property. The two portions together are assessed in the corporation books at $420. The plaintiff was obliged to divide the assessment between his tenants, and claims from the defendant $120 as his proportion. It happens that the part of the property leased to Wilson is sublet by him at an increased rental of $2150, but the whole of it was not collected from the subtenants by Wilson. The defendant contends that he is entitled to a diminution in consequence, and that $120 out of $420 is an overcharge, and he makes the same pretention as to the *two* preceding years, and concludes by offering $61 as the sum total of his indebtedness. First, as to the proportion justly payable by the defendant. It is a question of fact to be settled by evidence, and I am of opinion that the proportion settled by the City Treasurer, which is a few dollars more than the amount of the claim of plaintiff, is a perfectly fair assessment, notwithstanding the pretention of the defendant, unsustained by evidence, that he should benefit by and share in the small profits made by the co-tenant Wilson out of his subleases. The plaintiff had nothing to do with this.

The next question is whether the defendant has established any claim against the plaintiff for overcharges in the assessments of the previous years. The evidence here would require to be of the most positive character, as in case of a *condictio indebiti*, to justify the Court in opening up accounts once settled between the parties.

The pretension of the defendant is that he paid plaintiff in 1875 $97.02, whereas under the most favorable circumstances he should not have paid more than $80, less 2 p. c. discount, thus making an over payment with interest added of $21.08. That similarly in 1876 he overpaid $25.64. All this was based upon the assumption that the defendant's portion of the premises assessed at $420 was one fourth, as he would have it, and not a little less than one third, as the judgment complained of made it. As the Court has viewed the matter, the defendant underpaid for 1875 about $10, and for 1876 the payment was about right. The plaintiff's letter of date 25th October, 1877, offering a rebate, appears to have been based upon an erroneous calculation of what was due by defendant. He has a prudent dread of a law suit, and properly said to the defendant that he wished to keep on good terms with his tenants. At any rate the defendant refused the offer of plaintiff and "*offre non accepté ne vaut rien.*" The condemnation was a fair one and it should stand, save as to the interest at 10 per cent., which is reduced to 6 per cent.

*Lacoste, Q.C.*, for plaintiff.

*Hall* for defendant.

---

## SUPERIOR COURT.

MONTREAL, June 30, 1879.

BOURASSA v. ROY.

*Surety when débiteur solidaire—Interest.*

JOHNSON, J. The plaintiff's action is to recover from the defendant as a *caution solidaire*, money due under an obligation of the 23rd November, 1864—by one Pagé, and to which the defendant became party. The plea is: 1st, That the money was payable in March following the execution of the deed, and the obligation of the defendant was limited to that time; and that no demand was then made, and he thought the debt had been paid by Pagé, who was then solvent, and therefore that the defendant is discharged. 2nd. The defendant pleads that Pagé hypothecated his property, and the plaintiff, by not registering his obligation, has put the surety in a worse position. The fact appears to be that Pagé has been discussed by other creditors, and the plaintiff only registered after them in 1869; but the *caution solidaire* could preserve his own rights, and could himself look after the debtor. By 1961 C. C., the surety is not discharged by the delay given to the debtor by the creditor. He may, in the case of such delay, sue the debtor in order to compel him to pay. The *caution solidaire* here is the *débiteur solidaire* (see Art. 1941), and it is not a case where by the act of the creditor, the surety cannot be subrogated in his rights, for the surety as soon as this obligation became due, and even before, might have sued the debtor, if the debtor was insolvent.

As to the amount due, the plaintiff can only get the interest stipulated up to 1st August, 1866, when the Civil Code came into force; and thence for five years—the prescription enacted by Art. 2250, C. C. These sums of capital and interest, accumulated at the time of bringing the action, give rise to interest since