the payments which defendants had made (about which there is no dispute) were always paid in discharge of the previous year's obligation, so that the payment of $1,392.18 made on 4th December, 1902, was really only for the year 1901.

The trustees had no power, under sec. 34 of the High Schools Act, to compulsorily refer such a dispute to the County Judge, and without defendants' consent that learned Judge had no power whatever to determine that the amount payable for 1902 is still unpaid, which is the clear effect of his report. Defendants did not consent to, but on the contrary protested against, this asserted jurisdiction, and the reference proceeded subject to this objection. And finding the opposite view persisted in, defendants commenced an action to obtain an injunction to restrain the further progress of the reference, which action was heard before the Chancellor on the motion for the injunction, turned by consent into one for judgment, and was on 2nd April, 1904, dismissed with costs: see 3 O. W. R. 403.

Plaintiffs now contend that the question in dispute is res judicata, by the report of the County Judge, and also by the judgment in the other action. But this contention is not, in my opinion, well founded. The reference to the County Judge did not authorize him to find that the liability was in respect of the year 1902, or of any other year. He could only, upon the material which the statute indicates, fix the amount, in case of a dispute as to amount, where the general liability was otherwise not in dispute. That was not the case in the present instance, and the reference to him was, therefore, wholly unauthorized. He had not, when the action was heard, made his report, and all the Chancellor intended to do, as clearly appears from his judgment, was to refuse to interfere with the reference.

If I am right in my opinion so far expressed, it is, of course, obvious that the evidence tendered at the trial should have been received and the merits should have been determined instead of assuming, as was done, that plaintiffs' contention of res judicata was well founded. It was apparently agreed that the evidence so tendered was or was not to be regarded as in, according to the view to be taken of the question of res judicata, and I shall, therefore, in what follows now regard it as properly before me. The question to be determined is one purely of fact, and its proper determination depends, in my opinion, on the selection of the proper starting point, which I think is at the time when the legal