and the naked question of law comes up, whether these wages could be seized under the circumstances. By article 558 wages not yet due are not seizable. What is "due"? The meaning of the word is cited from a law dictionary by the contesting party to be that it is due if the day on which it is payable has arrived. But at what time of the day? Could the defendant here have maintained on *that day* an action for his wages? Evidently not. The garnishee had the whole day to pay them. Then it was contended that the exigency of the writ went to oblige the garnishee to declare what he owed, and also what he might owe. The garnishee has declared that fully. He says he owes nothing. He can't get the services of his workman unless he pays him in advance. His agreement with his master was: if you pay me in advance, I will go on working for the next fortnight, but not otherwise. So that the master had no hold on him whatever, and if this seizure were maintained, would be obliged to pay, and could get no service.

Art. 613 merely orders him not to dispossess himself until it is declared whether there is a valid seizure or not. He may or may not have done so. That is his affair; but there is no legal seizure.

Contestation dismissed.

Hatton & Nicolls, for plaintiff contesting.
Trenholme & Taylor, for garnishee.

SUPERIOR COURT.

MONTREAL, May 9, 1882.

Before TORRANCE, J.

THE CORPORATION OF THE VILLAGE OF HOCHELAGA, v. HOGAN et al.

Municipal Taxes—Prescription—Interruption.

The demand was for assessments due on real estate for the year 1875, amounting to $780.

The defendants pleaded prescription of three years under the Municipal Code, art. 950.

The evidence showed that a triennial evaluation roll was made in 1875, in virtue of which the land of defendants, situate within the municipality, was taxed to the amount of $780.15. On the 1st October, 1875, the taxes were payable and were not paid. There were new taxes for 1876, and 1877, which were not paid, and in January, 1878, in order to avoid the prescription which would be acquired for the taxes of 1875, the land was seized and offered for sale under the provisions of the Municipal Code. The arrears of taxes then claimed from the defendants amounted to the sum of $5,205.51, and this was the amount of the seizure. The seizure and sale were stopped by a writ of prohibition taken out by the defendants and others. The petition for the prohibition complained of the roll of evaluation for the year 1876 as illegal. The first judgment rendered in the Superior Court on the 9th July, 1879, was against the petitioners. They appealed to the Court of Queen's Bench, and were successful there by judgment of date 22nd June, 1880, and this judgment was confirmed by the Supreme Court on the 10th June, 1881. By this judgment, the roll made in 1876, on which the assessments of 1876 and 1877 were based, was declared null, inasmuch as a triennial roll had been made in 1875, and the seizure effected in order to collect these assessments was prohibited.

PER CURIAM. The pretension of the plaintiffs is that the seizure of January, 1878, which comprehended the taxes of 1875, interrupted the prescription for these taxes. On the other hand, the defendants do not say that the seizure was only for the taxes of 1876 and 1877. But it is plain that the prohibition only affected the roll of 1876, and not the roll of 1875, which was the basis of the assessment of 1875, now in question. There was nothing to prevent the seizure and sale for the taxes of 1875. There was nothing in the writ of prohibition to prevent the legal proceedings for the recovery of the taxes of 1875. The prescription, therefore, ran against these taxes, the prohibition notwithstanding. Prescription maintained.

Action dismissed.

Mousseau, Archambault & Monk for plaintiff.
Church, Chapleau, Hall & Atwater for defendants.

SUPERIOR COURT.

MONTREAL, March 11 and April 15, 1882.

THE ONTARIO BANK v. MITCHELL, es qualité.

Evidence—Witness—Executor.

Held (by RAINVILLE, J.) *that in an action against executors of a will, one of the executors who is a legatee under such will, and also individually sued, is a party to the suit, and cannot be examined on behalf of the estate of which he is an executor in a separate defence by it.*