did not appear by the said count that the instrument upon which that count is based, and which the Appellant had by his declaration described as "a certain writing obligatory commonly called a *Bon*," had been legally transferred by Norman Bethune, the payee, to the plaintiff; that a transfer by endorsement as mentioned in the said count, of a writing obligatory or *Bon*, could not give the endorsee any right of action against the drawer; and that in fact, it did not appear by the said count that there had been any privity of contract between the Appellants and the Respondents, or that the Appellant had any right of action against the Respondents.

The Respondents by their second plea averred that the alleged endorsement of the *Bon* or writing obligatory, spoken of in the said first count of the said Declaration, could not give the Appellant any right of action against the Respondents, because the sum of money mentioned in the said writing obligatory or *Bon* had never been legally transferred by Norman Bethune, the payee of the said *Bon*, or the transfer of the said sum of money accepted by the Appellant, the endorsee of the said *Bon;* that the pretended transfer of the sum mentioned in the said *Bon* or writing obligatory, by the endorsement and delivery of that instrument, was null and void.

The third and fourth pleas of the Respondents set forth—that the pretended transfer of the said *Bon*, spoken of in the said first count of the said Declaration, did not take place until long after the *Bon* had reached maturity; that during the period the *Bon* had remained in the hands of the payee, the liability of the drawers (the Respondents) had been extinguished, partly by payment and partly by compensation, as is fully explained by the said third and fourth pleas.

The fifth plea is a *défense au fonds en fait*, and applies to all the counts of the Plaintiff's Declaration.

Law issues were raised upon the first and second pleas fyled by the Respondents, and upon these issues the parties were heard in the early part of the Term of October last.

The Respondents contended—that the instrument spoken of in the said first count was not "a note in writing, commonly called a promissory note," and had therefore been truly described by the Appellant as "a writing obligatory, commonly called a *Bon*;" but relied chiefly on this ground: that whatever may be the nature of the instrument in question, as it has not in this case been brought within the limits of our Provincial Statute respecting the negociation of promissory notes, but, on the contrary, has been designated as "a writing obligatory or *Bon*," the Appellant was bound to aver and prove, that he held that writing obligatory by a title sufficient to vest in him the sum due under the said *Bon* or writing obligatory; that the Appellant had not made a sufficient averment in this respect, as the title he had set up under an endorsement, could not have had the effect of transferring the sum of money due under the instrument in question. In fine, that as the Appellant had described the instrument upon which his claim is founded as "a writing obligatory, commonly called a *Bon*," he could not derive any advantage from the provisions of our Provincial Statute, which refers to "notes in writing, commonly called promissory notes," and to none other.

Chief Justice Reid, Mr. Justice Pyke, and Mr. Justice Rolland concurred in this view of the case; and as the majority of the Court (Mr. Justice Gale dissentient) rendered judgment on the twentieth