are clearly in favor of the appellant I am to reverse, and give plaintiff judgment on his motion.

The judgment is as follows :—

"Considering that the jury sworn to try the present case have, by their answers to the questions submitted to them, found in favor of the appellant, plaintiff in the court below, and that they have assessed the damages which he has sustained by the fire mentioned in the pleadings in this cause at the sum of $600;

"And considering that the motions made by the respondents in arrest of judgment, for judgment *non obstante veredicto*, and for a new trial, had been disposed of when the case was heard before the Superior Court on the motion of the appellant for judgment on the verdict;

"And considering that the said motion, not being opposed in the mode prescribed by article 422 of the Code of Civil Procedure, the appellant was entitled to his judgment on the verdict;

"And considering that there was no error in the judgment rendered by the Superior Court at Sherbrooke on the 18th day of May, 1881, and that there is error in the judgment rendered on the 31st day of January, 1882, by said Superior Court sitting in Review;

"This Court doth reverse the judgment rendered by the said Superior Court sitting in Review on the 31st day of January, 1882, and doth confirm the judgment rendered by the said Superior Court, at Sherbrooke, on the 18th of May, 1881, and doth condemn the respondent to pay the costs as well those in the Superior Court as those incurred in Review and on the present appeal."

Judgment reversed.

Ives, Brown & French for Appellant.
Camirand & Hurd for Respondent.
W. White, Q. C., counsel.

COURT OF QUEEN'S BENCH.

MONTREAL, September 19, 1883.

DORION, C.J., MONK, RAMSAY, CROSS & BABY, JJ.

BENOIT (plff. below), Appellant, & BRAIS (deft. below), Respondent.

Promissory note signed by error—Evidence.

The defendant, sued on a promissory note, pleaded, in the first place, that the signature was a forgery, but subsequently amended his plea, and alleged that he signed the note by error, intending to give a receipt for the amount stated therein. Held, that in the case of an illiterate person who signed by making his mark, this change of defence was not an indication of bad faith, and, the evidence appearing to the Court to sustain the amended plea, the judgment dismissing the action was confirmed.

The action in the Court below was brought upon a promissory note for $710. This note was signed by the defendant with a cross, in the presence of a witness, and was payable on demand with interest.

The plea was that the defendant did not sign the note, and had no reason to do so, seeing that the plaintiff Benoit was at the time his debtor. At the trial it appeared that the defendant Brais had really made his mark on the document produced. He then obtained leave to amend his plea, and pleaded that he is unable to read, and that he signed the paper as a receipt for a sum of $710 paid to him by Benoit.

It appeared that Brais sold a property to Dr. de Grosbois in 1872 for $5,000. Benoit bought the same property from De Grosbois and assumed the payments coming due, which were at the rate of 6,000 francs per annum. On the 1st November, 1874, there were $500 due as principal and $210 as interest, making $710, the amount of the note in question.

The Court below was of opinion that the note sued upon had in fact been given as a receipt for this sum, and the action was accordingly dismissed.

RAMSAY, J. There is a question of procedure raised on this appeal, which appears to me to have no solid foundation. Appellants complain of a surprise, and that a certain notice of *enquête* for the 7th May, 1880, was originally for the 6th, and that it appears on the face of it to be altered. The attorneys of the appellant are not those of plaintiff in the Court below, and it seems that Mr. Longpré after this, on the 12th May, 1880, accepted service of the notice of hearing on the merits, without any sort of reserve or objection. In addition to this, it is difficult to see what appellant has suffered from this alleged surprise—what more he has to offer to the Court on the point, the whole case being a very simple one. Appellant sued the