If the trustees desired to comply with an award on them to pay money, if they had not available funds on hand they might have to levy a rate for the purpose. To do this they should be correct in their proceedings. Sub. 20, sec. 27, of ch. 64, directs them to exercise all the corporate powers vested in them for the fulfilment of any contract or agreement made by them.

In *Stark* v. *Montague* (14 U. C. 473) it was held that no rate could legally be imposed for paying the salary of an unqualified teacher (*i. e.* uncertified), and that such a teacher could not legally receive any portion of the school fund. Section 80 says that no person shall be deemed a qualified teacher who does not, at the time of his engaging with the trustees, and applying for payment from the school fund, hold a certificate of qualification.

If the want of a certificate vitiates the rate, a similar reason would apparently avoid a rate levied to remunerate a person who had served without any binding agreement with the school corporation. In neither case would the person be a duly qualified teacher claiming money under contract with the trustees as such.

The late Mr. Justice Burns, in *Kennedy* v. *Burness* (15 U. C. 493), says: "A teacher may no doubt contract with the trustees, as such, personally on their part, and in such case they would be personally liable to carry out the contract. * * He can only invoke the extraordinary powers given for his protection, when he admits that his contract with the trustees is of such a character as that the school acts apply to it, and that it is made under them."

It is to be observed that this case was decided before the Act of 1860, and its provisions respecting agreements under them."

We consider this objection fatal to the defence. It is therefore unnecessary to discuss the other.*

It is right, however, to notice the wording of section 9 of the act of 1860, on which defendants claim to have proceeded: "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 U. C. C. S. 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.*"

It would seem to be simply impossible to carry this section into effect. If they refuse for one month after publication they are to be liable, and award may be enforced against them by warrant *within* one month after publication.

This is another of those most unfortunate cases which have come before the courts in consequence of errors naturally committed in the exercise of statutable powers to decide claims and issue executions otherwise than by regular legal process. A most arduous and dangerous duty is imposed on arbitrators by directing them to issue their warrant for the seizure of property at the risk of being made trespassers for unintentional errors; but it is impossible to leave persons whose goods are forcibly and illegally seized without adequate remedy. The design for the avoidance of litigation and cost is most laudable; but experience demonstrates the almost impossibility of carrying it into successful operation. The substitution of the simple process of the Division Court (irrespective of amount) for the cumbrous and costly machinery of arbitration would remove all difficulty. The cost need be only a few shillings: here the costs mentioned in the award are $25.

We have no course but to hold all the proceedings illegal, and that plaintiff is entitled to judgment.

GWYNNE, J.—The avowry and cognizance, which are demurred to, when epitomized, profess to justify the wrong complained of in virtue of a contract in the avowry and cognizance respectively alleged never to have been entered into so as to have any legal effect.

The proceeding under the statute 22 Vic. ch. 64, which can only constitute a justification where there is a preceding valid contract, cannot afford a justification, when the absence of such a contract is admitted in the pleadings. The demurrer therefore must be allowed.

Judgment for plaintiff on demurrer.)

The same case was also heard with by the Queen's Bench. See below.

GRAHAM v. HUNGERFORD, MCDOUGALL, MCRAE AND RUSSELL.

In the Court of Queen's Bench.

School trustees cannot be held liable under 23 Vic. ch. 49, sec. 9, for wilfully neglecting or refusing to comply with an award, without being first afforded an opportunity of explaining or justifying such non-compliance.

Where, therefore, the defendant in replevin justified seizing the plaintiff's goods under a warrant of the arbitrators issued against the plaintiff and the other trustees for non-compliance with an award, but did not shew that the plaintiff was notified or called upon to shew cause before such warrant issued: *Held*, that the plea was bad.

Remarks as to the informality of the warrant.

