

The case of *Hay v. Employers' Liability Assurance Corporation*, 6 O.W.R. 459, decides, upon the authority of *Venner v. Sun Life Insurance Co.*, 17 S.C.R. 394, and *Jordan v. Provincial Provident Institution*, 28 S.C.R. 554, that, as the question of materiality in the answers contained in the statement in writing, is for the Judge or jury, it is unnecessary to set out in the policy in full the misstatements relied upon or to allege their materiality. I am bound by this.

Also see *Elgin Loan and Savings Co. v. London Guarantee and Accident Co.*, 11 O.L.R. 330.

The defendants apparently rely most strongly upon the statement of the Mayor in the writing referred to, as it appears in the answers to questions 11 and 12 on that paper: "Q. 11. To whom and how frequently will he account for the handling of funds and securities? A. He accounts to Treasurer daily, or when he has collected funds."

The answer was merely a statement of the Collector's duty. That was true until the Collector failed to do his duty, and appropriated money he ought to have paid to the Treasurer. It was to prevent loss in case the Collector failed to do his duty that the guaranty bond was secured.

"Q. What means will you use to (a) ascertain whether his accounts are correct? (b) How frequently will they be examined? A. (a) Auditors examine rolls and his vouchers from Treasurer yearly. (b) Yearly."

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 subsec. 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 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