirements of section 141, sub-section 2 of the Ontario "Insurance Act," which prevented the defendants relying on said statements to defeat the action? (3) Were the answers of the mayor, as to the safeguards against the employee's dishonesty, misrepresentations which avoided the contract?

The facts on which questions 1 and 3 depend are stated in the head-note and the material provisions of the "Insurance Act" are set out in the opinion of Mr. Justice Duff.

W. M. Douglas K.C. and *J. E. Thompson* for the appellant. The appellant was entitled to rely on the statutory audit, his answer to the question submitted being merely that there would be such an audit and not a warranty of its being correct.

(1) 30 Ont. L.R. 618.

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The company cannot invoke the misrepresentation, if any, in the mayor's answer, the bond not stating that it would be material as required by the Ontario "Insurance Act" (R.S.O. [1897] ch. 203, sec. 141, subsec. 2). See *Village of London West* v. *London Guarantee and Accident Co.*(1); *Jordan* v. *Provincial Provident Institution*(2), does not overrule this case, but is distinguishable.

Watson K.C. and *R. J. Slattery* for the respondents. The mayor was guilty of misrepresentation, which, independently of statute, avoids the policy. *Venner* v. *Sun Life Ins. Co.*(3); *Anderson* v. *Fitzgerald*(4); *London General Omnibus Co.* v. *Holloway*(5).

And the statute does not save the contract. *Jordan* v. *Provincial Provident Institution*(2).

THE CHIEF JUSTICE.—I concur in the opinion of Mr. Justice Idington and would dismiss the appeal with costs.

DAVIES J. (dissenting).—I am of the opinion that this appeal should be allowed and the judgment of Mr. Justice Britton, the trial judge, restored. I agree in the main in the reasoning by which the trial judge supported his conclusion, holding the respondent liable upon the bond.

The action was one brought upon a bond of the Fidelity and Guarantee Company guaranteeing the honesty in the discharge of his duty of one John Matt-

(1) 26 O.R. 520.
(2) 28 Can. S.C.R. 554.
(3) 17 Can. S.C.R. 394.
(4) 4 H.L. Cas. 484.
(5) [1912] 2 K.B. 72.

son, chief of police and tax collector of the Town of Arnprior.

The official whose honesty in the discharge of his duties was guaranteed proved faithless, and in the years 1909 and 1910 respectively embezzled sums of money received by him as tax collector for arrears of taxes due in 1908 and 1909 respectively, largely exceeding the amount of the bond sued on.

Many defences, as is usual in cases of this kind, were set up by the guarantor company, but the one which the Appellate Division upheld and upon which it based its judgment was that the plaintiff corporation had failed to audit yearly all the outstanding collection rolls as it held that the mayor of the corporation had promised in answer to questions submitted to him before the bond was issued that the auditors would do.

The learned judge who delivered the judgment of the Appellate Division says:—

> The auditors themselves declare that they did not examine the collector's rolls and never even saw them, so that there is no pretence that the promised annual examination of the rolls by the auditors was ever made,

and that

> this neglect was a violation of the promise in the statement on behalf of the corporation that the auditors would examine the rolls yearly

and

> the learned trial judge erred with respect to the failure of the town corporation to keep the promise made on their behalf by the mayor in answer to questions 12 (*a*) and (*b*) that the auditors would examine the collector's rolls yearly.

The question before us resolves itself largely into one of the true meaning and intent of these answers. These answers made by the mayor must, in my judg-

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ment, be read and construed with reference to the parties by whom and to whom they were made and to the subject-matter on which they were made. The mayor of the town was answering questions as to what means were used to ascertain whether the accounts of the city collector were correct, and I construe his answer to mean that there was a yearly audit of those accounts by auditors and that these audits were those provided for by the municipal statutes under which the town was governed.

Further, that the plaintiff municipality did not undertake and was not understood as undertaking or promising any other audit than this yearly statutory one and that there was no undertaking, warranty or promise on the part of the mayor that the yearly statutory audit would be a thorough and efficient one.

