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

The statutes cited are referred to in the judgment.

Morrison, J.—By the 84th section of "The Upper Canada Common School Act," it is enacted that "in case of any difference between trustees and teacher, in regard to his salary, the sum due to him, or any other matter in dispute between them, the same shall be submitted to arbitration, in which case:

1. Each party shall choose an arbitrator.

2. In case either party in the first instance neglects or refuses to appoint an arbitrator on his behalf, the party requiring the arbitration may, by a notice in writing to be served upon the party so neglecting or refusing, require the last mentioned party, within three days inclusive of the day of the service of such notice, to appoint an arbitrator on his behalf, and such notice shall name the arbitrator of the party requiring the arbitration; and in case the party served with such notice does not, within the three days mentioned therein, name and appoint an arbitrator, then the party requiring the arbitration may appoint the second arbitrator.

3. The local superintendent, or in case of his inability to attend, any person appointed by him to act in his behalf, shall be a third arbitrator, and such three arbitrators or a majority of them shall finally decide the matter."

The 85th section enacts that the arbitrators may require the attendance of the parties and witnesses, books, &c., and administer oaths, &c.

The 86th section authorizes the arbitrators, or any two of them, to issue their warrant to any person named therein to enforce the collection of any moneys awarded to be paid, and the person named in such warrant shall have the same powers and authority to enforce the collection of the moneys mentioned in the warrant, &c., by seizure and sale of the property of the party against whom the same has issued, as any bailiff of a Division Court has in enforcing a judgment and execution issued out of such court.

The 87th section enacts, that no action shall be brought in any court of law or equity to enforce any claim or demand between trustees and teachers which can be referred to arbitration as aforesaid.

And by the 9th section of 23 Vic. ch. 49, it is declared that 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 Upper Canada 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.

It was contended on the part of the plaintiff that the arbitrators had no jurisdiction to make any award, as no contract under the corporate seal of the trustees was proved to have been produced before them—the 12th section of 23 Vic. ch. 49, enacting that all agreements between trustees and teachers to be valid and binding shall be in writing, signed by the parties thereto, and sealed with the corporate seal. But it was proved by the plaintiff's witness that an agreement was produced before the arbitrators, and the witness thought under the corporate seal; and as the plaintiff, as a trustee, named an arbitrator, and submitted the matter in dispute to the arbitrators, we may, under these circumstances, assume that the arbitrators had all the necessary materials before them to give them jurisdiction to enter upon the arbitration and make the award.

It was also objected, that the award was informal: that there was no award, as it was not made in terms between the corporation and the teacher. The award put in evidence was in the following words:

"At an arbitration, held May the 2nd, 1864, to decide a dispute between the trustees of the Roman Catholic separate school No. 20, Thurlow, in the village of Canifton, and Miss Ann McGurn, teacher in said section, the following were the arbitrators: Wm. Naylor, on behalf of Miss McGurn; S. S. Pake on behalf of the trustees; F. H. Rous, Local Superintendent of Hastings. After hearing the evidence, and considering the case fully, the arbitrators decide and award that the trustees of said section shall forthwith pay into the hands of Mr. Rous the sum of sixty-four dollars twenty-two and one-half cents, such sum to be disposed of as follows:

To Miss McGurn	$59 12½
Expenses of arbitration	5 10
	$64 22½

(Signed) SAMUEL S. PAKE,
WILLIAM NAYLOR,
F. H. ROUS, L. Sup. S. Hast.

Belleville, May 2, 1864.

The 17th section of the Separate School Act, Consol. Stat. U. C. ch. 65, declares that the trustees of each separate school shall be a body corporate, under the name of The Trustees of the Separate School of (as the case may be), in the township, city or town (as the case may be) of, &c.; and, as before stated, the latter part of sec. 9 of 23 Vic. ch. 49, enacts that no want of form shall invalidate the award or proceedings of arbitrators under the school acts.

The object of the legislature was to give a simple, speedy and inexpensive mode of settling disputes between trustees and teachers by arbitration, and it probably assumed that it might frequently happen that arbitrators would be appointed from a class unacquainted with the drawing up awards in a technical form; and in order to avoid expense and litigation, and to give effect to the adjudication of the arbitrators when acting within their jurisdiction and powers, provided against their awards becoming inoperative from want of form. Such being the case, I think it is incumbent on us to give the most liberal construction to the provisions of the statutes, with a view of carrying into effect the intentions of the legislature; and where we can see, as in the present case, on the face of the award itself, that in all material points it is sufficiently certain, although informal in some respects, to strive to uphold it. And in my judgment the objections taken to the award are to matters of form, within the meaning of the enactment, and they do not render the award invalid.

Upon the other point in the case, and which was the principal one argued at the bar—whether the arbitrators and their bailiff were within the protection of the statute for the Protection of Justices of the Peace and other officers from vexatious actions—I am of opinion that they are. Arbitrators such as these defendants were are, by force of the common school acts, upon their appointment constituted a tribunal upon whom is cast the duty of determining the rights and liabilities of the parties concerned, and indeed the only one to which the parties can resort to ascertain their rights—See sec. 87 above quoted, and Tiernan v. School Trustees of Nepean, (14 U. C. R. 15); and the legislature has invested them with authority, in the event of non-compliance with their award, after the period mentioned in the statute, to enforce obedience by the issuing of their warrant to seize and sell the goods of the trustees, clothing the person to whom they direct their warrant with the same power and authority for its execution as a bailiff of the Division Court.

It therefore appears clear to me that these defendants were persons fulfilling a public duty imposed by act of parliament, and that this action is brought against them for acts done by them in the performance of such public duty, and that they are consequently within the protection of ch. 126, the 1st sec. of which enacts that such an action shall be an action on the case as for a tort, and in the declaration it shall be expressly alleged that the act complained of was done maliciously and without reasonable or probable cause, and that if upon the trial, the general issue being pleaded, the plaintiff fails to prove such allegation he shall be nonsuit, &c. Here the action is one of trespass, and the evidence adduced by the plaintiff on the trial negatived, in my opinion, malice and want of probable cause.