

ceived from the head office at Baltimore, the general agent at Toronto issued, instead, the new bond, in the same terms as those of the expiring one.

It was contended on behalf of the plaintiffs, both at the trial and before us, that the defendants could not invoke for any purpose the answers given in 1904, on which the first bond purported to be based.

This position, however, I consider to be untenable. The bond on which the plaintiffs bring their action and on which they base their claim, contains a recital that they have delivered to the defendants "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 duties of his said office or position, and other matters, which statement is made a part hereof." It is also therein stated that "it is hereby agreed and declared" that the bond is given "upon the faith of the said statement as aforesaid by the employer, which the employer warrants to be true." The only statement which the town corporation had given to the company was that of the 10th June, 1904, and the plaintiffs having accepted and retained in their possession the second bond containing the statements above quoted, and having paid the premium therefor and the subsequent annual premiums, and having accepted and retained the bond and the annual continuation certificates, which are expressly declared to be "subject to all the covenants and conditions of the said original bond heretofore issued," and having brought their present action upon the bond of 1905 and the annual continuation certificates, they cannot now be heard to dispute the facts so plainly stated in the bond; and they are, in my opinion, clearly estopped from now setting up such an objection.

In submitting to the plaintiff corporation the questions regarding Mattson and his position and duties, the defendant company expressly stated that the answers would be taken as the basis of the bond, and at the foot of the answers the Mayor, in his "official capacity," declared that it was agreed that the answers were to be taken "as conditions precedent and as the basis of the bond."

Assuming that the answers and statement of the Mayor of the 10th June, 1904, are the statements referred to in the bond sued upon, it remains to be seen whether the plaintiffs, under the terms of the bond and the facts disclosed by the documents and the testimony, are entitled to recover. . . .