The auditors were men appointed presumably because of their knowledge of accounts; their duties were defined by statute. It was no part of the mayor's duty to re-audit the auditors' audit and see that it has been properly performed; he was most probably quite incompetent for such a task and his promise went no further than this, that there was a yearly statutory audit by municipal auditors and that the Act would be complied with and such yearly audit made.

The questions and answers on which the point turns are as follows:—

Q. 6. (*a*) What will be the title of applicant's position ?

A. Chief of Police and Collector of Taxes.

Q. (*b*) Explain fully his duties in connection therewith.

A. To collect all taxes, commutation money and dog taxes.

Q. 9. (*a*) Is he required to make deposits in bank ?

A. He pays direct to Treasurer.

Q. 11. To whom and how frequently will he account for his handling of funds and securities ?

A. He accounts to Treasurer daily, or when he has collected funds.

Q. 12. (*a*) What means will you use to ascertain whether his accounts are correct ?

A. Auditors examine rolls, and his vouchers from Treasurer yearly.

Q. (*b*) How frequently will they be examined ?

A. Yearly.

As I am agreeing with the learned trial judge in his conclusions and reasonings with respect to these questions and answers, I do not think I can do better than quote from his reasons. He says:—

I am of opinion that these answers do not mean more, and that they were not intended to mean more, than that the "Municipal Act" requires a yearly audit, and that there would be such an audit: the Act would be complied with.

Section 295 of the "Consolidated Municipal Act," 1903, provides for the appointment of a collector or collectors; and sub-section 3 of that section provides that the council may prescribe regulations for governing them in the performance of their duty. There is no regulation governing them prescribed by statute, and the matter is left to the fair and reasonable discretion of the council.

The plaintiffs' council, on the 4th October, 1893, passed a by-law requiring all municipal taxes to be paid on or before the 14th day of December in each year. This by-law was amended, in a manner not material in this action, by a by-law dated the 6th October, 1899.

Under the by-law of 1893, five per cent. had to be added to these unpaid taxes. To have that done, and to enable the treasurer to make the return required of him, the collector was obliged to make a return to the treasurer of all persons who had paid taxes on or before the 14th day of December, and at the same time he was required to pay to the treasurer the amount of taxes so paid.

Section 292 provides that the treasurer shall, after the 14th December and on or before the 20th December, prepare and transmit to the clerk of the municipality a list of all persons who have not paid their taxes on or before the 14th day of December. This necessitates the examination of the collector's roll for each year, down to the 14th December; and apparently no statutory duty is put upon the treasurer to examine the collector's rolls other than to that date.

Section 299 provides for the appointment of two auditors by the council of each municipality.

Section 304 defines the duties of these auditors. They shall examine and report upon all accounts affecting the corporation or relating to any matter under its control or within its jurisdiction for the year ending the 31st December, preceding their appointment.

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The treasurer of the Town of Arnprior was a salaried officer, who also gave security to the plaintiffs by a bond of these defendants for the due performance of the duties of his office.

Section 290 prescribes the duties of the treasurer, and section 291 states what books the treasurer is to keep. He must keep a cash book and journal; and in entering receipts of money in the cash book it would seem to be sufficient to enter amount of money received from collector without stating the persons from whom the collector received it, or on account of the taxes of any person. He should enter the date of payment of any tax money to him by the collector.

After the roll goes back to the collector, with the percentage added for collection, there is no statutory provision for any inspection of it.

Mattson saw his opportunity, and began to appropriate the money received by him from the taxes unpaid on the 15th December, 1908, and unpaid on the roll on the 15th December, 1909.

In interpreting the answer of the mayor it should be remembered that the plaintiffs are a municipal corporation. Their work is done as prescribed by statute, and as to which the defendants know as much as the plaintiffs. They are presumed to know the law. The answers were given in perfect good faith.

I am able to find, upon the evidence, that there was no fraud or concealment of any kind, nor was there any wilful misstatement on the part of the mayor, treasurer, or clerk, or any officer of the plaintiff corporation, in obtaining the bond in question. I am of opinion that the answers of the mayor — the statements in writing — are true in the way the mayor understood the questions and in the way he wished the defendants to understand them, and in the way the defendants did understand them.

