

MIDDLETON, J.

JUNE 28TH, 1917.

POOLE v. WILSON.

Executors—Action against Executor of Division Court Clerk for Fees not Paid to Bailiff—Evidence of Bailiff—Corroboration—Entries in Clerk's Books—Time-limit—Public Officers Act, R.S.O. 1914, ch. 15 sec. 13—Application of Payments on Account—Surety for Clerk—Liability—Interest—Change in Contract—Rate of Interest—Acquiescence.

Action by a Division Court bailiff against the executor of the deceased clerk of the Court and his surety, a guarantee company, to recover a balance due for bailiff's fees.

The action was tried without a jury at London.

J. C. Elliott, for the plaintiff.

F. E. Perrin, for the defendant Wilson, executor of George Wilson, deceased.

C. H. Ivey, for the defendant guarantee company.

MIDDLETON, J., in a written judgment, said that the amount claimed was \$894.55, including interest computed annually with rests at 6 per cent. up to the 31st December, 1916. The plaintiff was appointed bailiff in November, 1893, and had held that office ever since. The late George Wilson was then clerk and held office till May, 1916, when he died. From the 16th June, 1899, the defendant company had been the clerk's surety for the due discharge of his duties. The statutory bond required the clerk to "pay over to any bailiff or bailiffs of the Division Court the fees to which he or they may become entitled under the tariff of fees, unless when the clerk and bailiff otherwise agree in writing."

On the 16th May, 1902, the clerk and bailiff had an accounting, and an acknowledgment was signed by the clerk admitting a balance due of \$155. Each year since, statements had been rendered by the bailiff to the clerk shewing the fees claimed, and payments had been made by the clerk on account. There had always been a large and growing balance due. A demand was made for interest, and this was acceded to, and interest was included in the accounts from time to time. The general accuracy of these accounts, and of the entries in the bailiff's books, was established by reference to the clerk's books. The entries in "home" suits corresponded, and in most cases entries in "foreign" suits also corresponded.