2. It is not necessary under such circumstances that the Court should declare the assessment roll null, or that the roll should be before the Court.

3. Interest on money so illegally paid runs only from the date of the demand of restitution.

The declaration asked for the setting aside of an assessment roll, and that defendants be condemned to pay plaintiff $1,823.99, with interest and costs. It alleged that on the 27th July, 1868, commissioners in expropriation were appointed for the widening of Place d'Armes Hill; that they were to report on September 15, and the delay was extended to October 10. That on November 20, long after their powers had ceased, the commissioners made an assessment roll, distributing the cost of the improvement, and assessing plaintiff $1,236 31. He paid it to avoid an execution, and now sought to recover it.

The plea denied plaintiff's allegations, and set out that he was benefitted by the improvement, and never complained of the roll, which was duly confirmed.

PER CURIAM.—The payment to defendants is proved; it was a payment under protest. As to whether the money was a debt due by law to defendants, it was so, of course, if the assessment roll referred to could be seen to have been made by the Commissioners within their powers, and within the time fixed for their operating. The Commissioners' appointment conferred office on them only for a time, that is, up to Sept. 15. Was that time extended by authority? Plaintiff says so, but he says no more than that it was extended to Oct. 10. Nothing appears from which we can say that beyond this date the Commissioners had power or office; yet the assessment that plaintiff paid was upon a roll made by those Commissioners only in November. This was too late.

Much has been written in the last thousand years on error of law and error of fact, and on error or mistake as ground for rescinding agreements, or reclaiming money paid. Writers on the subject have in all times differed. Even texts of the Roman law on the subject seem contradictory. See Savigny; Thibaut; Smith's Leading Cases; Kent's Comm. Under the English and American systems of law the case of defendants would prevail; but I do not see how the English or American systems can control this case. We have law of our own, and it cannot be put out of mind, or made to cede to other law. I refer to our Civil Code 1047, which I read by the light of the commentators, for instance, of Marcadé, vol. 5, pp. 254 et seq. The assessment money paid by Wilson was not due to any body; the defendants must restore it. I see it has been held so in Scotland, in a case like this one.

As to my declaring the assessment roll null and void, largely, as prayed, I cannot do that, in the absence of the roll, nor is it absolutely required that I should do this to enable me to order the restitution of the money in question. I see enough upon the issues as formulated and the proofs in so far as the parties have made proofs, and (I may add) abstained from making proofs, to compel me to say that it appears that Wilson's money was paid as an assessment imposed upon him upon the operation of the assessors made outside of the time within which it was competent to them to operate. Plaintiff does show *prima facie* that the Commissioners were *functi officio* when they made the assessment roll. If they were not after the 15th Sept. they were after 10th Oct.

A question of some importance remains, that of interest. The plaintiff is entitled to interest, but from what date? He remained seven years and a half inactive, and then first asks defendants to repay him his money, with interest from time of payment. Our Code bars demand for all arrears of interest over five years. But the law also enacts for a case like this, that interest only runs from demand, for the defendants were in good faith. (5 Marcadé, 258.) They supposed that the money was due to them. The Commissioners erred in form, so the money was not due, not a lawful debt. A quasi contract resulted from all that passed, obliging defendants to repay, but only on demand. No demand was made until this suit was brought, so interest can only be allowed from service of process. The like was ruled in *Brunelle* v. *Buckley*, which went through three Courts.

E. Barnard for plaintiff.

R. Roy, Q.C., for defendants.

JOHNSON, J.

DAWES v. FULTON *es qual.*

Assignee, Action against—Insolvent Act, Section 125.

Held, that the ordinary hypothecary action cannot