are the principal and intermediate parties to the instrument." In the declaration the plaintiff avers that Young endorsed and delivered the bill to the Metropolitan Bank, who endorsed the same to plaintiff. Now all this must have been done before the plaintiff could sue on the bill. It is true some of the authorities shew that if the bill, when the action was commenced, was in the hands of a third person, as agent or trustee for the plaintiff, he might sue, though the bill was not then in his actual possession. In all these cases, I apprehend, the person suing has been a party to the bill at some time before the bringing of the action. For the purposes of our stamp act, I think we are certainly bound to decide, that when a person becomes the holder of an unstamped bill, so as to sue and does sue on it, he must, to make it valid in his hands, have put the double stamp on it before commencing the action. Indeed I personally take a much stronger view of the necessity of a holder protecting himself by the double stamp when the bill without it would be void. The holder, in my judgment, can only be considered safe when he puts on the proper stamp at the time he would in law be considered as having taken and accepted the bill as his own, or within a reasonable time thereafter. We are, therefore, of opinion that, on the first ground of nonsuit, our judgment must be in favour of the defendant.

In coming to this conclusion, I may observe that I still retain the view expressed in *Baxter* v. *Baynes*, that the most convenient way to raise the question as to the invalidity of a bill for want of a stamp is by a special plea; but as no objection was taken at the trial to the want of a special plea, and express leave was given to enter a nonsuit, if the court should be of opinion that the plaintiff was not entitled to recover for want of the bill being properly stamped in due time, and the case was argued before us on that ground, we do not think it necessary in this case further to discuss the question as to this ground of defence being set up under the plea, that the defendant did not accept the bill.

The bill is not evidence of an account stated as between these parties, for there is no privity between the acceptor and the endorsee. The only evidence is the letters produced at the trial, and these only refer to the bill which is the subject of the action. If that bill is void and of no effect, an acknowledgment of it, and a promise to pay in a particular way, can raise no promise to pay on the account stated, for there would in any event be no legal or valid consideration for the promise stated. The doctrine is laid down in some of the older cases, though not expressly in relation to the particular point now under discussion, "the accompt doth not alter the nature of the debt, but only reduceth it to certainty;" *Drue* v. *Thorn* Aleyn. 73.

As to the question of damages, *Suse* v. *Pompe* is an authority that the amount for which the jury assessed damages, is the amount which could be recovered against the drawer or endorser of the bill; and some of the authorities seem to sanction the view, that larger damages may be recovered by the holder against drawer and endorser, than against the acceptor; the acceptor not being considered liable for re-exchange, as his contract is only to pay the sum specified in the bill and legal interest, according to the rate of the country where it is due. The amount found for the plaintiff accords with the views expressed in *White* v. *Baker*, decided in this court, and is quite as favourable to the plaintiff as the authorities would seem to warrant.

In argument it was suggested, that the value of the American currency, as compared with our own, at the time of the trial, was the true measure of damages for the plaintiff, or that the plaintiff might select any day between the breach of defendant's contract to pay and the assessing of the damages, as the one on which the rate of exchange should be fixed. Independent of the invariable doctrine in England, that interest is the only damages that can be given for the detaining of money after the day on which it is due, the authorities, particularly in England, in the case of an ordinary breach of contract, when the party suing has paid all the money, decide that the damages are to be considered by placing the plaintiff in the position he would have been in, if the defendant had carried out his contract; and the value of the commodity to be delivered is to be estimated at what it was worth at that time. There seems to be one exception to this rule; when stocks are borrowed to be returned by a certain day, the jury should give such damages as will indemnify the plaintiff, and, when the stock has risen since the time appointed for the transfer, it will be taken at its price on or before the day of trial; (*Owen* v. *Routh*, 14 C. B. 327, and American notes to that case.)

There was nothing said in the argument as to this bill being payable in New York with current funds. If that means any thing different from lawful money of the United States, then it may be a question if the instrument is a bill of exchange at all; and if it is not legally a bill of exchange, plaintiff can have no property in it.

The rule to increase the damages will be discharged, and the defendant's rule to enter a nonsuit made absolute.

Rule absolute to enter a nonsuit, rule to increase damages discharged.

Friel v. Ferguson et al.

Magistrate—Trespass—Information—Warrant, evidence of—Joint tort—Evidence—Notice of action—Direction to jury—General verdict—Restricting to one count—Verdict against two defendants on separate counts.

The warrant of a magistrate is only *primâ facie*, not conclusive evidence of its contents; as, for instance, of an information on oath and in writing having been laid before him.

Such information must be, under Con. Stats. C. cap. 102, sec. 8, not only on oath, but in writing; and, except on an information *thus* laid, there is no authority to issue the warrant.

In this case, the magistrate having acted in direct contravention of the statute, in issuing a warrant without the proper information under the statute, or without even a verbal charge having been laid against the plaintiff, and and there being no evidence of *bona fides* on his part, the court held that he was not entitled to notice of action.

Semble, 1. That the fact of a magistrate's issuing a warrant without the limits of the county for which he acts does not necessarily disentitle him to notice of action. 2. That such notice will be bad, if it omit the time and place of the alleged trespass.

A general verdict, on a declaration containing one count in trespass and another in case, is not bad in law. But in this case, the court being of opinion that there was only one joint cause of action against the defendants, that is the arrest, restricted the verdict to that count.

Held, also, that a joint tort was sufficiently established against the defendants by evidence that one procured the warrant to be issued and the other issued it; that both knew that no charge had been made against plaintiff, that the warrant was given by the one to the other for the