secution is illegal, and suggested the advisability of eliminating from the exceptions in s. 112 of the former Judicature Act actions for malicious prosecution.

This apparently led to the passing of s. 62 of the Judicature Act of 1913 (3 & 4 Geo. 5, c. 19), which provides that "in actions for malicious prosecution the judge shall decide all questions both of law and fact necessary for determining whether in not there was reasonable and probable cause for the prosecution."

Sec. 60 of the same Act says that a jury may give a special or general verdict, but shall give a special verdict if the judge so directs and shall not give a general verdict if directed by him not to do so.

By s. 61, the judge, instead of directing the jury to give either a general or a special verdict, may direct the jury to answer any questions of fact stated by him and the jury shall answer such questions and not give any verdict.

It does not appear to us that the new enactment (s. 62) clears up the difficulty, or at least it introduces a new one, when it says the judge shall decide all questions both of law and fact necessary for determining reasonable and probable cause. But can he (as under the former practice he could) have the assistance of a jury under s. 61?

The trend of the cases seems to shew that the judicial thought was that gradually the jury rather than the judge was being entrusted with the duty of passing upon the existence of reasonable and probable cause. And the legislature may have thought proper to settle the matter by passing s. 62. But has it done so? Or can judges still leave questions of fact relating to this particular issue to the jury? Sections 61 and 62 appear to be inconsistent.

It would be well to call attention to another notable change made by the Judicature Act of 1913 above referred to. By the Act of 1897 (R.S.O. c. 51, s. 112), all actions of slander, criminal conversation, seduction, malicious arrest, malicious prosecution and false imprisonment, were placed in the same class as actions