exchange these words, "Accepted—the Richardson Gold Mining Company, per James Glass, secretary," and that in no other way or form was the said bill of exchange accepted. That the said Gilbert received the said bill of exchange with the said words so written on the face thereof from the defendant in his the said defendant's official capacity as such secretary, and took and kept the same until after the same fell due, and that after the same was long past due, he transferred the same to the plaintiff, who took the same after it was due as aforesaid. That the defendant never had any consideration for accepting the said bill, nor was it ever intended by said Gilbert or defendant, that any personal liability should arise thereon against the defendant. And that the bill of exchange in this plea set out is the bill of exchange in the declaration mentioned, and no other, and the acceptance thereof alleged above, and in this plea mentioned, is the acceptance of the said bill in the declaration mentioned, and that in no other way or form howsoever was the said bill of exchange in the declaration mentioned accepted."

Scott, for defendant, obtained a summons to strike out the above plea as embarrassing and for duplicity. He cited *Bank of Montreal* v. *Delatre*, 5 U. C. Q. B. 862; *Owen* v. *Van Lester*, 10 C. B. 319; Bullen & Leake's Prac. 810.

Bell, Q C. (Belleville), shewed cause, citing *The Great Western Railway Co.* v. *The Grand Trunk Railway Co.*, 24 U. C. Q. B. 107.

Gwynne, J.—The summons in this case, as it appears to me, must be made absolute for striking out the plea which has been pleaded.

The plea sets out the bill sued upon, *verbatim* by which it appears to have been addressed to the defendant as follows:—"James Glass, secretary Richardson Gold Mining Company, 'Belleville.' The plea also avers, that the bill was presented to the defendant as secretary of the said company, and that he then being 'secretary of the said company' wrote upon and across the face of the said bill of exchange these words, '*Accepted—the Richardson Gold Mining Company, per James Glass, secretary*, and that in no other way or form was the said bill of exchange accepted.' Now if this had been the whole of the plea, the object of the pleader as stated in the argument, namely, of inviting a demurrer for the purpose of submitting to the court as a question of law, whether this constituted the acceptance of the defendant or not would have been effectually obtained: *Yates* v. *Nash*, 8 C. B. N. S. 581. But the plea does more; it avers that the Richardson Gold Mining Company is a body corporate; that it purchased from the drawer certain machinery for the purposes of the company's operations, and thereby became indebted to the drawer and that to obtain payment of the debt so due from the company to the drawer, the latter drew the bill, which is set out *verbatim:* that the drawer, when drawing the bill *intended* that it should be accepted and paid by the company, and did not intend that the same should be a draft or bill upon the defendant in his individual capacity, or that it should be accepted or be payable by the defendant in his individual capacity: that the bill was *addressed* and presented to the defendant *as* secretary of the company and in his official capacity: that the drawer received the said bill, with the said words written on the face thereof, from the defendant in his official capacity, and took and kept the same until after the same fell due, and after it became due he transferred it to the plaintiff, who took the same after it became due: that the defendant never had any consideration for accepting the said bill, *nor was it ever intended* by the drawer or the defendant that *any* personal liability should arise thereon against the defendant."

Now, unless there be some statute authorising the bill of exchange, so drawn and addressed, to be accepted in the manner this was, so as to bind the company, upon whom the bill was not drawn, as the acceptors thereof, it is plain that this is not the acceptance of the company, and unless it be the acceptance of the defendant it is no acceptance at all; if it be no acceptance at all, the plaintiff cannot recover, and this is the only event which can defeat his right of recovery, for, whatever may have been the want of consideration as between the drawer and the defendant, and whatever may have been their intention, not appearing on the face of the bill, as to the exemption of the defendant from a liability appearing on the bill, in virtue of its being accepted if accepted by him, cannot prejudice the plaintiff's right of recovery, although it was transferred to him after it became due, if he gave value, which is not questioned.

These matters alleged in the plea can have no bearing or effect upon the question, whether the bill has been accepted by the defendant or not, and whether he is liable thereon as acceptor or not. Facts alleged in a plea must be taken to be inserted for some purpose. The natural purpose appears to be to invite an issue upon the facts so alleged—and if several of the facts so alleged are wholly immaterial to the merits of the plaintiff's right to recover, he may well, I think, complain that the plea is embarrassing. If he should join issue on the plea, what does it put in issue? Would the acceptance of the bill by the defendant be properly in issue? It may be questionable whether it would—for the allegation "that the defendant never had any consideration for accepting the said bill, and that it was transferred to the plaintiff after it became due," seems to imply an admission of an acceptance, although such acceptance was without consideration; moreover, how could the bill have been transferred after it became due, if having never been accepted it never did become due; whether the plea or any part of it, taken by itself, is good upon demurrer or not, I express no opinion; it is sufficient for the purpose of the present motion to say, that the only material point being whether the bill upon its face shews that it is or is not, as alleged in the declaration, the acceptance of the defendant, all the other matters alleged, although they may be immaterial to that question, may well be complained of as calculated to embarrass the plaintiff, and should not therefore be permitted to be introduced into the record. The case of *The Great Western Railway Company* v. *The Grand Trunk Railway Co.*, 24 U. C. R. 107, to which I was referred, does not in my judgment warrant such a plea as this, nor have I found any case which does.