

(10) *Arbitrations with Teachers—Difference in two awards.*

The Trustees of a certain School Section had agreed to engage a certain teacher, but differences having arisen as to his salary, &c., an arbitration was had, and the award made was to the effect, that there was due to the Teacher from the Trustees £50, for which they were individually liable. This award not having been complied with, the Teacher named an arbitrator and gave notice to the Trustees, claiming for his salary since the date of the first award; but they, acting under legal advice, did nothing; and the second arbitration took place without their concurrence. The following was the award then made:—1st. That the arbitrators having received indisputable evidence of the former award, and of its recognition by the parties, agreed to adopt the same. 2nd. That as the Trustees had failed to perform said award, and as, by the 17th section of the School Act of 1850 (p. 51), the Teacher was entitled to his salary at the rate agreed on till fully paid, the said Teacher was entitled to his salary from the date of such award to the present time, with costs of the arbitration, making altogether £95 12s. 3½d.; and further, that he was entitled to such salary for all time to come, until he should be paid in full. (See 4, page 49.)

At the trial, however, the arbitrators quoted an award which was materially different from that proved to have been made by them. (See 1 below.)

On the second award the arbitrators issued their warrant to a bailiff to make the whole sum awarded (which included the sum due under the first award), by seizure and sale of the goods and chattels of said Trustees. (See 6 & 7, page 49.)

The Teacher had been engaged by the Trustees at a certain salary, by verbal agreement only. (See 2 below.)

Held, 1. That as the award of the arbitrators proved, differed materially from their award as pleaded, such plea could not be supported.—*Kennedy v. Burness et al.*, 15 Q. B. R., 473.

(11) *Agreements with Teachers must be in writing.*

2. That the averment of an agreement with the Teacher could be supported only by a written agreement.—(*Idem.*) (See 4, page 49.)

(12) *Personal liability of Trustees dependent upon their neglect or refusal to exercise their Corporate powers.*

3. That as by the Upper Canada School Act of 1850, sec. 12, sub-section 16 (p. 42), the Trustees can only be personally liable when they have wilfully neglected or refused to exercise their corporate powers, such neglect or refusal should have been alleged and shown in the award, to warrant its directions to levy on the Trustees personally. *Semble*, also, that the evidence showed no sufficient ground for such liability. (See 15, this page.)

Quære. Whether the arbitrators have authority to determine the question of personal liability on the part of the Trustees.—(*Idem.*)

(13) *The Arbitrators' award is final as to Teacher's claim for further salary.*

4. That the non-payment of the first award was not a non-payment of the Teacher's salary under his agreement, so as to entitle him to such salary after the award; nor was it a matter in difference, within the meaning of the Act, which could authorize a second reference.—(*Idem.*) (See 16, on this page.)

(14) *Duties and Responsibilities of Arbitrators.*

5. That the arbitrators were not precluded from raising these objections by the provision in the statute that such award shall be final.

6. That the plea which the arbitrators set up, that the grievances charged related solely to judicial acts done in good faith in their capacity of arbitrators and within their jurisdiction, was insufficient, for not stating anything which could authorize an award against the trustees as personally liable.

7. That the plea of their bailiff on similar grounds was also bad.

8. That if the award had been good as to the salary since the first award, yet the including in it the sum given by such award, and for which a levy had been already made, would make the whole award bad.—(*Idem.*)

(15) *Neglect or refusal of Trustees to exercise their corporate powers must be proved.*

In an action of replevin for goods of School Trustees distrained under an award for the salary of a School Teacher, declaring the Trustees individually liable on the ground, "that the Trustees did not exercise all the corporate powers vested in them by the School Acts for the due fulfilment of the contract," made by them with such Teacher.—*Kennedy v. Hall et al.*, 7 C. P. R., 218.

Arbitration—Replevin—Personal liability.

Held, That the award as evidence did not support pleas which averred as required by the 16th clause of the 12th section of the School Act of 1850, a wilful neglect or refusal by the Trustees to exercise their corporate powers as the ground for making them personally liable.

2. That, on the facts, the defendants as Trustees were not personally liable, the award ascertaining for the first time the exact amount due to the Teacher, and declaring the Trustees personally liable without giving them any opportunity to exercise their corporate powers to raise the money to pay it.

3. That the action being of replevin, no notice of action was required.—(*Idem.*)

(16) *Arbitrators' award final as to Teacher's claim for further salary.**Arbitration—Personal liability.*

A School Teacher, after an award had been made in his favor on a dispute as to salary with the Trustees, afterwards made a claim in a second arbitration for the amount payable under the first award, together with his salary for the further period which had elapsed since such award, and sought under an award obtained *ex parte* and a warrant thereon to recover the amount by a seizure of the Trustees' goods. (See 12, on this page.)

Held, On replevin by the Trustees, that such a course was illegal and not contemplated by the School Acts.—*Kennedy v. Burness et al.*, *Murray v. Burness et al.*, 7 C. P. R. 227. (See 13, on this page.)

(17) *Representation as to the character of a Teacher by a rate payer, with a view to obtain redress, is a privileged communication. Malice and falsehood of the representation must be proved in action for libel.*

A representation by the assessed inhabitants of a School Section as to the character of a Teacher, made with a view of obtaining redress, is a privileged communication, which it is of importance to the public to protect; and such a statement would not be the less privileged if made by mistake to the wrong quarter.

Quære. Whether a communication of this nature can be made by