

SUPERIOR COURT.

AYLMER (District of Ottawa), Nov. 22, 1887.

Before WURTELE, J.

COLE V. BROCK.

Costs—Opposition to judgment.

Held:—That the costs to be reimbursed, and for which a deposit must be made on the filing of an opposition to a judgment rendered on default, do not include any fee to the plaintiff's attorney, but include the prothonotary's fee and the law stamp for taxing such costs.

PER CURIAM.—Judgment was rendered on default by the prothonotary, and the defendant has made an opposition and has deposited \$3.80 to meet the costs incurred after the return of the writ up to the judgment.

The plaintiff contends that the deposit is insufficient to meet such costs, as they should, according to her, include, in addition to the items allowed, a fee of \$10 for her attorney, and 90 cents for the fee and law stamp on the taxation of the costs incurred; and she has moved that the defendant be required to deposit an additional sum of \$10.90, and that in default of so doing the opposition be rejected.

An opposition to a judgment is held to be and is in reality a defence to the action. (C. C. P., art. 490.) It places the parties in the same position as if a plea had been duly filed and no judgment had been rendered. In order, however, to reinstate the plaintiff, all disbursements uselessly made by him should be reimbursed, and a deposit of a sufficient sum is therefore required.

Do the disbursements include any fee to the plaintiff's attorney on the suppressed proceedings? The tariff provides none and on the contrary provides only one block fee for the management of an action. And I find a passage in Pothier's Treatise on Civil Procedure which shows that the opposition to a judgment, being a defence to the action and not a new issue, does not give rise to any additional fee to the plaintiff's attorney: No. 415. "Les oppositions aux jugements rendus par défaut . . . ne forment point de nouvelles instances, et par conséquent ne doivent pas donner lieu à de nouveaux droits de conseil."

The article of the Code of Procedure (C.C.P., art. 486,) which provides for the repayment of the disbursements and requires the deposit of a sufficient sum to meet them, also provides that such costs shall be taxed; and this is a proceeding entailing a disbursement which is occasioned by the defendant's fault and must be borne by him. The deposit should, therefore, cover the fee and stamp for the taxation.

I consequently pronounce the following judgment:—

"The Court after having heard the parties by their counsel upon the motion respecting the alleged insufficiency of the deposit made in this cause with the opposition against the judgment rendered on default by the prothonotary and having examined the record;

"Considering that the costs for which a deposit must be made with an opposition to a judgment under article 486 of the Code of Procedure consist only of the disbursements made after the return of the action, and do not include any fees to the plaintiff's attorney, but should include the prothonotary's fee and the law stamp for the taxation of the costs to be reimbursed;

"Seeing that the plaintiff's attorney claims a fee of \$10.00, to which he is not entitled, and that the sum deposited was only \$3.80, which was and is insufficient to cover the prothonotary's fee and the law stamp for the taxation of the costs in addition to the other disbursements;

"Doth order the defendant and opposant to deposit an additional sum of ninety cents within three days, costs compensated, reserving to the plaintiff her recourse in case of default on the defendant and opposant's part to complete the deposit."

Motion granted in part.

Henry Ayles, for Plaintiff.

Rochon & Champagne, for Defendant and Opposant.

COURT OF QUEEN'S BENCH—
MONTREAL.*

City of Montreal—42-43 Vict. (Q.), ch. 53, s. 12—Assessment roll—When it comes into force—Prescription of action to annul.

Held:—That an assessment roll comes into force from the date of its final completion,