The company's knowledge of the fact that the examination of the collector's accounts was the yearly examination made by the town auditors under the statute and no other and that the expression "the auditors examine rolls and his vouchers from treasurer yearly" refers to the yearly audit, appears clearly from Mattson's application to the defendant company for their guarantee bond and by the examination of their general agent Kirkpatrick who, in January, 1909, attended at Arnprior to make an inspection in reference to the treasurer of the town and Mattson, the town collector. The auditors' annual reports were shewn to have been in the company's hands and they

knew that the audit which did and would take place was part of the general audit of the corporation accounts.

The same remark as to their knowledge of the meaning of this language applies to the statements signed yearly on behalf of the corporation in reference to the examination of Mattson's books and accounts. It was the statutory audit made by the statutory auditors and none other. The municipality could not audit accounts except through individuals and when they used the expression "examined by us from time to time in the regular course of business" they only meant, and clearly must have been understood to refer to, the statutory examination which it was their duty to make through the auditors. On this point I am quite satisfied the company never was misled in the slightest.

Then again it does seem to me that under any construction of the words of the answer of the mayor to the question of the auditing of the accounts, the default of Mattson for the year 1908 amounting to $3,941.12, is clear and the plaintiff is entitled to recover that sum at least. The Appellate Division apparently assumed that an annual examination of the old rolls would have shewn such default. But that seems impossible under the circumstances. Mattson's defaults for the years 1908 and 1909 did not take place in those years respectively. The taxes paid in 1908 were not in arrear until after the end of that year and Mattson may not have received the arrears for that year till long afterwards. He certainly did not receive them in the year 1908. The rolls for 1908 were examined at the end of that year and there was no

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default on the part of Mattson then. The report of the auditors up to and inclusive of the 31st December, 1908, shews no default. So that when the statement was signed in June, 1909, on which the policy was continued for another year it was quite correct.

The accounts had been examined and everything was not only found correct by the auditors, but it now appears from the evidence to have been correct.

The embezzlement of the arrears of the 1908 taxes took place after the annual audit. The misappropriation by Mattson of the taxes for the year 1908, which was his first embezzlement, did not take place till 1909 when the arrears of 1908 were paid to him and no audit at the end of the year 1908, however complete and searching it might be, could avail to discover a default or misappropriation which had not then taken place. As the collector's default, with respect to the 1908 arrears, could not have been detected or exposed earlier than the audit which would take place in respect of the year 1909, because only then could it have been discovered, it does seem to me that the liability of the defendant for these embezzled arrears of the 1908 taxes is clear.

While I, therefore, think on any construction of the answers of the mayor to the questions of the defendant company, the corporation is entitled to recover, to the extent of the misappropriation of the 1908 arrears, as proved, $3,941.12, I am also of the opinion that on the proper construction of those answers they are entitled to recover for the full amount of the company's bond.

IDINGTON J.—Appellant is a municipal corporation in Ontario. Its tax collector in 1904 applied to

respondent to become his surety to appellant. It did so by its bond upon faith of representations made in answer to some eighteen questions. At foot thereof the then mayor of appellant signed as such the following:—

It is agreed that the above answers are to be taken as conditions precedent and as the basis of the said bond applied for, or any renewal or continuation of the same that may be issued by the United States Fidelity and Guarantee Company to the undersigned, upon the person above named.

Dated at Arnprior, Ont., this 10th day of June, 1904.

Of these questions and answers Nos. 11 and 12 are all that are necessary for us to look at for our present purpose. They are as follows:—

Q. 11. To whom and how frequently will he account for his handlings of funds and securities ?

A. He accounts to treasurer daily, or when he has collected funds.

Q. 12. (*a*) What means will you use to ascertain whether his accounts are correct ?

A. Auditors examine rolls, and his vouchers from treasurer, yearly.

(*b*) How frequently will they be examined ?

