done which the warrant made a condition precedent to the plaintiff's discharge within the thirty days. We do not hold that the irregular form of a warrant, when the justice has jurisdiction over every subject matter to which the warrant relates, should be constructed to be an excess of jurisdiction, so as to deprive him of the protection of the act.

Nor do we concur in the argument that the defendant was acting ministerially only, for the determination of these questions as to costs was we think clearly an act of adjudication. The case of *Linford* v. *Fitzroy* 13 Q. B. 240 cited by Mr. McKenzie, was argued before the passing of the Imperial Statute, 11 & 12 Vic. ch. 44, on which our Stat. of U. C. ch. 126, above referred to, was framed.

This case appears to us to come within the spirit and meaning of that act. If the defendant had acted maliciously and without reasonable or probable cause he would be liable in an action on the case, but he is not a trespasser, since that act, if he had jurisdiction and has not exceeded it.

The case of *Leary* v. *Patrick* 15 Q. B. 266 is the most strongly in favour of Mr. McKenzie's argument, but it is quite distinguishable. There the plaintiff was arrested on a warrant for a penalty and 12s. costs. It appeared in evidence there never had been any adjudication for costs, and the court, without entering into the question whether costs were recoverable or not, held the plaintiff was unlawfully arrested for costs which had never been adjudged against him.

We think the rule should be discharged.

Rule discharged.

COMMON PLEAS.

(*Reported by* S. J. VANKOUGHNET, Esq., M.A., *Barrister-at-Law, Reporter to the Court.*)

STEPHENS v. BERRY.

Unstamped bill of exchange—Time for affixing double stamp—Evidence—Bill payable in American currency—Damages—Account Stated—White v. Baker, 15 U.C.C.P. 292, *followed.*

When a party becomes the holder of an unstamped bill of exchange he must, in order to make it valid in his hands, affix the double stamp to it *before* commencing an action upon it.

Per RICHARDS, C.J., that the holder of such a bill can only be considered safe by affixing the proper stamp at the time when in law he would be considered as having taken and accepted the bill as his own, or within a reasonable time thereafter.

The view expressed in *Baxter* v. *Baynes*, 15 U.C.C.P. 237, as to the most convenient mode of raising the question of the invalidity of a bill for want of a stamp, (*i. e.* by a special plea) adhered to. In this case, however, as no objection had been taken at the trial to the absence of a special plea, and express leave had been given to enter a nonsuit, if the court should be of opinion that plaintiff was not entitled to recover on account of the bill not having been properly stamped in due time, and the case having been argued on that ground, the court did not consider it necessary to discuss the question as to the propriety of such ground of defence being set up under the plea of non-acceptance.

Held, also, that the bill of exchange was no evidence of an account stated between the plaintiff and defendant (indorsee and acceptor) as there was no privity between them; nor were certain letters which referred only to the bill, for if the latter was void, an acknowledgment of it and promise to pay in a particular way could raise no promise to pay on the account stated, because there would in any event be no legal or valid consideration for the promise.

White v. *Baker*, 15 U.C.C.P. 292, followed as to the damages in the shape of exchange, to which the holder of a bill is entitled against the acceptor.

Quære, whether an instrument purporting to be a bill of exchange, payable in New York "with current funds," if it mean other than lawful money of the United States, is a bill of exchange.

[C. P., T. T., 1865.]

The first count of the declaration alleged that one William Young, on 11th January, 1865, by his bill of exchange, then overdue, directed to the defendant under the name and firm of E. Berry & Co., required the defendant to pay to his order the sum of fifteen thousand dollars in New York, with current funds, sixty days after date thereof; and defendant, under the name and style of E. Berry & Co., accepted the bill payable at the Bank of America, in New York, and the said William Young then endorsed and delivered the said bill to the Metropolitan Bank, or order, for account of the said plaintiff; and the said Metropolitan Bank then endorsed the same to the plaintiff; and the said bill was duly presented for payment thereof at the said Bank of America, in New York, and was dishonoured.

The declaration also contained the common counts for money payable by the defendant to the plaintiff for goods bargained and sold by plaintiff to defendant; for goods sold and delivered; work, labour, and materials; for money paid, money received by defendant to the use of plaintiff, for interest, and for money due on an account stated.

The defendant pleaded on 18th April, 1865,

1. That he did not accept the bill.
2. Plea to second count, never indebted.

On these pleas issued was joined.

The cause was taken down to trial at the last spring assizes for the county of Victoria, before Mr. Justice Adam Wilson.

The bill sued on was given in evidence. It was dated at Milwaukee, 11th January, 1856, drawn by William Young on Messrs. E. Berry & Co., Kingston, C.W., payable to the order of the drawer, sixty days after date, for fifteen thousand dollars, in New York, with current funds. It was endorsed by the drawer, "Pay Metropolitan Bank, or order, for account of R. H. Stephens, Esq., or order," and by Romeo H. Stephens. On the face of the bill, it was accepted payable at Bank of America, New York, by E. Berry.

A letter from E. Berry & Co. to the plaintiff, dated 24th March, 1865, was also put in, stating they would substitute their draft on Jacques Tracy & Co., at three months date, to mature $\frac{1}{3}$. $\frac{1}{3}$ June and $\frac{1}{3}$ July, for $15,000 and interest on the whole, to be in place of Young's draft on them, held by the plaintiff. The notes were to carry interest at 7 per cent. from 15th March, to be made in three equal amounts. Mr. Young's note was to be returned to him on the above notes being handed over to plaintiff. There was also another letter from E. Berry & Co. to plaintiff, dated, Kingston, 28th March, 1865, in which they acknowledged the receipt of plaintiff's letter of the 25th March, and said they had written Mr. Jacques that their proposal of the 24th March had not been accepted, and that they should not have occasion to trouble them. The letter proceeded, "We think we can make you a substantial payment as soon as navigation opens in May, and the remainder early in June, if that will suit you. We have at the moment no one whom we should like to ask to endorse for us; we never endorse ourselves for any one." The plaintiff contended that these letters were evi-