

new bond. I come to the conclusion that the defendants can do this only because of the want of care on the plaintiffs' part in not making inquiry as to the written statement mentioned in the bond.

The plaintiffs are not bound by any alleged warranty of the truth of the statement. The plaintiffs did not execute the bond; the employee did.

Such a statement as the defendants invoke might be true when made and untrue at the expiration of the first year, so that a new statement in the same words could not be given. The defendants are getting the benefit of the falsity of a statement, if it was false, made in 1904, by making that statement do the double duty of being the foundation of a bond in that year and of another one in substitution in 1905, without the plaintiffs asking for such substituted bond. . . .

[Reference to *Youldon v. London Guarantee and Accident Co.*, 3 O.W.N. 832, 26 O.L.R. 75, 4 O.W.N. 782; *Liverpool and London and Globe Insurance Co. v. Agricultural Savings and Loan Co.*, 33 S.C.R. 94.]

I am of opinion that the old statement for the former bond can be read into the new contract and as the foundation of the bond sued upon.

Counsel for the plaintiffs submitted that, under R.S.O. 1897 ch. 203, sec. 144, sub-sec. 2, the defendants could not rely upon the falsity of any statement in the writing mentioned; as the bond did not, in providing for the voiding of it, limit the untrue statements to those that are material to the risk.

In so far as the defendants rely upon any misstatement in the application, that objection is supported by *Village of London West v. London Guarantee and Accident Co.*, 26 O.R. 520; but the main reliance of the defendants is upon the misstatements in the writing itself, not the application. This is set out in the body of the bond. Having regard to *Jordon v. Provincial Provident Institution*, 28 S.C.R. 554, and to *Venner v. Sun Life Insurance Co.*, 17 S.C.R. 394, I do not decide nor do I give effect to the plaintiffs' contention in this action upon that point.

In the case of *McDonald v. London Guarantee and Accident Co.*, 2 O.W.N. 1455, the recited statement in writing delivered by the employer expressly stipulated that the statements therein were to be limited to such statements as were material.