

defendant in which one C. was plaintiff and the present plaintiff defendant, said warrant having been issued without authority and after the debt for which said suit was brought and said warrant issued was paid and satisfied to the satisfaction of the plaintiff by giving new securities therefor. Plaintiff's statement of claim was framed on the theory that the justice had jurisdiction but that he acted maliciously and without reasonable and probable cause; there was no count or paragraph against the justice founded on want or excess of jurisdiction.

Per GRAHAM, E. J., MEAGHER, J., concurring.

*Held*, 1. It was not necessary under the circumstances to consider whether the justice exceeded his jurisdiction or not.

2. The warrant having been properly issued, and the only question being as to whether or not it could be enforced after the debt was paid, that this question was not covered by the notice, and that the action must be dismissed: R.S.N.S. (5th series) c. 101, s. 12.

Per WEATHERLE, J.—The jury having found that defendant acted in good faith and that he had reasonable and probable cause for directing the arrest of plaintiff, and was not actuated by malice, plaintiff could not succeed.

*Quere*, whether after the warrant was issued plaintiff could adjust the debt by giving new securities.

Per RITCHIE, J.—The plaintiff could not succeed, the notice of action being defective.

*Quere*, whether plaintiff could not have succeeded if trespass had been alleged.

C. S. HARRINGTON, Q.C., for appellant. W. E. ROSCOE, Q.C., and W. M. CHRISTIE, for respondent.

Full Court.]

WALLACE v. HARRINGTON.

[Feb. 4.

*Mortgage—Foreclosure by assignee—Subsequent advances—Barristers and Solicitors Act 1899, N.S. Act 1899, c. 27, ss. 27, 31, 32—Failure of solicitor to take out certificate—Right of client to recover costs from opposite party.*

H. assigned to plaintiff a mortgage held by him of certain property of which F. was owner subject to the mortgage to H.

The assignment, to which F. was a party, and which was made at his request, contained among other things an agreement on his part that any future advances which he might require, if made by the assignee, "should also be a lien or charge upon the property."

After the death of F. foreclosure proceedings were commenced by W., who, in addition to the amount secured by the mortgage, made a claim for subsequent advances.

The defendant H. was appointed to represent the heirs of F. in the proceedings, but, subsequently, C. F., who claimed to be one of the legal