the 18th of February, 1859, at £85 per annum. About the first day of February, 1859, a cheque was given him by the local superintendent of Whitchurch, on the order of the trustees, and he endorsed it to Sylvester. After his dismissal he brought an action in the above Division Court against Sylvester for the amount of the cheque. At the trial it was objected that Sylvester could not be made individually responsible, as he was only one of the trustees, and had received no consideration. The judge then asked if the other trustees would be added as defendants, to which they agreed. Some objection being made to the legality of trying the case before the judge, and the clauses of the School Acts relating to arbitration between trustees and teachers being spoken of, the judge overruled the objections, and after some discussion endorsed on the summons the following order: "Ordered to be referred to the award and final determination of the Rev. J. S. Hill, to decide the matters of difference, as well as this suit between the parties. By consent." The clerk of the court afterwards drew up an order of reference, which directed that the award when made might be entered as the judgment in the cause; and the award having been made in favour of the plaintiff, he endorsed on the summons: "By award of Rev. Mr. Hill, judgment for plaintiff for £25, with costs, ordered to be paid in twenty days.

The appellant, treating this as a decision within the 16 Vic., ch. 185, sec. 24, appealed from the judgment, on the following and other grounds: 1. That the court below had no jurisdiction in the matter. 2 That even if it had, the award (now entered as judgment) is bad, being against the trustees individually, and also against parties whose responsibility was not proved. 3. That the contract with the teacher was not under the corporate seal.

Hodgins for the appeal. *Cameron*, Q. C., contra.

BURNS, J., delivered the judgment of the Court.

We do not think this is an appealable matter under the 24th section of 16 Vic., ch. 185. That section contemplates that there may exist cases triable in the Division Court against and between superintendents, trustees, teachers, and others acting under the provisions of the Common School Acts; and to provide for uniformity of decision an appeal to either of the superior courts of law is given to the chief superintendent of schools. When the appeal is properly initiated, the judge of the Division Court is to certify under his hand the summons and statement of claim, and other proceedings in the case, together with the evidence and his own judgment thereon, and all objections made thereto. Now, instead of doing this, the judge in this instance certifies to the summons and statement of claim, and the proceedings to refer the matter to arbitration, with the judgment of the arbitrator, and without any evidence whatever. The legislature never meant that this court should be an appellant court from the determination of an arbitrator appointed by the judge of the Division Court. For all that appears upon the face of the summons and statement of claim in the Division Court, the case would seem to be that of one of an ordinary character. The judge had, under 4th section of 16 Vic. ch. 177, power, with the consent of both parties to the suit, to refer the matters in dispute in the suit between the parties, as also matters not in the suit, to arbitration, in such matters as he might think reasonable and just. The section provides that the award shall be entered as the judgment, and shall be as binding as if given by the judge. This case seems to have been a case of that kind, from the endorsement made by the judge on the summons of the reference by consent, the award of the arbitrator, and the judgment entered upon the award. A case of that kind is not one contemplated by the 24th section of the School Act of 1853, that is, chapter 185 of 16 Vic.

If the case in the Division Court was of that nature that it came under the provisions of the 17th section of the School Act of 1859, as amended by the 15th section of 16 Vic. ch. 185, so that the remedy was by arbitration, and that no action should be brought in any court of law or equity to enforce the claim, then the defendants' remedy would have been to have applied to the superior courts for a prohibition. The only thing to be said against such a course would be that, perhaps, before the defendants could have applied for and obtained the writ of prohibition, the case might be tried and disposed of in the Division Court in the meantime. We do not seem to have as speedy a remedy in that respect as they have in England, certainly, but still I do not think it is any argument against the course to say that there may be delay. The act in England, 12 & 13 Vic. ch. 109, gives parties a speedy means of obtaining the writ, and if the writ be improperly or improvidently issued, the courts have power to set aside the writ. See *In re Baddeley* v. *Denton* (4 Ex. 508). If the defendants appeared to the matter, by reason of want of jurisdiction, the judge might of the writ of summons, and contested the right of the judge to try course try that question and give judgment upon it, and if he should decide wrongly in respect to it, I should, at present, be inclined to say that judgment would then be an appealable matter under the 24 section of ch. 185. But if it were not so, I still think the case would be one to apply to the superior courts for a writ of prohibition, for in such case the defendants would not be submitting to or acquiescing in the judge entertaining the suit because he had jurisdiction. I should say the defendants might, in an application after judgment, take the opinion of a court of superior jurisdiction whether the inferior had jurisdiction. The point was raised in the case of *Roberts* v. *Humbly*, (3 M. & W. 120,) but was not necessary to be decided, for the want of jurisdiction was apparent upon the face of the proceedings. Baron Parke said, if it had been necessary he should have wished to consider whether a party is to be bound by the judgment of an inferior court, where he has had no opportunity to dispute its jurisdiction. Alderson, Baron, however, said he thought the court had a right to interfere, and even to grant the writ of prohibition after execution, and he says, all the cases where it has been held otherwise have turned on the acquiescence of the party. The passages quoted from 2 Coke's Inst., 602, I think are decisive on the point, and reason is in favour of it.

In the present case, however, I have not adverted to the rights of the defendants, with any view of encouraging them to try the experiment of applying for a prohibition. If they did make the application they might be met with the answer that they had given their consent to a reference of all matters in the suit, as well as all other matters, and under the section alluded to in the Division Court Act of 1853, the judge had the power to make such a reference.

The case, so far as we have now to deal with it upon this appeal of the chief superintendent of schools, is clearly not one coming within the meaning of the provisions giving an appeal to this court, and therefore must be dismissed.

Appeal dismissed.

IN CHAMBERS.

Reported by ROBERT A. HARRISON, ESQ., *Barrister at-Law.*

CHARLES WATTS v. WILLIAM LITTLE, JOHN HUNTER, JOSEPH LONEY, AND HENRY KIRKLAND.

CHARLES WATTS v. JOSEPH LONEY AND HENRY KIRKLAND.

Amendment—Terms—Setting aside judgment in ejectment—Terms.

Upon the application of plaintiff, the following amendments were allowed by a judge in chambers, upon terms of paying costs. 1st. The insertion in a judgment roll of the date of its entry. 2nd. The insertion in the roll of the amount of taxed costs in the cause. 3rd. The insertion in the roll of the aggregate amount of debt and costs recovered in the cause. 4th. The statement in a *fi. fa. lands* of the true amount of debt and costs, an amount being therein erroneously stated. 5th. A similar amendment in a ven. ex. lands and *fi. fa.* residue.

Where, in an action of ejectment, defendant was a few minutes too late in the entry of appearance to the writ, and afterwards promptly applied to set aside the judgment, upon an affidavit of merits, showing the merits in detail, the application was allowed, upon the terms of entry of appearance and payment of costs within a month, otherwise summons to be discharged.

Where the summons to shew cause why the judgment in ejectment should not be set aside was discharged with costs, and leave granted to make a second application for the same purpose, the second summons was made absolute, only on the terms of paying the costs of the judgment, and of both applications.

(Chambers, 31st August, 1860.)

The first of these causes was an action of ejectment, brought to cover possession of a parcel of land in the township of Burford; and judgment was entered for want of an appearance.

The defendant, Joseph Loney, advised with an attorney (Mr. D. G. Miller) who thought he had no defence at law, but seemed to think that he might maintain his possession by the aid of a court of equity, in restraining proceedings at law; and so he