A. (*b*) Yearly.

The auditors never had, when these answers were made, in fact examined a single collector's roll and never, in any succeeding year over which by renewals this obligation of respondent extended, was such examination made. The answer was palpably untrue and should not have been made by any one having due regard to his own honour.

It is urged that the mayor was entitled to presume that the auditors had discharged their statutory duty. The mayor had no right to presume any such thing unless and until, as his duty as mayor bound him to do, he had examined and inquired and been in some way misled. It is the duty of the mayor to see that

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every officer of the corporation is doing his duty. And so far as that related to the duties of an auditor it did not involve a re-examination of the work, but to see that the methods laid down in law therefor had been duly observed.

The respondent was entitled to presume that he had discharged that duty and spoke whereof he knew in answering these questions as he did. It was a matter of fact upon which the bond, as it plainly states, must rest as a condition precedent to liability thereon.

It was, moreover, when read in light of the frame of the question and the agreement quoted above from the foot of the memorandum, an undertaking that the auditors would discharge their clear statutory duty.

That undertaking is made, by the memorandum so signed by the mayor, the basis of the said bond, or any renewal or continuation of the same, and by the terms of the bond itself it is shewn that it was upon the faith of the said statements setting forth the nature and character of the office or position to which the employee had been appointed, the nature and character of his duties and responsibility, and the safeguards and checks to be used upon him in the discharge of said duties, and same being warranted to be true, that appellant entered into said bond; and it is stipulated in said bond that if the statement shall be found in any respect untrue the bond shall be void.

Such must be the result of its untruth unless by reason of the statute which I am about to refer to, that stipulation is rendered inoperative.

Then it is said the bond sued upon was given, as in fact it was given, the following year without any re-

petition of that statement of fact and undertaking and, therefore, cannot be made a foundation for respondent to rest its defence thereon.

This bond refers as the other had to the employer (*i.e.*, the appellant) having delivered to the respondent a statement in writing setting forth the nature and character of the office or position to which the employee has been elected or appointed, the nature and character of his duties and responsibilities and the safeguards and checks to be used upon the employee in the discharge of the duties of said office or position, and other matters, which statement is made a part hereof.

What statement can be referred to if not that which in fact had been delivered by the employer the year before? No other has been suggested, but its identification does not rest upon that alone, for the memorandum above quoted expressly anticipates its use as basis for "any renewal or continuation" thereof.

I think it is no straining of the language used to say it is a renewal of the bond given in 1904 on faith of such answers as already dealt with.

In all its terms save as to dates it is identical.

I, therefore, hold it is founded upon the answers already referred to as delivered in 1904, and respondent entitled to rely thereupon and the assurance given therein and memorandum at foot thereof; subject to what may be set up by virtue of the statutory provisions contained in section 144 of the "Insurance Act" of 1897.

Turning to a consideration of that section which is the third, if not chief, point relied upon by appellant herein, I think the whole section must be read together and due regard be had to the history thereof if we would correctly interpret and construe any single subsection thereof.

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The words in sub-section 2,

> unless such terms, condition, stipulation, warranty or proviso, is limited to cases in which such statement is material to the contract,

are pressed upon us as the governing part of the sub-section, and as requiring in each insurance contract an express statement that "the statement in the application" to be made a possible ground of avoidance of the contract "is material to the contract."

I am uable to see what good the expression of any such statement in the contract could serve. It is quite clear that the insistance of it might become very embarrassing. In the multiplicity of questions often put and answered, many may be properly put and answered in the way of eliciting information, yet when taken alone may be immaterial. Is it to be supposed that the legislature intended that the insurer must under pain of losing the benefit of such answers, select the material from the immaterial and expressly tell the applicant that those immaterial are of no consequence and may be answered falsely or truly as he pleases, for they are of no consequence ?

Again he may think quite properly that a question which he deems to be material should be put and answered: and yet a judge or jury may afterwards take an entirely different view of it and hold it immaterial and then his whole safeguard is gone as to the remaining answers though all may have been found false; for the moment he stipulates by general terms for too much, he loses the benefit of what he would otherwise have been entitled to.

