

In 1876 Wilson instituted an action against the Corporation, alleging the illegality of the assessment roll, and claiming to be re-imbursed the above amount, with interest from date of payment. The Corporation pleaded that they were not bound to re-imburse the money; that it had been paid for a work which benefited the property of Wilson, and that it was not a case in which the party was entitled to get it back. The Court below gave judgment for the principal, but allowed interest only from the date of the summons, instead of from the 19th January, 1869, date when the money was paid to the Corporation. There is no difficulty about the capital; the Corporation does not appeal from the judgment rendered. But the executors of Mr. Wilson institute an appeal and say that interest should be allowed from the time the money was received by the Corporation; that Wilson paid under coercion, being threatened with proceedings in execution. It is not contended that Wilson would be entitled to interest if the payment had been voluntary; the appellants admit that where the payment is voluntary, interest is awarded only from the date of putting *en demeure*. But the appellants urge that when a party pays because he is threatened with an execution he is entitled to interest from the date of payment. The Code does not provide for this case. Art. 1047 says, he who receives what is not due to him, through error of law or of fact, is bound to restore it. If the person receiving be in good faith, he is not obliged to restore the profits of the thing received. Art. 1049 says, if the person receiving be in bad faith he is bound to restore the sum paid, with the interest from the time of receiving it. It has been contended that there was bad faith on the part of the Corporation. We do not see that such was the case. They made an assessment roll, and for some irregularity the roll was set aside. There is no evidence of bad faith in that. The only case, therefore, provided for by the Code, viz., the case of bad faith, does not arise here. The case of *contrainte*, or payment under threat of execution, is not provided for. This would seem to settle the case. But we have been told that the Code in this particular did not alter the law as it existed before the Code, and that according to the old law this case would be decided differently. The author-

ity of Merlin is cited. This author merely says that when a person is *contraint*, he is entitled to interest from the time of payment. He is merely referring to Bretonnier who says, "unless he has been forced to pay." There is nothing positive in this, and no decision is to be found, and none has been cited, which meets the present case. I have looked at the decisions under the Code Napoléon, and have found two cases. In one case, in the *Journal du Palais*, the party was condemned to pay interest only from the time of the judgment. In another case, in 1828, the *arrêt* condemned the party to refund the amount with interest from the date of the payment. This case was under a disposition similar to one contained in our Code, that a person who is condemned may appeal by giving security for the costs, and if he gets the judgment reversed he is entitled to recover the amount with interest from the date of payment. I think this article is to be interpreted adversely to the pretensions of appellants; for if it had been the general rule that a party who pays a sum of money by *contrainte* has a recourse for interest from the date of payment, there would have been no necessity for this article in the Code. But it was because there was no such general rule that the Code says the party is entitled to interest. And there is a good reason for the distinction, because a person who pays money under coercion may bring an action immediately for the recovery of the money paid; but in the other case he has to wait until the appeal is decided, and unless he had the right to interest under the Code, he would only get interest from the date of his action. A case of *Sutherland & City of Montreal* has been referred to by the appellants. In that case Dr. Sutherland had paid an amount for which he was assessed for the widening of Little St. James Street. A very short time after, he brought an action for the recovery of the money, and he asked for interest from the date of payment. He obtained judgment and the judgment was confirmed by the Privy Council. The question of interest was not raised in our Courts, and the judgment of this Court and of the Privy Council merely granted the conclusions of the declaration, by which interest from the date of payment was prayed for. That judgment, therefore, is not a precedent which can be invoked by the present