

Burton, J. A.]

THE VICTORIA MUTUAL FIRE INS. CO. V.
DAVIDSON ET AL.

*Principal and surety—Division Court clerk—
Change in duties—Discharge of sureties—
Entry in books—Evidence.*

After defendants had become sureties for a Division Court clerk a special arrangement was made between the plaintiffs and the clerk, under which the clerk was to receive no costs, but disbursements only in all suits in which nothing should be realized, and the clerk guaranteed in all cases that the court had jurisdiction. This arrangement was subsequently altered by giving to the clerk fifty cents besides disbursements, and it was arranged that the clerk should make periodical statements. Statements were rendered from time to time, and a cheque, given for the balance, shown. It was afterwards discovered that these statements were not correct, and that moneys collected had not been paid over to the plaintiffs. In an action by plaintiffs against defendants on their bond,

Held, that the settlements were not conclusive.

Held also, that by the special agreement made the sureties were discharged.

The cases deciding that entries in the books of an officer are evidence in his lifetime as against his sureties, questioned.

Hagarty, C. J.]

STANTON V. CORPORATION OF ELGIN.

Board of Audit—County attorney's fees—Disallowance of items in, by Provincial Treasurer—Reduction by Board of Audit from subsequent account—Mandamus.

One C. was charged and committed for trial on twenty-five separate charges of larceny. On being brought before the County Judge he elected to be tried by jury, and at the ensuing assizes was tried and convicted on three of the charges, the others not being tried. Under an order in council the County Attorney is entitled, in cases of felony, to a fee of \$4 on receiving and examining all information and other documents, etc., connected with criminal charges for the Court of Assize, etc., upon the Crown Counsel's certificate that such fees should be allowed. The County Attorney obtained the Crown Counsel's certificate, and in his account charged a fee

of \$4 on each of the twenty-five cases which was audited by the Board of Audit and passed; but on the Provincial Treasurer disallowing twenty-two cases, and his decision being communicated to the Board, they made an order deducting the amount disallowed from the County Attorney's subsequent account.

Held, that a *mandamus* would not lie requiring the Board of Audit to rescind their order, for the disallowance by the Provincial Treasurer was a good reason for their so deducting the amount, their doing so or not being a matter for their discretion.

A fee of fifty cents is allowed to the County Attorney for services in the County Judge's Criminal Court for attendance and service in Court, and making necessary entries for each prisoner not consenting to be tried without a jury. In C.'s case the twenty-five charges were especially read over to him, and his election taken, the County Attorney attending and making the necessary entries. The County Attorney charged fifty cents in each of the twenty-five cases, but only fees in three cases were allowed by the Board of Audit, the Board declaring that the additional must be claimed from the Government, and subsequently the Board disallowed absolutely this additional sum. The Provincial Treasurer having disallowed such amount.

Held, that a *mandamus* would not lie.

The County Attorney claimed to recover \$100 for an affidavit verifying jurors' book, and \$100 for certificate which he drew up for County Judge to sign.

Held, that these fees could not be allowed, and therefore a *mandamus* would not lie here either.

Read, Q.C., for the applicant.

Bain and Raines, (St. Thomas), for the Board of Audit.

J. G. Scott, Q.C., for the Attorney General.

CHANCERY DIVISION.

Wilson, C. J., C. P. D.]

[June 6.

RYAN V. FISH.

Dower Act—Damages for detention—Damages for mesne profits—Tout temps prest—R. S. O. c. 55—O. J. A. s. 19, subs. 10.

Held, where the plaintiff in an action for dower has endorsed a claim for damages for detention of dower, then, though the tenant of the