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. It was not contended that the application of Rowley contained any untrue statements. Defendants contended that the answers by the "employer" (the loan company) to the questions submitted and the declaration made by the president, which it was agreed should form the basis of the contract of guarantee, came under sec. 144 (1a) of the Insurance Act, R. S. O. 1897 ch. 203.

That can not be, because that sub-section applies only to the "application of the assured," and by the interpretation clause of the Insurance Act, sec. 2, sub-sec. 45, "the assured" means "the person whose property, life . . . fidelity, or insurable interest is insured." The statements and declaration sought to be brought by defendants under sub-sec. 1 (a) are those of the "employer," and defendants can rely only on such statements and declarations as are set out on the face or back of the contract. One of the statements alleged to be so set out in the recital is as to "the moneys to be intrusted to him and the checks to be kept on his accounts." In answer to question 6.—"Is he allowed to pay out of the cash in his hands any amounts on your account, and, if so, are those payments previously authorized and subsequently audited, and by whom?—said: "yes; handles all the cash; all withdrawals from the bank require the joint cheque of president and manager." "Q.—How often do you require him to pay over to you, and is he then allowed to retain a balance in hand? If so, how much? And do you see that he has that amount in his possession? A. All cash excepting very small amounts deposited in the bank daily. All cash and bank balances checked by the auditors." The evidence was that the president signed large numbers of cheques in the cheque book, which was left in Rowley's control, and in one instance referred to in the examination for discovery of John S. Moore, the manager of the liquidators, Rowley had on 30th October, 1896, drawn a cheque payable to Agnes A. Laidlaw for $22.50, and debited her in the company's ledger with $2,250, and the auditors, if they checked her account with the cash book, must have found $2,250 debited to her there, and a like sum on the counterfoil of the cheque book, but they could not have required the cheque, which had been returned from the bank, to be produced, or checked the entry in the cash book with the bank book, or the fraud would have been discovered. It is literally true that the moneys withdrawn from the bank required the joint