

## COURT OF REVIEW.

QUEBEC, May 31, 1886.

Coram STUART, Ch. J., CASALTY, J., CARON, J.  
*Costs on congé défaut—Distraction in favor of attorney.*

**HELD:**—(Confirming the judgment of the Court below, ANGERS, J., Beauce.) *That costs, on a congé de défaut, awarded, by way of distraction to the attorney, are exclusively due and payable to him; and, therefore, that, in another suit brought by the same plaintiff against the same defendant, for an amount including the amount of the first demand, the defendant cannot set up, as a ground of temporary exception, the precedent non-payment of such costs to the defendant.*

The judgment is as follows:—

“*Considérant que les frais obtenus sur le congé de défaut d’une action pour la somme de \$128.62, qui forme partie de la présente demande, ont été distraits en faveur de Sévère Thêberge, écuier, procureur, et n’appartiennent pas au défendeur, qui ne peut les réclamer,—rejette l’exception temporaire du défendeur avec dépens.*”

Judgment confirmed.

*Morrisset & de St. George* for the plaintiff.  
*Sévère Thêberge* for the defendant.

(J. O’F.)

## SUPERIOR COURT.

AYLMER, (district of Ottawa), Feb. 24, 1887.

*Before WÜNTELE, J.*

DUMAIS, Petitioner, v. FORTIN, Respondent.  
*Hull, City of—Election of Alderman—Contestation—Security for costs—Bail bond.*

- HELD:**—1. *That the contestation of the election of an alderman of the City of Hull is a matter which depends on and belongs to the Superior Court.*
2. *That the bail-bond for security of the costs of the contestation of an election under the charter of the City of Hull and under the municipal code, need not contain the description of the real estate of the sureties.*

**PER CURIAM.**—The petitioner contests the election, on the 18th January last, (1887,) of the respondent as an alderman of the City of Hull.

Before presenting his petition, the petitioner gave security for costs before the Prothonotary, as required by the 37th section of the charter; but although the surety justified his sufficiency on oath, the bond does not contain the description of his real estate. The petition is addressed to the Judge of the Superior Court, residing in the District of Ottawa; but the bond specifies that the security given is for the costs which may be awarded by the Superior Court.

On the presentation of the petition, the respondent filed an exception to the form, which he styled “preliminary objections,” alleging the irregularity and insufficiency of the security for costs, for the two reasons just mentioned, and the consequent nullity of the proceedings.

Now, as to the first objection.

The charter provides, in section 35, that the contestation of the election of an alderman shall be decided by a judge of the Superior Court, sitting in the District of Ottawa, in term or in vacation, and section 37, in speaking of the procedure, says that a notice stating the day on which the petition will be presented to the court, must be served on the respondent eight clear days before it is so presented to the court. Whether the judge acts in term or in vacation, he constitutes the Court for the trial of the contestation; and that court is the Superior Court, of which the bond entered into as security for the costs and the other proceedings in the contestation are records. There is therefore no irregularity in the bond, when it states that it is entered into as security for the costs which may be awarded by the Superior Court on the contestation of the election.

Then as to the other objection.

Section 237 of the charter enacts that the municipal code shall apply on all subjects not provided for. The nature of the security to be given for the costs on the contestation of an election is not mentioned in the charter, and therefore the provisions of article 353 of the municipal code apply: “The sureties must be owners of real estate to the value of \$200, over and above any incumbrances there may be on such property. One surety suffices, provided he is an owner of real estate to the required value.” In connec-