Respondent for the amount of a promissory note made in the following terms:

"St. Bruno, 5 Décembre, 1874.

"Pour valeur reçue, à première demande, je promets payer à Adolphe Benoit, la somme de sept cent dix piastres courant, avec intérêt.

"A. M. sa X marque. Brais.

"F. H. N. Berthiaume,
"Témoin."

At first respondent pleaded to this action that he never signed such a note, and that it was a forgery, and he supported this plea by affidavit. Later, he moved to be allowed to amend his defence, and to be permitted to plead that he had signed, by his mark, the note in question, but that he intended to give a receipt for this amount of money. As to the change of means of defence, it is insisted that it is evidence of bad faith, and that the new plea is an admission of the falsity of the former plea, the truth of which was vouched for by affidavit. I cannot draw the conclusion from this change of plea appellant does. It is true that the two pleas are incompatible, but it is to be remembered that the signature to the promissory note was simply the mark of an illiterate person (made, too, by another; Ev. of Berthiaume, pp. 8 and 11), who now says he thought he was signing a receipt. If it be true he was in error as to the nature of the document, it is not wonderful that he should plead that he did not sign a promissory note, and if he pleaded that in good faith, it is no evidence of turpitude that he should swear to it. Deprived of all sensational matter, the case resolves itself into this: did defendant sign the note by error? It is purely a question of evidence.

The evidence adduced by appellant is to me far from tending to give force to his case. The notary Berthiaume, brother-in-law of appellant, knows nothing of the transaction beyond the fact that plaintiff and defendant came and asked him to make a note and that he did it. No money passed, and nothing was said as to where the money came from. This is not very conclusive, it is true, but it is unusual among people of that class, carrying out a transaction before people who knew their affairs generally. On the other hand, respondent persisted in the attempt to establish that he could not have signed the paper in question at St. Bruno, as he was at Montreal on the 5th December, 1874. Again, I cannot consider the evidence of broken conversations with appellant as of any weight. The exact fidelity of the memory as to the words used, is more than questionable. The conversations with Berthiaume are not evidence at all, except in so far as they might affect his character for veracity, for his evidence is really little more than negative.

So far as I can see, the key to the mystery is to be found in the evidence of the appellant. I think it is impossible to believe his story. At the time the note was made, the legal relation between respondent and him was that of debtor and creditor. Now he wishes us to believe that he then, being indebted to respondent in a sum almost precisely, if not precisely the amount of the note, lent him $710, payable on demand with interest, and that he went on paying to respondent and to his son, without ever demanding payment of this demand note. Again, he tells us that he knew of a donation by respondent to his son which was not signified to him; he can't tell how he knew it, and that after that he dealt with the son and not with the father. This is not true. On the contrary, he admits having taken another note from respondent as a protection, and it appears by the action that on the 2nd November, 1875, (nearly a year later than the date of the note sued on), he took another note in notarial form from the respondent for $200, which was afterwards taken as part payment of the account between Benoit and Brais, father or son. We thus find a notable contradiction in appellant's testimony, and evidence of a course of proceeding identical to that followed on the present occasion, according to respondent's pretention.

There is still another point more conclusive. After a great deal of beating about the bush, appellant says that he got the money he lent to respondent from a *dépot* in the hands of Berthiaume, a day before from Berthiaume; and yet he does not venture to ask his brother-in-law one word about this matter, although he was twice examined as a witness. Under these circumstances, I see no reason to reverse the judgment of the Court below.

Judgment confirmed.

Préfontaine & Co. for appellant.

Lacoste & Co. for respondent.