

filed. The petition was dismissed, and judgment was rendered condemning the defendant for a sum exceeding \$100 and maintaining the *capias*.

In taxing the plaintiff's bill of costs the prothonotary taxed the advocate's fees on the action, as in a case in the Circuit Court, for the amount of the judgment, and allowed the same advocate's fees on the incidental proceeding as are allowed in the Circuit Court on the contestation of a writ of attachment before judgment, but disallowing the fees for articulations of facts. I am now asked to revise this taxation.

Article 16 of the tariff of advocates' fees in the Superior Court provides that in actions under \$200 instituted by writ of *capias ad respondendum* the costs are the same as in actions over \$100 in the Circuit Court. Then we have the general rule adopted in December, 1870, that in all suits in the Superior Court between \$100 and \$200 the fees to be allowed to advocates and bailiffs shall be those allowed in actions of the same class in the Circuit Court. These provisions, however, only apply to fees allowed to advocates and bailiffs. No special provision for these cases is made in the tariffs regulating the fees payable to prothonotaries and sheriffs; and in all suits in the Superior Court, whether the amount be over or under \$200, the tariffs made for that court must be applied. These officers are, therefore, entitled to the fees allowed in actions of \$400 and under, which is the lowest class mentioned. The prothonotary has taxed the costs on the action in this cause according to these principles, and I maintain his taxation.

The contestation of the *capias*, whatever may be the amount of the action, is an incidental proceeding that concerns the liberty of the subject and that essentially appertains to the Superior Court, which alone has jurisdiction in matters of *capias*. No provision for such an incidental proceeding is made in the tariffs for the Circuit Court; but full provision is to be found in the tariffs for the Superior Court. The fees allowed by the tariffs for the Superior Court on a petition to quash a *capias* must consequently be allowed even when the suit is for a sum

under \$200. I therefore overrule the prothonotary's taxation, and allow the fees fixed by the tariffs of the Superior Court on the petition to quash.

Article 821 of the Code of Civil Procedure says that if the contestation of a *capias* is founded upon the falsity of the allegations of the affidavit, issue must be joined upon the petition in the *ordinary course* and independently of the contestation upon the principal demand. All the incidents of the procedure in a principal demand consequently apply in the *ordinary course* to such an incidental proceeding, including articulations of facts. I am of opinion, therefore, that the advocates in this cause are entitled to their fees on the articulations of facts filed in the issue on the petition to quash; and I allow them.

My ruling will be recorded as follows:—

"Having heard the parties upon the application of the plaintiffs for the revision of the taxation of their bill of costs as well on the action as on the petition to quash the *capias* in this cause;

"I, the undersigned judge of the Superior Court, rule and order that the costs on the action, which was for a sum under \$200, and was instituted by writ of *capias ad respondendum*, be taxed as regards the advocate's and the bailiff's fees as in an action over \$100 in the Circuit Court, and as regards the prothonotary's and the sheriff's fees as in an action under \$400 in the Superior Court, and that the costs on the incidental proceeding or petition to quash the *capias* be taxed according to the tariffs for the Superior Court; and I further rule that the advocates are entitled to fees for articulations of facts and answers thereto on such incidental proceeding, and I order that such fees, as well as the prothonotary's fees on the production of such articulations and answer, be allowed to the plaintiffs;

"And proceeding to revise the taxation of the prothonotary, I tax the plaintiffs bill of costs as follows:—&c., &c."

Taxation revised.

H. A. X. Talbot, for plaintiffs.

Rochon & Champagne, for defendant.