

pine timber, according to the tenor and effect of the said contract or agreement for the sale and delivery thereof, at Sillery Cove, near Quebec, on or before the 15th day of June, 1835.

And this Court considering further, that upon the sale of goods by admeasurement, which may happen to be destroyed before measurement, the loss is cast upon the seller; that the stipulations of *admeasurement* and of delivery at a particular place, rendered the sale conditional and incomplete until the occurrence of those events; and that in the meantime the risk, the "*periculum rei venditæ*," is not to be borne by the Purchasers; that after the expiration of the time fixed for the delivery, the Purchaser was not bound to receive the property, the contract having been determined by the seller's breach of its conditions; and that in the performance of all commercial contracts punctuality is required, the rule of the Civil Law, "*Dies interpellat pro homine*" being strictly applicable to them:

It is therefore by the Court now here considered and adjudged, and the said Respondents are hereby adjudged and condemned to pay and satisfy to the said Appellants:

First. The sum of £1979 3s. 4d. with interest thereon, from the 13th day of July, 1835, till paid: and,

Secondly. The sum of £312 10s. being the difference in value on the quantity of 50,000 feet of red pine, between the Market price thereof in the month of June, 1835, and the price of 9½d. per foot being the contract price for which the said Respondents were to have delivered the said quantity of red pine timber to the Appellants, with interest on the said sum of £312 10s. from this date till paid:

And this Court hereby dismisses the demand of the said Respondents as incidental Plaintiffs in, the Court below, reserving to them, the said Respondents, nevertheless, all such recourse as they may legally have and take for the value of such quantities or parcels of the said red pine timber as may have come into the hands and possession of the Appellants, belonging to the said Respondents, subsequent to the said 19th day of June, 1835.

And lastly, this Court doth adjudge and condemn the Respondents to pay to the said Appellants, as well the costs of the said Suit or Action, as of the incidental demand in the Court below, together with the costs of the present Appeal.

PROVINCE OF } COURT OF APPEALS.
LOWER CANADA. }

QUEBEC, November Term, 1845.

BENJAMIN HALL,

Plaintiff in the Court Below,

APPELLANT:

AND

WILLIAM BRADBURY AND JOHN ROBERTS,

Defendants in the Court Below,

RESPONDENTS.

No set form of words is requisite to constitute a promissory note; and an instrument called a writing obligatory or a *Bon payable to order* for value received, may be considered as a *note in writing*, within the intent of the Provincial Statute 34, Geo. III; ch. 2, though it does not follow the very words of that Act; and though it be merely described and designated in the Plaintiff's Declaration as a writing obligatory, or *Bon*.