

livered to the said defendant, Richard Hungerford, being the person named in such warrant, to be executed in due form of law, by virtue of which said warrant the defendant Richard Hungerford, as such bailiff in said warrant named, afterwards, and while it was in full force, to wit, at the said time when, &c., and within the limits of the said school section, pursuant to said warrant and the statute in that behalf, seized and took the goods and chattels of the plaintiff in the declaration mentioned for the purpose of levying thereout the moneys so awarded to be paid and directed to be levied as aforesaid, and which still remain wholly due and unpaid, as the said defendant Richard Hungerford lawfully might for the cause aforesaid, and detained the same until, &c.

The defendant Richard Hungerford, as bailiff, pleaded a similar plea.

Demurrer.—That the said plea admits that the appointment of the said Isabella McDougall was not legal and valid under the statute, and there could therefore be no legal or valid reference to arbitration or award between her and the trustees: that the award as alleged in the said plea is illegal and void; no valid adjudication of the fact of wilful neglect or refusal by the trustees, so as to make them personally responsible, is shewn; the warrant set out in the said plea is illegal and void, and shews no defence or justification for the taking of the plaintiff's goods.

MORRISON, J., delivered the judgment of the court.

The arbitration and award in the pleas mentioned were under the authority of the 84th and following sections of the Common School Act, Consol. Stat. U. C. ch. 64, and the 9th section of 23 Vic. ch. 49, which latter enacts, "If the trustees wilfully refuse or neglect, for one month after publication of award, to comply with or give effect to an award of arbitrators appointed as provided by the 84th section of the said Upper Canada Common School Act, the trustees so refusing or neglecting, shall be held to be personally responsible for the amount of such award, which may be enforced against them individually by warrant of such arbitrators within one month after publication of their award; and no want of form shall invalidate the award or proceedings of arbitrators under the school acts."

The chief question raised by these demurrers is, whether the defendants shew a good foundation to justify the issuing of the warrant under which the plaintiff's goods were seized: namely, that the plaintiff, as one of the trustees, wilfully refused and neglected for one month after publication of the award set out, to comply with or give effect to it; for unless that is shewn, the plaintiff could not be held personally responsible for the amount payable by the award, nor could the teacher or the arbitrators enforce the amount against him individually by means of a warrant issued by the arbitrators under the authority of the statute.

It must be borne in mind that the award itself is one between the school corporation and the teacher, and the duty of the trustees as forming that corporation is to comply with the decision of the arbitrators,—in the present case to pay the sums of money awarded forthwith, that is, after notice of the award and a proper demand made upon them as such trustees by the teacher, the person authorized to receive the money; and if after such notice and demand, the trustees, as members of the corporation, wilfully refuse or neglect for one month after publication of the award to comply with it by paying the amount awarded to the teacher, then the trustees so refusing or neglecting shall be held to be personally responsible, and the amount may be enforced against them by the warrant of the arbitrators. The statute is unfortunately silent as to the proceedings to be had before the arbitrators shall take upon themselves so grave a step as issuing an execution against the trustees personally; and when we consider that in most of such cases the persons appointed to be arbitrators will be persons unacquainted with legal proceedings, it is to be regretted that the provisions of the statute did not indicate the procedure in such cases. In the absence, however, of any directions in the statute, justice and common sense dictate that before such trustees can be held or declared personally liable, a warrant issued, and their goods seized and sold in this very summary way, that there should be some statement or complaint made by the teacher to the arbitrators that she had not been paid the amount awarded her, and that the trustees or some of them wilfully neglected and refused to pay the amount awarded. That being the case, they, the arbitrators, should take some steps to ascertain the facts and adjudicate upon the matter, by a notification to the trustees and calling upon them individually to shew cause why a warrant against them should not issue under the provisions of the statute, to levy the amount awarded out of their own goods, on the ground of their wilfully refusing and neglecting for a month after publication of the award to pay the amount.

If such steps had been taken in the case, the plaintiff might have shewn, as one of the trustees, that he, personally, as a trustee, was willing to comply with the award, and that his co-trustees refused

to do so, or the trustees might have shewn (among other grounds that might be suggested) that the corporation had not the money on hand to meet the demand, but that without delay they took the necessary steps to collect the amount under the powers conferred on them by the statute from the rate-payers of the school section. In such and like cases it could hardly be said that the trustees wilfully neglected and refused to comply with the award, and that the arbitrators would be justified in issuing a warrant against them personally.

In these pleas it is not alleged or shewn that the plaintiff was ever notified or called upon to shew cause why the warrant mentioned in the plea should not be issued, nor is it alleged that any adjudication whatsoever took place determining that the plaintiff was guilty of wilful neglect or refusal. The plea assumes, as in the case of *Ranney v. Maclem et al.*, 9 C. P. 192, that no such adjudication was necessary, and that a distress warrant may issue against the individual property of each trustee without its being shewn that he has had any opportunity to contest the fact of wilful neglect and refusal, as said by Draper, C. J., in that case cited, "in effect issuing execution without trial or judgment, and which is so manifestly contrary to justice that it cannot be sustained."

If it was the intention of the legislature that school trustees must have in their treasurer's hands money at all times to meet such demands, and that if they merely omit paying the amount for a month after publication of an award, that without any notification to them, or further proceeding or adjudication, a warrant may issue to seize their individual goods, the statute should have so declared in express terms.

It is unnecessary to discuss the other question raised on these demurrers, but I may add that the warrant under which these defendants, justify, is very defective and informal, it does not recite the award or shew any foundation for its being made. It simply authorizes R. H. after ten days to collect from the trustees the sums mentioned in it, for whom or upon what account is not stated, and directs within eight days after the receipt to pay the amount to J. R., &c., merchant, a stranger to all these proceedings, and in default of payment on demand to levy by distress and sale of the goods of the trustees the amount with costs, &c.,

Judgment must be given for the plaintiff on the demurrer to both pleas.

Judgment for Plaintiff.

GRAMMAR SCHOOL MASTER'S ASSOCIATION.

At the recent annual meeting of the Grammar School Masters' Association, the following report (deferred for want of space until now) was unanimously adopted by the Association:—

REPORT OF THE COMMITTEE ON THE GRAMMAR SCHOOL BILL.

In the report now submitted, the Committee beg to present those points, which, in their opinion, require to be provided for in any future legislation relative to Grammar Schools. The subject will be most advantageously treated by considering first,

THE STATUS AND DUTIES OF GRAMMAR SCHOOLS.

The functions of the Grammar Schools practically arrange themselves under two chief heads:—

The imparting to advanced Common School pupils a training, linguistic, or scientific, or mixed—this training being preparative for the various competitive examinations, especially for the University Matriculations, the entrance examinations of the Law Society and Medical Council, the examinations for Common School certificates, and probably hereafter in Canada, as now in England, the examinations for the Civil Service.

The imparting to a considerable number of advanced Common School pupils their final scholastic training previously to their entering on the practical business of life.

THE ADMISSION OF PUPILS.

The definition above given of the duties of Grammar Schools, takes for granted that they receive at regular intervals an accession from the Common Schools of thoroughly prepared pupils.

First, as to the regularity of supply, frequent complaint has been hitherto made, that, even in the case of Union Schools, no provision exists in the law for the promotion of pupils from the highest department of the Common School to the Grammar School. As a consequence of this omission, the law practically delegates to the pupils themselves the responsible duty of determining the nature and the extent of their scholastic training. The absurdity of compelling trustees to make a separate provision for the instruction, in the same branches, of pupils of the same stage of advancement, and taught in adjacent rooms of the same building, is too manifest to require further illustration.