accept an arbitration, but the defendant having refused an arbitration, the plaintiff instituted the present action, claiming the value of the manure and of certain fall ploughing. The claim for fall ploughing was dismissed, but the Court found from the evidence that at the termination of the lease, the plaintiff had put upon the farm (over and above the quantity agreed to be left) 325 loads of manure, which at the valuation established by the evidence of record, amounted to $315, and the defendant was condemned to pay this sum.

An appeal was taken, and the points submitted by the defendant were, 1st, on the merits, that the plaintiff could not recover, because the manure placed on the farm had been worked into the soil, and the plaintiff had had the benefit of it in the green crop of 1862. Further, that the plaintiff had remained in possession of the farm as the tenant of the purchaser, Judge Gale, after he brought his action. It was true he remained at the advanced rate of £90, but he got an additional extent of land. The principal point, however, that was urged by the appellant was irregularity in the mode of rendering the judgment in the Court below. It appeared that judgment was first rendered in open Court on the 31st of March, 1865, dismissing the plaintiff's action. The plaintiff inscribed the case for review, but in the meantime the judge, having discovered an oversight, recalled the judgment, and on the 25th of April, again rendered judgment verbally for $315 in plaintiff's favour. Subsequently, a re-hearing was ordered, the defendant did not appear at this, and finally the judgment appealed from was rendered on the 31st of May. The defendant submitted that the rendering of a judgment in open Court constituted a final judgment, and could not be subsequently altered by the judge.

Per Curiam. (DUVAL, C. J., MEREDITH, DRUMMOND, and MONDELET, JJ.) There is no error in the judgment appealed from, and consequently it must be confirmed.

Kerr, for the Appellant.

Mackay & Austin, for the Respondent.

HUNTER, (plaintiff in the Court below) Appellant; and GRANT, (defendant in the Court below) Respondent.

Payment—Collateral Security.

An action for goods sold and delivered. Question of evidence as to whether a transfer of instalments coming due under a deed of sale was given in full payment of the debt, or merely as collateral security.

This was an appeal from a judgment of the Superior Court, rendered at Montreal by *Monk*, J., on the 30th of June, 1865, dismissing the plaintiff's action.

In September, 1864, the plaintiff sold goods to the defendant to the amount of $623. 12, and in February following brought an action for $600, balance alleged to be due on this sale. The plea of the defendant was, that he had paid for the goods by making a transfer to the plaintiff, on the 12th of September, 1864, of $600, being the last five instalments payable to the defendant, under a deed of sale by one Regis Petel; and that he had paid the balance, $23. 12, in cash. The plaintiff answered that the transfer was received only as collateral security, and did not discharge the defendant.

The Court below dismissed the action on the ground that the transfer contained a clause of warranty, *de fournir et faire valoir*, and that the delays and terms of credit mentioned in the transfer, for the payment of the amount therein specified, were available by the defendant, and operated in his favour, under the terms and considerations of the transfer.

Per Curiam. (DUVAL, C. J., MEREDITH, DRUMMOND, and MONDELET, JJ.) Considering that the appellant hath fully proved the sale and delivery to the respondent of the goods and merchandize, for the value of which the action was brought; considering that the allegations of the plea have not been proved, and that the transfer referred to in the plea was not given in full payment of the appellant's debt, but merely as collateral security for the payment thereof; considering, therefore, that in the judgment there is error, &c. Judgment reversed, and respondent condemned to pay $600.

Dorion & Dorion, for the Appellant.

Leblanc, Cassidy & Leblanc, for the Respondent.