

1913, in actions for malicious prosecution, is clearly stated in the text books to be that "the existence of reasonable and probable cause is a question for the judge, and not for the jury." The rule, however, is subject to the qualifications that all preliminary questions of fact on which this ultimate issue depends are for the jury. That is to say, the jury must find what the facts of the case were, as known to or believed by the defendant, and then the judge decides whether those facts constituted reasonable and probable cause: viz., whether the defendant shewed reasonable care and judgment in believing and acting as he did. Thus, if the defendant alleges that he prosecuted the plaintiff because of certain information received from a third person, it is for the jury to say whether that information was really received by the defendant and whether it was really believed by him, and it is for the judge to decide whether, if it was so received and believed, it constituted a reasonable ground for the prosecution. This division of functions between judge and jury may be effected at the discretion of the judge in two ways. He may either direct the jury to find the facts specially, and then decide for himself on the facts so found whether there was reasonable and probable cause, or he may tell the jury that if they find the facts to be otherwise, there is none, thus leaving the jury to find a general verdict on this hypothetical direction.

This subject was discussed in a recent case in the Province of Ontario (*Ford v. Canadian Express Company*, 21 O.L.R. 593), and from the judgment in that case we gather that, notwithstanding the prohibition spoken of by Mr. Justice Anglin, trial judges have usually submitted questions to the jury; and, although the existence of reasonable and probable cause is a question for the trial judge, questions are often left to the jury on the issue as to the want of reasonable and probable cause, such as questions of reasonable care and questions of honest belief, etc., and these questions have been held to be proper questions to be left to the jury under certain conditions.

As has been seen, Mr. Justice Anglin held that the practice of submitting questions to the jury in actions for malicious pro-