REPLEVIN, Plea—That before and at the said time when, &c., to wit, during the year 1868, the plaintiff and John Birmingham and Roderick Grant, all resident freeholders of the school section hereinafter mentioned, were trustees of school section No. 6, in the township of Eldon, in the county of Victoria, duly elected in that behalf, and accepted and took upon themselves the duties of the said office of school trustees: that before the said time when, &c., and during the year 1867, one Isabella McDougall was employed by the trustees of said school section as a teacher, and entered upon and for a long time performed the duties of such teacher in said section; but the written agreement between the said trustees and teacher was not sealed with the corporate seal, owing to one of the said trustees, to wit, J. B., wrongfully refusing to affix the same, and keeping it in his possessoin against the will of the remaining trustees: that afterwards, and before the said time when &c., differences having arisen between the plaintiff and the said J. B. and R. G. as such trustees, on the one part, and the said Isbella McDougall as such teacher on the other part, in regard to the payment of her salary and the sum due to her as such teacher, the same were duly submitted to arbitration according to the statute in that behalf, and that defendants, Neil McDougall, Duncan McRae, and James Swan Russell, became and were the arbitrators duly appointed and authorized in that behalf, in accordance with the provisions of the said statute, to whom the said differences were to be and were so submitted, and by whom they were to be heard and finally decided according to the said statute: that the said arbitrators having duly required the attendance of all the parties interested in said reference, and of their witnesses, and having heard and considered the evidence produced before them, and all the provisions of the statute in that behalf having been complied with, they duly made and published their award of and concerning the said matters in difference, and thereby awarded that there was then due to the said Isabella McDougall as and for her salary as such teacher, the sum of $160, with legal interest thereon from the first day of March, 1868, and ordered and awarded that the said sum and interest should be forthwith paid to the said Isabella McDougall by the said plaintiff and the said J. B. and R. G. as such trustees, together with the sum of $25, the costs of the said reference and award: that the said trustees having had due notice of the said award, and after publication thereof and demand made upon them, wilfully neglected and refused to perform the same by payment of said money, and one month after such demand having elapsed, the said arbitrators, in pursuance of the said statute, duly issued their warrant directed to the defendant Richard Hungerford, in the words following:

PROVINCE OF ONTARIO, County of Victoria, Township of Eldon, *To wit:* We, the undersigned, arbitrators in the claim of Isabella McDougall, v. The Trustees of School Section No. 6, in the township of Eldon, in the county of Victoria, by virtue of the authority vested in us by the Upper Canada Common School Acts, hereby authorize and appoint Richard Hungerford of the township of Eldon, after ten days from the date hereof, to collect from John Birmingham, Alexander Graham, and Roderick Grant, the trustees of school section No. 6, in the township of Eldon before named, or either of them, the sum of $160, with legal interest thereon from the first day of March, 1868, till paid, and the further sum of $25 for costs already incurred, in the claim of Isabella McDougall v. The Trustees of School Section No. 6, in the township of Eldon aforementioned, and to pay within eight days from the receipt thereof the amount so collected to James Swan Russell, of Kirkfield, in the township of Eldon, merchant, whose discharge shall be your acquittance for the sum so paid, and in default of payment on demand by the trustees aforenamed, namely, J. B., A. G., and R. G., you are hereby authorized and required to levy the amount by distress and sale of the goods and chattels of the aforenamed J. B., A. G., and R. G., or any of them, together with all such costs in your so doing as would be legal in proceedings issuing from the Division Court. Given under our hands and seals this eleventh day of December, in the year of our Lord, 1868, at Bolsover, in the township of Eldon aforementioned.

NEILL MCDOUGALL, [L. S.]
DUNCAN MCRAE, [L. S.]
J. S. RUSSELL, [L. S.]

Which said warrant duly made under the hands and seals of the arbitrators was thereupon, and before the said time when &c., de-

* During this Term, the Court of Queen's Bench, held the avowry bad on the other objection taken by demurrer, but not noticed in this judgment, in the case of Graham v. Hungerford, arising out of same arbitration.