

The learned Judge was satisfied to accept this as corroboration of the plaintiff's evidence, which he credited.

It is the clerk's duty to collect and pay over the bailiff's fees in "foreign" suits; and, in the absence of any evidence to the contrary, the presumption is, that he did receive his own and the bailiff's fees from the foreign clerk.

Section 13 of the Public Officers Act, R.S.O. 1914 ch. 15, was relied upon as barring any claim for fees beyond 10 years; but, upon due application of payments on account, the balance represented items earned within this period.

It was argued that the bargain for interest, at any rate the bargain for interest at 6 per cent., a rate in excess of legal interest, discharged the surety.

The fundamental principle was, that the contract of the surety could not be changed without his consent. It made no difference that the change might or might not prejudice him. When the principal debtor has covenanted to pay a certain sum and interest at a certain rate, and the surety has undertaken the due performance of this covenant, he may escape liability if the covenant is varied by any change of interest, for liability upon this varied contract has not been undertaken by him.

But, when he guarantees payment of a sum due or to become due, he is not discharged because the debtor makes a new bargain which does not in any way interfere with his liability, but merely imposes an additional and collateral liability to pay interest. If there was any bargain to give time, the surety would be discharged; but the only contract was to pay interest on all balances unpaid.

There was nothing to prevent the surety at any time paying the claim and suing the debtor. There was nothing to prevent the creditor himself suing: *York City and County Banking Co. v. Bainbridge* (1880), 43 L.T.R. 732.

Interest at the legal rate of 5 per cent. may be recovered, even when there is no mention in the bond. There may be a recomputation, based upon interest computed at this rate. On the basis of 6 per cent., the interest charged amounts to \$1,449.45; this will make a substantial reduction.

As against the executors the agreement binds for 6 per cent.

It does not seem fair conduct on the part of the plaintiff to allow matters to run into arrear for many years, and then sue the surety—but the plaintiff acted honestly, trusting that the clerk, a man who stood well in the community, would ultimately pay. There was no connivance or collusion. The case is within *Durham Corporation v. Fowler* (1889), 22 Q.B.D. 394.