

day of October last, dismissing the first count of the Plaintiff's Declaration, with costs, *sauſ à se pourvoir*.

PRESENT :—MESSRS. JUSTICE BOWEN,
PANET,
BEJARD, and
GAIRDNER.

The Court of Appeals of our Lady the Queen, now here, having seen and examined the Record and Proceedings in this cause, more particularly the Declaration of the said Plaintiff and the demurrer or *défense au fonds en droit* of the said William Bradbury and John Roberts, to the first count of the Declaration of the said Benjamin Hall, and to the demand therein contained, having heard the parties by their Counsel respectively, and mature deliberation had thereon. Considering that in the said first count of the Declaration it is sufficiently alleged and set forth that the said William Bradbury and John Roberts, as merchants and copartners, on the 20th December, 1834, made their certain writing obligatory, commonly called a *Bon*, and thereby declared the same to be good on demand to the order of the said Norman Bethune for the sum of £426, current money of the Province, received in cash, and then and there delivered the same to the said Norman Bethune, and that there was paid to the said Norman Bethune on the thirty-first January 1845, the sum of fifty pounds on account, there leaving a balance of £376 due thereon, and that the said Norman Bethune, to whose order the payment of the sum of money in the said *Bon* specified was to be made, after the making of the said *Bon* and before the payment of the balance due thereon, to wit, on the 1st of April 1837, endorsed the same to the said Plaintiff; and considering that no set form of words is requisite to constitute a promissory note; and that the instrument called a writing obligatory, as set forth, does contain an absolute promise to pay to the order of the said Norman Bethune, and for value received, the sum of money therein mentioned, and that such allegations bring the note in writing called a *Bon* within the intent of the Provincial Statute 34, Geo. III, ch. 2, though it does not follow the very words of that Act :

It is therefore considered and adjudged by the said Court now here (dissentient, the Hon. Mr. Justice Gairdner,*) that the Interlocutory Judgment of the Court below rendered in this cause on the 19th day of October 1837, rejecting and overruling the first count of the said Plaintiff's Declaration be, and the same is hereby reversed with costs to the Appellant; and proceeding to render that Judgment which the Court below ought to have given in the premises; It is considered and adjudged that the parties do proceed to the proof of the several issues of fact alleged and raised in and by the pleadings in the said cause; and that the Record be forthwith remitted to the Court below for such further proceedings thereon as to law and justice may appertain.

* NOTE.—The dissent of Mr. Justice Gairdner merely applied to the insufficiency of the Plaintiff's Declaration, in not having alleged the *writing obligatory* or *Bon* to be a *note in writing* within the intent of the Provincial Statute 34 Geo. III, ch. 2.