

COUNTY COURTS.

(Reported by THOMAS HODGINS, Esq., Barrister-at-Law.)

(Before His Honor Judge BOSWELL, Judge of the County Court of the United Counties of Northumberland and Durham.)

THOMAS FERRIS, v. STEPHEN CHESTERFIELD, ARCHIBALD VIRTUE, AND JOHN H. MORLEY,

Common School Act—Annual School Report—Disputations—Arbitration—Award—Power of County Judge.

It is by sub. s. 21 of 27 of "the Upper Canada School Act," (Consol. Stat. U. C. p. 735), made the duty of the trustees of such school section to cause to be prepared and read at the annual meeting of their section, their annual school report for the year then terminating, which report shall contain, among other things, a full and detailed account of the receipts and expenditure of all school money, &c., and by s. 29 of the same act, it is provided, that "In case the account, &c., is not satisfactory to a majority of the freeholders and householders present at such meeting, then a majority of the said freeholders and householders shall appoint one arbitrator, and the trustees shall appoint another, and the two arbitrators thus appointed shall examine the said account, and their decision concerning it shall be final, &c., and the sum or sums awarded by them against any person, shall be collected by such arbitrators, &c."

Held, that under a reference pursuant to this section, the arbitrators were justified in making an award against a secretary-treasurer of a school section, who was also one of three school trustees, who were parties in the reference; and that the reference intended by the act, is not a reference by the trustees in their corporate capacity but as individuals.

Held, also, that the jurisdiction of a county judge under s. 130, 131, 133, &c., of the Upper Canada Common School Act, is not necessarily co-extensive with the authority of arbitrators appointed under s. 29; and that where a pleading set up a proceeding had before the county judge, under s. 133, as a bar to proceedings taken under an award made pursuant to s. 29, but did not show in specific terms that the matter decided by the arbitrators were not only identical, but that the county judge had competent jurisdiction respecting them, the pleading was held bad.

This was an action of replevin. The plaintiff declared that the defendants, on the 24th March, 1858, in the township of Darlington, in the county of Durham, took and detained the Goods and Chattels of the plaintiff, to wit, two horses, &c.: and unjustly detained the same against sureties and pledges, until, &c.

The defendant pleaded—First, *Non Cept*; Second, That the Goods and Chattels, &c., were not the property of the plaintiff; and, Third, a special plea as follows:

And for a third plea the defendants say, that the plaintiff, one John Irwin and one William Irwin, were duly elected trustees of School section, number sixteen, in the township of Darlington, for the year of our Lord, one thousand eight hundred and fifty-seven: That the annual meeting of the said school section was duly held according to law on the second Wednesday in January, in the year of our Lord, one thousand eight hundred and fifty-eight: That it was the duty of the said trustees to cause to be prepared and read at the said annual school meeting of the said school section their annual school report, for the year terminating on the thirty-first day of December, in the year of our Lord, one thousand eight hundred and fifty-seven, which report was to include among other things prescribed by law, a full and detailed account of the receipts and expenditures of all school monies received and expended on behalf of the said section, for any purpose, whatever, during the said year, terminating as aforesaid: That at the said school meeting, it was the duty of the freeholders or householders of the said section, present at the said meeting, or a majority of them, amongst other things, to receive and decide upon the said report of the said trustees: That the said trustees did cause to be prepared and read at the said annual school meeting of the said section so held as aforesaid, their annual report for the year terminating as aforesaid: That the account included in the said report and furnished by the said trustees, was at the said annual school meeting, duly decided not to be satisfactory to a majority of the freeholders or householders present at such meeting: That a majority of the said freeholders or householders thereupon duly appointed one person, to wit, one William H. Rogers, and the said trustees then duly appointed another person, to wit, one Donald H. McLeod: And the said William H. Rogers and the said Donald H. McLeod, the said two arbitrators thus duly appointed thereupon, duly examined the said account: And, thereupon, to wit, on the nineteenth day of February, in the year of our Lord, one thousand, eight hundred and fifty-eight, duly made and published

their award in writing, of and concerning the same, and thereby duly awarded, that the said plaintiff was indebted to the said school section, in the sum of thirty-three pounds, two shillings and four-pence, and thereby authorize the collector of taxes for the said section, such collector being then the defendant, Archibald Virtue, to collect the said sum so awarded against the said plaintiff, within one month from the date of the said award, together with interest unless the same should be sooner paid: That the same being unpaid, and the said month having elapsed, the said defendant, Archibald Virtue, and the said defendant, Stephen Chesterfield, as his servant, bailiff and agent, thereupon duly detained the said goods, chattels and personal property of the plaintiff, for the said sum so awarded, as aforesaid, as they lawfully might for the causes aforesaid, and put the same into the possession of the said defendant, John H. Morley, a public inn-keeper, to be kept until the same could be lawfully sold, which is the taking and detaining in the declaration alleged.

To this plea the plaintiff demurred.

The following were the alleged grounds of demurrer.

Because the corporation of said school section are not properly described therein; and, because it is not shown in what capacity the award therein set forth is made against said plaintiff: Nor is it shown that the said arbitrator had authority to make an award against an individual member of a trustee corporation: And because such arbitration and award are remedies between freeholders and householders of a school section, and the school corporation of such section, and not between said freeholders and householders, and a trustee or secretary, treasurer of said section.

The plaintiff also replied specially to the third plea of defendant, that on or about the thirtieth day of January in said year, one thousand, eight hundred and fifty-eight, the plaintiff was ordered to appear before the judge of this honorable court in pursuance of and under the provisions of the Upper Canada School Act of 1850, to answer certain charges preferred against him as secretary-treasurer of said school section, by John Irwin and William Irwin, trustees as aforesaid, in regard to his alleged indebtedness to said school section, as set out in said supposed award, and concerning which, the said supposed award was made. And that the judge of this honorable court after having heard and fully considered the complaint of said John Irwin and William Irwin, and the evidence and proof adduced in support of such alleged indebtedness, and the allegations of the plaintiff and of the said John Irwin and William Irwin, and the argument of counsel for both parties, ordered the said plaintiff to be discharged, and decided that the said plaintiff was not in any manner indebted to said school section, nor bound to pay over any monies, nor to deliver any books, papers, or chattels, belonging to said school section; and that the plaintiff was thereby totally discharged and released of and from all liability for and on account of the said school section. And the plaintiff further says, that the making of said supposed award was vexatious, and that it included all or a part of the expenditures of money made by the plaintiff on behalf of said school section, and monies for which said plaintiff was not responsible, which had been previously investigated and allowed to the plaintiff, aforesaid, by the judge of this honorable court.

To this replication the defendant demurred.

The following were his causes of demurrer:

Because the proceedings therein alleged to have been had before the county court judge, was a proceeding taken by the trustees against the secretary-treasurer, while the proceeding set-out in the third plea of the defendants, is a proceeding between the freeholders and householders of the school section, and the trustees, and the proceedings by the trustees against the secretary-treasurer, is no bar to the proceeding and award set-out in the defendants' plea; and because the said county court judge had no power that the said secretary-treasurer was not indebted as a trustee to the school section or otherwise, and because it is alleged that the said John and William Irwin were at the time of the said proceeding before the county court judge, trustees of the said school section.

Thos. Hodgins, for plaintiff.

J. D. Armour, for defendant.