I admit that it would be possible to frame a policy in which each question and answer could be set out and the expressed statement of its materiality be declared, but with an express provision that if found im-

material that would not affect any other, or the stipulation in relation to any other, and so on through the whole complex maze of questions.

I cannot think the insured would benefit much by that sort of a bringing home to his mind which is the only object suggested of expressing in the bond something declaring the materiality of what he was answering. Indeed, taking the words in question literally and trying so to apply them, eventually leads to so many absurdities that I cannot think the object of the legislature was that which is suggested. I, therefore, seek another meaning to the words.

The insured is amply protected by observing the whole scope and purpose of these sections and reading the words relied upon in relation thereto, and so read I see no difficulty. The stipulation, no matter what it is, must only be good or held good so far as it relates to any statement in question which is material and not beyond. In other words I should read it as if the purpose of the sub-section was to limit the operation of such a condition, stipulation, etc., to cases in which it is material. So read the whole sub-section is made operative and to harmonize with the rest of the section and the insured gets the substantial benefit intended. The other way contended for renders the latter part of the sub-section useless and indeed an absurdity.

In any way one can read the curious phrase there are difficulties. Let us choose that presenting the meaning which best accords with the rest of the whole section.

It is said the case of *Jordan* v. *The Provincial Insurance Co.*(1) is distinguishable because the word

(1) 28 Can. S.C.R. 554.

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"material" appeared in some way in the policy there in question. I do not so read the condition in which it did appear as at all complying with the present contention. It does not profess to do so. It does not specify that any particular statement or set of statements were material. It was rather a stipulation quite independent of what the words I have dealt with seem if taken in the literal way argued for here to require. It simply declared that the fraudulent or misleading statement of a fact material to the contract in the application should render the certificate void, which is quite another thing. It does not earmark, as it were, the answers and express anything as to their meaning or import. It does not enlighten the applicant any more than the insured was here.

But it seems quite clear that the principle upon which this court proceeded in that case, rightly or wrongly, forbids the interpretation contended for. Then since that case or rather the facts upon which it is founded took place the legislature expressly added to sub-section 1 the following:—

(a) Nothing herein contained shall exclude the proposal or application of the assured from being considered with the contract, and the court shall determine how far the insurer was induced to enter into the contract by any material misrepresentation contained in the said application or proposal.

This is clearly intended to settle the general scope and purpose of these sub-sections in the way of protection of the insurers in the same way as the respondent claims it is protected herein.

The insurers were as a class long ago such gross offenders that the legislature had to step in and protect the insured against themselves and the judicial interpretation of the law of contract.

Let us not by disregarding that presumably considered by all men as settled and so acted upon for many years, start another era giving chances to have another crop of gross offenders in the person of the insured class. If the materiality is left to the courts and juries, as the legislature evidently intended, then both classes of offenders will, it is to be hoped, be kept in such check as equity and good conscience may require.

It is to be further observed that in such cases as presented herein the insured was not in fact the applicant and thus was not brought within the literal terms of the sub-section.

I think the appeal must be dismissed with costs.

DUFF J.—The statutory provisions to be applied are now contained in section 144 of the Ontario "Insurance Act." That section is as follows (pp. 443 and 444, Cameron's Life Insurance) :—

144. (1) Where any insurance contract made by any corporation whatsoever, within the intent of section 2 of this Act is evidenced by a sealed or written instrument, all the terms and conditions of the contract shall be set out by the corporation in full on the face or back of the instrument forming or evidencing the contract, and unless so set out, no term of, or condition, stipulation, warranty or proviso, modifying or impairing the effect of any such contract made or renewed after the commencement of this Act shall be good and valid, or admissible in evidence to the prejudice of the assured or beneficiary.

(*a*) Nothing herein contained shall exclude the proposal or application of the assured from being considered with the contract, and the court shall determine how far the insurer was induced to enter into the contract by any material misrepresentation contained in the said application or proposal.

