MACAULAY, C. J., delivered the judgment of the court.

It would seem thirty-eight of defendant's voters refused to take the oath, and were not all, or a portion of them, merely excused or exempted therefrom by the returning officer accepting them as, in his opinion, duly qualified to vote—that is, as being natural-born or naturalized subjects of her Majesty. It appears to me such votes must be struck out, and that the onus is not on the relator to prove them aliens,—the objection is, not that they are aliens, but that they refused to be sworn as to their being subjects; and the objection seems sustained and valid, and the decision of the county judge therefore right.

As to the returning officer being made a party, that rested with the county judge; and this returning officer not being made a party is no sufficient ground for reversing his decision. The defendant not having disclaimed, but having accepted and defended the suit, incurs a liability to the costs in consequence.

McLEAN, J., and RICHARDS, J., concurred.

Per Cur.—Rule discharged with costs.

TIERNAN v. SCHOOL TRUSTEES of N[illegible]AN.

(Hilary Term, 19 Vic.)

(Reported by C. Robinson, Esq., Barrister-at-Law.)

No action can be sustained by a school teacher for his salary: arbitration is the only remedy.

(14 Q.B.R., 15.)

The plaintiff sued for his wages as a school teacher. At the trial at Ottawa, before *Macaulay, C.J.*, several objections were taken to his action, twelve issues having been joined on the record. The main objection, however, was, that no action could be sustained in a court of law upon such a demand, and that the only remedy was by arbitration. A verdict was rendered for the plaintiff, and £25 15s. damages.

Stephen Richards moved for a new trial on the law and evidence, and for misdirection, or to arrest the judgment.

Hagarty, Q.C., showed cause, citing Avery v. Scott, 8 Ex. 487; Livingston v. Ralli, 25 L.T. Rep. 243, Q.B.

ROBINSON, C.J., delivered the judgment of the court.

The statutes 12 & 14 Vic. cap. 48, sec. 17, and 16 Vic. cap. 185, sec. 15, must govern the question, and we are of opinion that the defendant is entitled to prevail on the exception.

The statute 16 Vic., cap. 185, sec. 15, referring to 13 & 14 Vic., cap. 48, enacts "that no action shall be brought in any court of law or equity, to enforce any claim or demand which, by the said seventeenth section of the said act in part recited, may be referred to arbitration."

The 17th section of 13 & 14 Vic., cap. 48, thus referred to, without expressly excluding, as the 16 Vic., cap. 185 does, the jurisdiction of the common law courts, makes provision for settling by arbitration all such disputes as may arise between school trustees and a teacher, in regard to his salary, the sum due to him, or any other matter in dispute between them, having first provided in the same clause "that any teacher shall be entitled to be paid at the same rate mentioned in his agreement with the trustees, even after the expiration of the period of his agreement, until the trustees shall have paid him the whole of his salary as teacher of the school, according to their engagement with him."

It is quite evident, in our opinion, that it is the effect of that clause, and was the intention of the legislature, that if a person who has been a common school teacher should, after the cessation of his engagement, differ with the trustees upon any matter growing out of his engagement or employment as teacher, he might refer it to arbitration under this provision; and if so, then it follows, that under the enactment in the latter act he is confined to that remedy

Rule absolute.

McLARREN v. BLACKLOCK.

(Hilary Term, 19 Vic.)

(Reported by C. Robinson, Esq., Barrister-at-Law.)

Malicious arrest—Evidence.

Where an action for malicious arrest is brought against the agent of the plaintiff in the suit, it is not sufficient to produce an affidavit purporting to be made by him. It must be proved to have been made by him, and that he was the plaintiff's agent.

(14 Q.B.R., 24.)

Case for malicious arrest of the plaintiff, in the County Court of Hastings, upon a *Ca. Sa.*, at the suit of J. W. D. Moodie against the plaintiff.

The declaration charged that the defendant, on the 1st of August, 1855, not having any reason to believe that the plaintiff had parted with his property, or made any secret or fraudulent conveyance thereof, in order to prevent its being taken in execution, but wrongfully intending, &c., "maliciously made a certain affidavit, whereby he deposed and made oath that he had reason to believe that the now plaintiff, one William Martin, and one Samuel Stevens, had parted with their property, or made some secret or fraudulent conveyance thereof, in order to prevent its being taken in execution." And the declaration further charged the defendant with maliciously causing, by virtue of the said affidavit, a *Ca. Sa.* to be sued out against this plaintiff, and Martin and Stevens, to satisfy the judgment of the said Moodie, &c.; also, with causing the writ to be endorsed and delivered to the coroner (the plaintiff in the writ being the sheriff, &c.) and with causing the now plaintiff to be arrested thereon.

The defendant pleaded—1. Not guilty; 2. That he did not cause the plaintiff to be arrested by virtue of the said writ, in manner and form, &c.; 3. That at the time of the making of the affidavit in the declaration mentioned he had reason to believe, &c.

The plaintiff joined issue.

At the trial, at Belleville, before *Draper, J.*, the plaintiff produced a paper purporting to be an affidavit made in this cause in the County Court of the County of Hastings, and to be signed "James Blacklock,"—and authenticated by C. L. Coleman, a Commissioner B.R.C.H., and sworn by him on the 1st of August, 1855.

It ran thus—"James Blacklock, of the town of Belleville, in the County of Hastings, merchant, agent for the plaintiff in this cause, maketh oath and saith, that he hath reason to believe that William Martin, Samuel Stevens and John McLarren, the above named defendants, have parted with their property, or made some secret or fraudulent conveyance thereof, in order to prevent its being taken in execution."

The affidavit was produced on the trial by the clerk of the County Court, who was called as a witness.

There was no proof given that the defendant Blacklock made the affidavit produced, or that he had any hand in suing out the writ, or any concern in its being delivered or executed; and it was not shown that the defendant was agent for Moodie, the plaintiff in the process, or had received any instructions from him respecting it, or for making the affidavit; and there was no proof to identify the defendant as the person who made the affidavit or took any step in the matter.

The learned judge considered that as against a party not in any way connected with the original cause, such proof was indispensable, and intimated this to the plaintiff's counsel before he closed his case. After taking time to consider, the plaintiff's counsel offered no further evidence, and the learned judge directed the jury that the defendant was not sufficiently connected with the arrest to make him liable,—whereupon they found for the defendant.

Richards obtained a rule *Nisi* for a new trial, on the law and evidence, and for misdirection. He cited Spafford v. Buchanan, 3 O.S. 391; Hennell v. Lyon, 1 B. & Al. 182.