

The same may be said as to the statement upon which the annual renewal certificates were issued. That statement was untrue. The "books and accounts" of the collector were not examined each year by them as stated. A single book, the collector's roll for the current year, was all that was examined. It was equally important that the old ones in his possession should be also examined each year; and the fact that this was never done gave him the opportunity of concealing his defalcation for two successive years and a portion of the third, until the special audit brought them to light. . . .

I am of opinion . . . that the learned trial Judge erred with respect to the failure of the plaintiffs to keep the promise made on their behalf by the Mayor in answer to questions 12 (a) and (b), that the auditors would examine the collector's rolls yearly. It does not even appear that they informed the auditors that such a promise had been given, although it is surprising that the auditors should have thought that they had properly performed the duties of their office and complied with the requirements of the by-law appointing them, without examining the collector's rolls, which, it appears, were properly kept, and all payments entered; and a simple comparison of these entries with his receipts from the treasurer would at once have disclosed any deficiency. Under the facts proved in this case, the examination of the rolls in his possession at the time of the audit in January, 1909, would at once have disclosed a defalcation of \$3,941.28 for 1908, and the defalcation of 1909, amounting to the further sum of \$7,521.61, would never have occurred. There can be no question that the promise and representations were most material to the risk.

But there is more. The report of the auditors dated the 3rd March, 1909, which was read to the town council and confirmed, clearly shewed that the auditors did not claim to have examined any other books than those of the treasurer; and it was the duty of the council, under sec. 10 of the Municipal Act, to have seen that these officers duly performed the duties of the office to which they had been appointed. In my opinion, they had by no means, as argued before us, fulfilled their duty by simply passing the statutory by-law naming the officers.

By acquiescing in and confirming the report of the auditors, which shewed that they had not examined the collector's rolls, they violated the promises given by the Mayor on behalf of the corporation, in the answers that preceded and formed the basis of the bond; and the representations subsequently made by the Mayor and Clerk in the certificate upon which the annual re-