(*b*) A registered friendly society may instead of setting out the complete contract in the certificate or other instrument of contract, indicate therein by particular references those articles or provisions of the constitution, by-laws or rules which contain all the material terms of the contract not in the instrument of contract itself set

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out, and the society shall at or prior to the delivery over of such instrument of contract deliver also to the assured a copy of the constitution, by-laws and rules therein referred to.

(2) No contract of insurance made or renewed after the commencement of this Act shall contain, or have indorsed upon it, or be made subject to any term, condition, stipulation, warranty or proviso, providing that such contract shall be avoided by reason of any statement in the application therefor, or inducing the entering into of the contract by the corporation, unless such term, condition, stipulation, warranty or proviso is limited to cases in which such statement is material to the contract, and no contract within the intent of section 2 of this Act, shall be avoided by reason of the inaccuracy of any such statement, unless it be material to the contract.

(3) The question of materiality in any contract of insurance whatsoever shall be a question of fact for the jury, or for the court if there be no jury, and no admission, term, condition, stipulation, warranty or proviso to the contrary, contained in the application or proposal for insurance, or in the instrument of contract, or in any agreement or document relating thereto shall have any force or validity.

(4) Nothing in sub-sections 1, 2, and 3 of this section contained shall be deemed to impair the effect of the provisions contained in sections 168 to 173 inclusive, or the effect of the provisions contained in section 55 of *The Act respecting the Insurance of Live Stock.*

Section 144, sub-section 4, amended by 4 Edw. VII. ch. 15, sec. 5:—

Sub-section 4 of section 144 of the Ontario "Insurance Act," is amended by adding at the end thereof the following words:—

"Or the effect of the provisions contained in the Act of Ontario passed in the fourth year of His Majesty's reign and intituled 'An Act respecting Weather Insurance.'"

"Insurance contract" must be read in connection with section 2, sub-sections 37 and 41, and, it may be observed, includes among other things insurance of property against any loss or injury from any cause whatsoever. I have come to the conclusion that the representations made upon the applications for renewal which were contrary to the fact had the effect of invalidating the contract for renewal upon which the action is brought, and that there is nothing in the relevant enactments disentitling the company to set

up such invalidity as a defence. It is unnecessary to consider what would have been the proper construction of sub-section 1 before the enactment of sub-clause (*a*). The effect of sub-section 1 read with sub-clause (*a*) appears to me to be that as regards representations set out in an application or proposal the insurance company is entitled to rely upon the legal rule by virtue of which an insurance contract brought about by misrepresentations of fact material to the contract is thereby invalidated *ab initio*.

I do not think these provisions require that this rule of law should be set out in the contract of insurance. In other words, I do not think that the statute has made this rule of law inoperative unless it is embodied by an express stipulation in the insurance policy. It cannot, I think, be questioned that the representations referred to are made in a document which is properly described as an "application or proposal" within the meaning of the statute. The statements themselves were made by the appellants for the purpose of the application which was made by their officer. That is sufficient to dispose of the appeal.

ANGLIN J.—With not a little reluctance, because not satisfied that the defence which has prevailed is meritorious, I find myself constrained to concur in the dismissal of this appeal.

So far as it deals with the construction of sub-section 2 of section 141, of the "Insurance Act" (R.S.O. 1897, ch. 203), I am, with great respect, convinced that the decision in *Jordan* v. *Provincial Provident Institution*(1), was wrong and that the *Village of*

(1) 28 Can. S.C.R. 554.

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London West v. *London Guarantee and Accident Co.* (1), was rightly decided. But I feel bound to follow the *Jordan Case* (2) until it has been reversed by competent authority. In view of the certificates given on behalf of the municipal corporation when renewals of the policy in question were obtained, it may be that sub-section 2 would not aid it, if construed as it contends it should be.

On the other questions involved in the appeal I have found no reason to differ from the conclusions reached in the Appellate Division of the Supreme Court of Ontario.

Appeal dismissed with costs.

Solicitor for the appellant: *J. E. Thompson.*
Solicitor for the respondents: *R. J. Slattery.*

(1) 26 O.R. 520. (2) 28 Can. S.C.R. 554.