is a note to this case in the American edition which will reward an attentive perusal.

We think therefore this rule should be discharged. The plaintiff will have to relieve himself from the difficulty created by the form in which the verdict is taken.

Rule discharged.

HUGHES v. PAKE, NAYLOR, ROUSE AND JOHNSTON.

School Acts—Arbitration between trustees and teacher—C. S. U. C. ch. 126—Evidence of agreement—Form of award.

Held, following *Kennedy* v. *Burness*, 15 U. C. Q. B. 487, that arbitrators between school trustees and a teacher, under the U. C. Common School Act, acting within their jurisdiction, are entitled to protection under Consol. Stat. U. C. ch. 126, as persons fulfilling a public duty; and therefore that trespass would not lie against them and their bailiff for seizing goods to enforce their award under sec. 86.

It was contended that the arbitrators had no jurisdiction, as no contract under the corporate seal, required by 23 Vic. ch. 49, sec. 12. was proved to have been produced before them; but the plaintiff's witness said an agreement was produced which he thought had the seal, and the plaintiff, as a trustee, had named an arbitrator and submitted the matters in dispute. *Held*, that under these circumstances it might be assumed that the arbitrators had before them all that was necessary to give jurisdiction.

Held, also, that the award set out below was sufficient; and that the act, 23 Vic. ch. 49, sec. 9, which directs that no want of form shall invalidate such awards, should receive a liberal construction.

[Q. B., M. T., 1865.]

Trespass *de bonis asportatis*. Plea, not guilty, per statute. The defendants appeared by different attorneys, and the statutes noted in the margin of the pleas were Consol. Stat. U. C. chaps. 19, 64, 65, and 126; also, 18 Vic. ch. 131, 16 Vic. ch. 180, and 26 Vic. ch. 5.

The case was tried at the last Belleville Assizes, before Draper, C. J. From the evidence it appeared that the plaintiff was a trustee of the Roman Catholic separate school No. 20, in Thurlow, of which school one Ann McGurn was teacher: that she claimed nine and one-half months' salary as being due to her: that the matter being in dispute, McGurn, under sub-section 2 of the 84th section of the U. C. School Act, addressed a notice in writing, dated the 28th of April, 1864, to the trustees of the school section (of which the plaintiff was one) requiring the matter in dispute to be submitted to arbitration, naming in such notice her arbitrator, and notifying the trustees to name one; the defendant Rouse, who was the local superintendent, being the third arbitrator by virtue of the statute: that the trustees, at the instance of the plaintiff, named and duly appointed the defendant Pake the arbitrator on their behalf: that the three arbitrators met on the 2nd of May, and on that day the arbitration was entered upon and concluded, and their award made and signed by the three arbitrators, and on the same day it was handed to the trustees, and they were cautioned they would be liable personally if the amount awarded was not paid within a month. It also appeared in evidence that after the months' notice had expired, the arbitrators caused the three trustees to come before them, and that they, the arbitrators, "gathered from them (the trustees) that they levied no rate, made no money, and paid none:" that the arbitrators, in the beginning of July, issued their warrant, directed to the defendant Johnston as their bailiff, to distrain and seize the goods of the the three trustees, under which warrant Johnston seized and sold the goods of the plaintiff. The chief witness called by the plaintiff was the defendant Rouse, who testified to the facts stated. He also said that an agreement, made between the trustees and the teacher, McGurn, was produced before the arbitrators, and which he thought was under the corporate seal, but on this point he was not sure one way or the other, Patrick Reagon, one of the trustees, was also called by the plaintiff, and he stated in his evidence that he was served with a notice of the award, and that the plaintiff told him he had also been served with a like notice: that the plaintiff was the treasurer of the trustees: that prior to the 19th of May he had collected part of the money from the school section, and that he did not pay over the amount of the award.

At the close of the plaintiff's case, *Diamond*, on the part of the plaintiff Rouse, moved for a nonsuit, on the ground that he was a public officer, acting under the 3rd sub-section of the 84th sec. of the U. C. School Act: that the action should have been case: that there was no allegation or proof of the defendant having acted maliciously or without probable cause, and that he was entitled to the protection of the act to protect trustees and other officers from vexatious actions. *Holden*, for the arbitrators, defendants Pake and Naylor, made the like objections; and *Dougal*, for the defendant Johnston, contended that as bailiff he was entitled to the same protection.

It was agreed, with the consent of the learned Chief Justice, that the defendants should have leave to move to enter a nonsuit on the objections taken, and the question of damages was left to the jury, which they found to be $71.

Diamond, in pursuance of leave reserved, obtained a rule *nisi* to set aside the verdict and to enter a nonsuit as to defendant Rouse, on the ground that the action should have been case, under Consol. Stat. U. C. ch. 126, sec. 1; that it was proved at the trial that Rouse was an officer performing a public duty: that it was not proved he acted maliciously and without reasonable or probable cause, but that he was acting *bonâ fide* in reference to the making of the award and issuing the warrant which formed the subject matter of this action, and that he was consequently protected by ch. 126 above mentioned; and that no cause of action was proved. *C. S. Patterson*, on behalf of the defendants Pake and Naylor, obtained also a rule *nisi* to enter a nonsuit, on the ground that they were arbitrators appointed under the U. C. School Act, and were within the protection of ch. 126, and that trespass would not lie against them. And *Robert A Harrison*, on behalf of defendant Johnston, also obtained a like rule, setting out similar grounds that if the arbitrators were entitled to protection, he, Johnston, was equally so entitled, &c.

The three rules came on for argument together. *Jellett* shewed cause, and *Patterson*, *Harrison*, and *Diamond* supported their respective rules, citing *Kennedy* v. *Burness*, 15 U. C. Q. B. 473; *Sage* v. *Duffy*, 11 U.C.Q.B. 30; *Spry* v. *Mumby*, 11 U. C. C. P. 285, 288; *Waddell* v. *Chisholm*, 9 U. C. C. P. 125; *Davis* v. *Williams*, 13 U.C.C.P. 365; *Helliwell* v. *Taylor*, 16 U. C. Q. B. 279; *Hardwick* v. *Moss*, 7 Jur. N. S. 804; *Bross* v. *Huber*, 15 U. C. Q. B. 625.

The statutes cited are referred to in the judgment.