

cases in which such statement is material to the contract,—but does not require that such term or condition shall be contained in or endorsed upon the contract “in full.” It is enough if the contract “be made subject” to such stipulation.

Held, also, that the statements here made by the plaintiffs’ president, when seeking the insurance, that “all withdrawals from the savings bank require the joint cheque of the president and manager,” and that “a thorough and systematic audit is made by the company’s auditors,” whereas in fact the cheques were signed in blank by the president in batches, and so given to the manager, and no attempt was made to rectify the savings bank accounts,—were unquestionably material, and affected the risk.

W. K. Cameron, for plaintiffs. J. B. Clarke, K.C., for defendants.

Street, J.]

INNES v. HUTCHEON.

[Feb. 27.]

Replevin—Application order to sell—Con. Rules 1097, 1098.

Under an order for replevin in this action there were delivered to the plaintiffs six horses of considerable value. To obtain the order the plaintiffs paid into Court \$2,000, and were paying over \$5 a day to keep the horses at livery. No trial could be expected before the autumn. The plaintiff applied under Con. Rules 1097 and 1098, for an order for sale for the horses in question.

Held, that there was no power under the above rules or otherwise to grant the order, although if there had been it would have been a proper case for so doing.

G. Larratt Smith, for plaintiff. W. A. Lamport, for defendant.

Teetzel, J.]

RE BOWER TRUSTS.

[March 1.]

Settlement—By deed—Remainder to appointee under will—Or in default to “right heirs”—Death of settlor—Failure to appoint—Equitable estate in settlor—Vesting in administratrix—Devolution of Estate Act.

The owner in fee simple of certain land, by deed granted it to trustees to lease, and after payment of expenses, to pay the rent to him for life, and after his death to convey it to such persons as he by his will should appoint, and in case of his death without a will, “To hold the same in trust for the right heirs of (himself) according to the law of descent in Ontario in