

BOYD, C.—I see no reason to disagree with the conclusions in fact of the trial Judge; he finds that the statements of the employers in answer to the questions were untrue, and that they were material to the contract. But on the question of law he finds that these terms and conditions not being set out in full on the face or back of the sealed written instrument, which embodies the contract of guarantee, there has been a failure to comply with the statutory provisions, and that these terms and conditions thereby became inadmissible in evidence and consequently inoperative.

With this conclusion I am not able to agree. The statute in question is R. S. O. 1897 ch. 203, sec. 144; and the important parts are sub-secs. (1) and (2). The origin of these provisions may be traced back to the enactments of the Dominion of Canada in 1885, found in 48 & 49 Vict. ch. 49, secs. 7 and 8, and are now in R. S. C. 1886 ch. 124, secs. 27 and 28.

The guarantee agreement in this case was issued upon and after the proposal or application of the employee, fortified and accompanied by the answers of the company (the employers) touching the duties of the applicant, which answers it is agreed are to be taken as the basis of the contract between the employers (the plaintiffs) and the defendants, the guarantee company. Upon these papers, statements, and representations, the contract was issued and accepted by plaintiffs. On the face of the sealed contract of insurance or guarantee it is thus recited: "Whereas the employer has delivered to the company certain statements and a declaration setting forth, among other things, the duties and remuneration of the employee, the moneys to be intrusted to him, and the checks to be kept upon his accounts, and has consented that such declaration, and each and every the statements therein referred to or contained, shall form the basis of the contract hereinafter expressed to be made, but this stipulation is hereby limited to such of said statements as are material to this contract." This last clause is apparently the outcome of what was deemed a proper form of expression to comply with sub-sec. (2) of sec. 144: see *Village of London West v. London Guarantee and Accident Co.*, 26 O. R. 520, in which the defendants were the company now defendants.

The effect of this method of drafting is to embody or incorporate the material—i.e., what shall be found to be the material—parts of the preliminary application and declaration, whether by the employee or the employers, into the face of the contract. The cases, which are binding upon us, shew