

an ordinary commercial action that some Judges might think would be better tried by a Judge alone than by a Judge and jury. The claim for malicious prosecution must be tried with a jury. In the action against the bank, the question whether evidence can be admitted of the subsequent prosecution by Carruthers must be determined. The action against Carruthers is founded in tort, and an essential to the maintenance of that action is the establishment of malice. Its foundation in law and in fact seems to be entirely distinct from that of the cause of action against the bank, and the measure of damages is different.

The appeal should be allowed with costs and the order of the Local Judge set aside with costs.

HODGINS, J.A.

NOVEMBER 5TH, 1920.

TORONTO AND HAMILTON HIGHWAY COMMISSION v.
KLAINKA.

Highway—Toronto and Hamilton Highway Commission Act, 5 Geo. V. ch. 18, sec. 13 (3)—Regulations Made by Commission—Distance of Buildings from Centre Line of Roadway—Addition to Existing Building—Encroachment upon Highway—Application of Regulations to Towns and Villages—Interim Injunction—Motion to Continue—Terms—Speedy Hearing—Motion for Judgment.

Motion by the plaintiffs to continue an interim injunction restraining the defendants from constructing or erecting any addition to any building or buildings within a distance of 53 feet from the centre line of the roadway of the Toronto and Hamilton Highway.

The motion was heard in the Weekly Court, Toronto.

J. W. Pickup, for the plaintiffs.

F. Morrison, for the defendants.

HODGINS, J.A., in a written judgment, said that the plaintiffs, under sec. 13 (3) of the Toronto and Hamilton Highway Commission Act, 5 Geo. V. ch. 18, on the 27th June, 1917, passed regulations fixing the distance at which buildings or fences might be erected, as follows:—

"1. No building or fence shall be placed at a distance less than 53 feet from the centre line of the roadway."