

Montreal, noted in this issue, and the judgment does not appear to be open to objection, for there is nothing to prevent a person who has paid under coercion from bringing an action the next day for the recovery of his money, and then he will lose no interest. If he chooses to forbear, he places himself, as regards the period of forbearance, in the position of one who has paid voluntarily, and no interest is due.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, June 19, 1880.

Sir A. A. DORION, C. J., MONK, J., RAMSAY, J.,
TESSIER, J., CROSS, J.

WILSON et al. (plffs. below), Appellants, & THE
CITY OF MONTREAL (def. below), Respondent.

Money unduly paid—Interest is allowed only from date of demand of repayment if received in good faith—Payment under coercion.

The judgment appealed from was rendered by the Superior Court, Montreal, Mackay, J., April 30, 1878, condemning the respondent to repay to the appellants, as executors of the late Hon. Charles Wilson, the sum of \$1264.34, which had been collected from Mr. Wilson under an illegal assessment roll made to defray the cost of widening Place d'Armes Hill. The observations of the learned Judge who rendered the judgment in the Court below will be found in *Legal News*, Vol. 1, p. 243.

The judgment was appealed from in so far only as it refused interest from the date the tax was paid and allowed it merely from date of service of process. The *considérant* of the judgment below on this point was as follows:—

"Considering under all the circumstances that the defendants may be seen to have been obliged by quasi-contract to repay said \$1236.31 and \$28.03, to plaintiff on demand; that up to the institution of the present action, these moneys had not been demanded, and that therefore, and by reason of the defendant's good faith, and plaintiff's knowledge of the law and facts when he paid, they, the said defendants, are not bound to pay interest on the said sums except from date of service of process; the plaintiff when he paid was aware of the law

and of the facts, the taking of said money by defendants was not immoral, and plaintiff had been advantaged by defendant's operations widening the Place d'Armes Hill referred to, for his, plaintiff's property, had been improved (according to the opinion of Thomas Wilson, one of the plaintiffs *par reprise*;) Doth ad-judge and condemn the said defendants," &c.

The appellants contended that Wilson paid the tax only because he was threatened with a seizure. Such being the case, the following authorities were cited by them to show that under the circumstances the obligation to return the capital involves the obligation to pay interest as well, from the date of the payment.

"Merlin, Rep. Vo. intérêts § No. 3, 'celui qui a payé volontairement ce qu'il ne devait pas, et qui le répète en justice, ne peut exiger les intérêts que du jour de la demande, mais s'il n'a payé que comme contraint ce qu'il ne devait pas, les intérêts lui sont dus à compter du paiement.'

"Rousseau de Lacombe, Vo. intérêts No. 9, and (Guyot Rep. Vo. intérêts, lay down the same doctrine.

"And such also is the opinion of writers under the Code Napoléon. In particular Rolland de Villargues Dict. Vo. intérêts, Nos. 100 and 101 says:—'Il faut aussi décider que lorsqu'un individu a été injustement poursuivi et forcé de payer ce qu'il ne devait pas, il a droit aux intérêts de la somme indûment payée, à partir du paiement.

"Mais celui qui, sans y être contraint, aurait payé par erreur, ne pourrait réclamer contre celui qui a reçu de bonne foi les intérêts de la somme par lui payée que du jour de sa demande, attendu que le paiement a été volontaire.' Cites Lecamus 76. Henrys 2. 4, Bretonnier qu. 32.

"See also Journal du Palais (Ledru Rollin) Vo. Intérêts No. 194."

Sir A. A. DORION, C. J. In 1868 the late Hon. Charles Wilson was assessed on an assessment roll for certain improvements for enlarging the Place d'Armes Hill. He paid the assessment in 1869 and obtained this receipt:—

"Received from the Hon. Charles Wilson the above amount which he declares he pays under protest and to save the proceedings in execution with which he says he is threatened.

(Signed.)

JAMES F. D. BLACK,
City Treasurer."