The plaintiff was charged before the defendant with an offence within the provisions of the 18th section of chapter 92, Con. Stat. C. The defendant had jurisdiction under that section to impose the fine and costs on the plaintiff, and in default of payment within the period specified for payment, to issue a warrant to levy the fine and costs; and if no sufficient distress could be found, to commit the plaintiff to gaol for a term not exceeding a month, unless the fine and costs were sooner paid. In this case the defendant did not issue a warrant to levy the fine and costs, but, without first doing so, he issued a warrant to commit the plaintiff, and the plaintiff contends that such a proceeding was an excess of jurisdiction. I cannot take that view of it.

The act respecting the duties of justices out of sessions, in relation to summary convictions, ch. 103, Con. Stat. C., secs. 57 & 59, very clearly gives the authority and jurisdiction to the convicting magistrate to commit to gaol without first issuing a warrant to levy the fine and costs; and I think the statute applies to a conviction under the 18th section of chapter 92, and that the defendant was authorized to commit the plaintiff by a warrant in the form used by the defendant in this case.

The 57th section enacts that when a conviction adjudges a pecuniary penalty, and by the statute authorizing such conviction the penalty is to be levied upon the goods of the defendant by distress, &c., the justice making such conviction may issue his warrant of distress, according to a form in the schedule of the act, &c.; and the 59th section enacts that "whenever it appears to any justice of the peace to whom application is made for any warrant of distress as aforesaid (*i. e.* in the preceding clause 57) that the issuing thereof would be ruinous to the defendant and his family, or whenever it appears to the said justice, by the confession of the defendant or otherwise, that he hath no goods and chattels, &c, whereon to levy such distress, then such justice, if he deems it fit, instead of issuing a warrant of distress, may (O 1, 2, referring to the form of warrant to commit) commit the defendant to the common gaol," &c., "there to be imprisoned, with or without hard labour, for the time and in the manner the defendant could by law be committed in case such warrant of distress had issued, and no goods or chattels had been found whereon to levy," &c.

Upon a reference to the form of the warrant in the schedule to the act, no recital or reference is made, that it appeared to the justice that the party had no goods, and the warrant issued by the defendant corresponds with the form authorized by the statute; so that if it did appear to the defendant that it was useless to issue a warrant of distress in the first instance, the defendant was justified in issuing the warrant to commit as he did.

In the present case the defendant, no doubt, was satisfied that the plaintiff had no goods, as it appeared in evidence at the trial that the plaintiff was well known to the defendant, that he was a young lad living with his parents, and that he had no property.

I am not prepared to say, and I wish to guard myself from holding, that if a justice of the peace should issue a warrant to commit in the first instance, upon a charge such as was alleged against this plaintiff, without it appearing to him that the person convicted had no goods, or taking some means to ascertain the fact, that he would not be liable in trespass for exceeding his jurisdiction, and that it would not be incumbent on him in an action like this to give some evidence to that effect, the statute under which he convicts expressly declaring that he shall first issue a distress warrant, and the statute (c. 103) only dispensing with that proceeding under certain circumstances.

It would have been better and more satisfactory, perhaps, if the form given by the statute had provided for reciting the fact, so as to show that the justice professed to act under that provision of the act to which the form referred, but, as Pollock, C. B., said, in *In re Allison* (10 Ex. 567), "The statute gives a form to be adopted by magistrates, and they are not called upon to reason upon the matter."

Then as to the objection to the direction in the warrant to detain the plaintiff until payment of the charges of conveying him to gaol. There can be no doubt, and it was not denied, that the defendant had authority so to do, under the 62nd section of chapter 103, and the form of the warrant referred to in the 59th section expressly refers to these charges; but it is contended that as the amount of these charges was not inserted in the warrant, the blank for the amount not being filled up, there was an excess of jurisdiction. Leaving the amount blank was evidently an omission. A like objection was taken in the case of *Dickson* v. *Crabb*, in this court, in which judgment was delivered to-day. There the objection taken was, that neither the costs and charges of the distress nor of the commitment, nor of the conveyance of the party to gaol, were stated in the warrant; and, as said by the learned Chief Justice, it only shows an irregular exercise of jurisdiction, rather than an excess of it. Here the defendant apparently had determined the amount of the charge, but omitted to insert it in the warrant, leaving the amount "—— dollars." In *Dickson* v. *Crabb* we have decided that the case is within the spirit and meaning of the statute, cap. 126, sec. 1, and that trespass will not lie; and that decision disposes of the objection in this case.

HAGARTY, J., concurred.

DRAPER, C. J., not having been present at the argument, took no part in the judgment.

Rule absolute for nonsuit.

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*

(*Continued from page* 174.)

During the same Term the plaintiff also obtained a rule *nisi* to increase the verdict, pursuant to leave reserved, 1st to the sum of $15,161 10, on the ground that the plaintiff was entitled to the full amount, in lawful money of Canada, of the face of the bill in the declaration mentioned, being $15,000 with interest, or the