equivalent, in lawful money of Canada, of the sum of $15,000 in American money, having regard to the relative value of the Canadian and American dollar respectively; or, 2nd, to the sum of $10,743 34, on the ground that the plaintiff was entitled to a verdict for an amount which would, on the day of the trial, have purchased a draft on New York for $15,000 and interest and such sum of $10,743 34, being e requisite sum for such purpose.

Both these rules were enlarged until the present Term, and came on to be argued together.

Anderson for the plaintiff.

The bill was drawn and is payable in the United States, though accepted in this Province.

The 9th section of the Stamp Act provides, that any person in the Province who makes, draws, accepts, indorses, signs, or becomes a party to any bill or note chargeable with duty, before the duty or double duty has been paid by affixing the proper stamp, such person shall incur a penalty of $100, and the instrument shall be invalid and of no effect in law or equity, and the acceptance shall be of no effect, except only in case of the payment of double duty; but that any subsequent party to such instrument may, *at the time of his becoming a party thereto*, pay such double duty by affixing to such instrument a stamp to the amount thereof, and by writing his signature or initials on such stamp, and the instrument shall thereby become valid. Here the plaintiff has affixed the double stamp to the bill, and the only question is, has he done so in the proper time? That depends on the time when he became a party to the bill. This he did when he endorsed it. The holder of a bill is not necessarily a party to it, and until he puts his name on it, or in some way signifies that he is a party to the bill, he ought not to be brought within the highly penal terms of the statute.

There is a letter admitting defendant's liability, and the verdict is on the common counts as well, and may stand for the plaintiff on these counts.

The face of the bill with interest is the proper measure of damages. It is payable in dollars, and we know of no difference between the American dollar and our own; it is very trifling if there be any difference; and, therefore, the amount of the bill in our own country is what it really represents. We cannot take notice of the fact, that in the United States something else than gold is receivable in payment of debts, which in fact reduces the standard of their currency, though the coinage is precisely the same as it was before. The action is against the acceptor, and the case of *Suse* v. *Pompe*, 8 C. B. N. S. 538, is only authority to shew that, as against the drawer or endorser of a bill, the damages are limited to exchange and expenses: Chitty on Bills, 412; *Dawson* v. *Morgan*, 9 B. & C. 618 But in an action by indorsee against acceptor, the liability is to pay the money mentioned in the bill with legal interest, according to the rate of the country where it is due.

As to the variance in not describing the bill as payable in lawful money of the United States, he applied to amend if necessary.

McLennan, contra.—The venue is laid in the County of Victoria in this Province, and the bill according to the declaration, will be considered as made there, and the money mentioned in it will be considered as lawful money of Canada. *Kearney* v. *King*, 2 B. & Ald. 301, was an action against the defendant as acceptor of a bill of exchange. The declaration stated that a bill of exchange was drawn and accepted at Dublin, to wit, at Westminster, for certain sums therein mentioned, without alleging it to be Dublin in Ireland; and it was held, that, on this declaration, the bill must be taken to have been drawn in England for English money, and, therefore, proof of a bill drawn at Dublin in Ireland for the same sum in Irish money, which differs in value from English money, did not support the declaration, and was a fatal variance. In *Sproule* v. *Legge*, 1 B. & C. 16, the declaration stated the plaintiff, at Dublin, made a promissory note, and promised to pay the same at Dublin, without alleging it to be Dublin in Ireland, where also it was held that the promissory note must be taken to have been drawn in England for English money, and proof of a note made in Ireland for the same sum in Irish money did not support the declaration. Reference is also directed to Chitty on Bills, 397.

The stamps not having been put on the bill until after the commencement of the action, plaintiff must fail; the plaintiff's rights have reference to the time of bringing the action, and if the bill was not a good bill then, it cannot be now. If the plaintiff was not a party to the bill, he could not bring an action on it; and if, having brought his action, he then became a party to the bill, he did not even then stamp it, and it is therefore void. According to defendant's argument, the holder of a bill, who has never endorsed it away, can always avoid the forfeiture by putting on the double stamp and writing his name on it, even at the trial. This would in fact render the act of Parliament of little use; for frauds would constantly be practiced to avoid it. *Baxter* v. *Baynes*, 15 U. C. C. P. 245, is referred to as to the effect of the stamp act.

As to the account stated, the contract arising from the account stated is a contract to pay on request or demand, whilst the agreement to pay by defendant's letters is in a particular way.

No contract arises on the account stated from plaintiff being the holder of the bill, as there is no privity between him and the acceptor; *Early* v. *Bowman*, 1 B. & Ad. 889. *Calvert* v. *Baker*, 4 M. & W. 417; *Burmester et al.* v. *Hogarth*, 11 M. & W. 97; *White* v. *Baker*, 15 U. C. C. P. 292; Story on Conflict of Laws, secs. 286, 309; *Wood* v. *Young*, 14 U. C. C. P. 250; Chitty on Bills, 9 ed. 582, 583, 685, 686.

If the plaintiff can sustain the action, all he is entitled to recover is the value of the American money the day the contract was to be performed, with interest. He referred also to *Suse* v. *Pompe*.

RICHARDS, C. J., delivered the judgment of the court.

The first question to be considered is whether the plaintiff is a party to the bill sued on, and when he became such party. As a general rule, no person can sue on a bill of exchange or promissory note unless he is a party to it. The expressions run constantly through the cases, "He cannot sue on the bill; he is no party to it."

In Chitty on Bills, 9 ed. p. 27, it is stated, "The drawer, acceptor, endorser, and *holder*,