

mities of old age, coupled with disabilities from an accident, being no longer able to personally discharge the duties of the same." The bond was dated 28th January, 1899, and was for the due performance of the terms of the condition. Payments were made by Dana to plaintiff in the years 1898-1902; and on 18th March, 1902, Dana resigned his position as sheriff for the purpose of avoiding any further liability under the bond and under the condition. He was re-appointed by letters patent dated 24th April, 1902, in which no conditions were imposed. The present action was brought on 11th April, 1902.

C. H. Ritchie, K.C., for plaintiff.

A. B. Aylesworth, K.C., and M. M. Brown, Brockville, for defendants.

STREET, J., held that the bond was good, coming within the exception created by sec. 11 of 49 Geo. III. ch. 126, as to annual payments out of the fees of an office to a former holder of the office, where the amount so payable is stated in the patent. The word "revenues" used in the patent must be construed to mean the income of the office after deducting the necessary disbursements connected with it; such disbursements must be made from the receipts in any event, and if the balance remaining is less than the amount of plaintiff's annuity, the whole annuity cannot be paid out of it; therefore all he can claim is the balance, for his annuity is payable out of the fund. The exception in the statute should be strictly construed. The payment to be made is to be set aside annually, and to give proper effect to the restrictions with which the exception is fenced, it should be held that the annual sum is intended to be reserved, and paid out of the revenues of the year in which it becomes payable, and not out of those of any other year in whole or in part. The word "revenues" must be treated as the equivalent of "fees, perquisites, or profits" in sec. 11; and, as a sheriff is bound by sec. 14, sub-sec. (4), of R. S. O. ch. 147, to act as assignee for creditors if required to do so, the allowances made to him as assignee are "perquisites or profits" of his office, and therefore part of the revenue of it within the meaning of the patent and bond. So with payments made to him for services as returning officer. Plaintiff is entitled to judgment for the penalty of the bond. Damages to the issue of the writ assessed at \$131.33 and interest, and execution to issue therefor. Execution stayed on the \$10,000 until further damages shall be assessed for breaches, if any, occurring after the issue of the writ in the present action. As