ing that these six gentlemen did not act wisely in asking for troops; but there is no law that I am aware of, that can compel magistrates to be wise; and whether wise or unwise, if they conform to the statute, as they have done here, the military service has to be rendered and paid for. I hazard no opinion as to whether these gentlemen acted on good and sufficient grounds in asking for these troops in this particular case or not. It would be very easy to look wise after the event, and to say, on the one hand, that it is a pity the Mayor had not been left to take care of the peace of the city, or on the other, that perhaps the very presence of the volunteers prevented excesses. I assume that all the authorities acted in good faith: that his Worship considered he could preserve the peace, and was determined to do it, even without troops; and that the six gentlemen who asked for the troops were equally impressed with a sense of duty in doing so; if they were not they may be made responsible for it; but having done it, and the services having been rendered, I cannot entertain a doubt that those services must be paid for. The senior officer who was applied to had no discretion to exercise as to whether he would obey or not, nor had the officers of regiments, or their men. Magistrates, in a variety of cases, may subject themselves to action or indictment if they act illegally and in bad faith; but the question here is merely whether they had authority under the statute to do what they did, and I think it is impossible to read the statute that I have quoted without seeing that they were plainly vested with the power they used, and that as a consequence the troops were bound to obey, and are entitled to be paid.

Trenholme & Maclaren for plaintiff McEachern.
R. A. Ramsay for plaintiff Fraser.
R. Roy, Q. C., for defendants.

SOCIÉTÉ D'AGRICULTURE DU COMTÉ DE VERCHERES v. ROBERT et al.

Suretyship—Condition of surety's obligation varied.

JOHNSON, J. Robert, one of the defendants, was secretary-treasurer to plaintiffs, and he is sued as a defaulter, and does not contest the case. The two other defendants are sued as his security, having given their bond for the faithful execution of his office. They pleaded first a preliminary plea or *fin de non recevoir*, which is withdrawn. They pleaded secondly a demurrer, under which it was contended that the declaration did not show the indebtedness of the officer when he ceased to hold office, and therefore that the action should have been one to render an account. If the averments of the declaration are taken as true, which, of course, they must be under the demurrer, I do not think the latter can hold, for it is said that before and at the time of the fusion of the two societies the indebtedness of the Secretary-Treasurer was incurred; and, further, that he acknowledged his indebtedness by his report. So we must look at the question on the merits that is raised by the exception. The point is, whether the defendants in becoming security for a public officer can be held to have made themselves liable for all his private speculations. By a resolution of the 8th October, 1870, the directors authorized the officer to use the public money in hand (then over $200) and to keep it on call, he paying interest for it. Can it be said that this was not varying the condition of the surety's obligation? It appears to me impossible to say that. As a public officer he was not at liberty to touch a copper of this money for his private uses; and it was as a public officer that his two friends became his sureties. Many a man may be trusted not to rob the funds he receives in a public capacity who would never be trusted to use his private judgment in speculations. It was not the law that permitted him to use these funds, but themselves—the directors. I have no doubt that the sureties are discharged, and the action must be dismissed with costs. As to the defendant Robert, he acknowledges his indebtedness, and as between him and the Society, that is conclusive, and there must be judgment against him.

Mousseau & Co., for plaintiffs.
Geoffrion & Co., for defendants.

REBURN v. HUNTER.

Lease of riparian rights—Attachment not contested.

JOHNSON, J. In this case the Court is of opinion that the plaintiff is entitled to recover.