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ACTIONS FOR MALICIOUS PROSECUTION—FUNCTIONS OF JUDGE AND JURY.

It was provided by the Judicature Act, R.S.O. 1897, c. 51, s. 112, that, upon a trial by jury in any case, except an action of libel, slander, criminal conversation, seduction, malicious arrest, malicious prosecution or false imprisonment, the judge, instead of directing the jury to give either a general or a special verdict, may direct the jury to answer any question of fact stated to them by the judge for the purpose.

Mr. Justice Anglin, in referring to this enactment in the case of *Still v. Hastings*, 13 O.L.R. 322, said: "I read this section as tantamount to an express prohibition against the putting of questions to a jury in actions of the classes enumerated. Notwithstanding its provisions, however, appellate courts have affirmed the propriety of submitting questions to the jury in actions for malicious prosecution, and, in reviewing cases in which questions have been put they have expressed no disapproval of that course."

The learned judge in the same case also said, "It is often practically impossible to direct a jury hypothetically as to the facts upon which reasonable and probable cause depends in such a manner that there can be any certainty that the jury at all appreciate the nature and the scope of its duties in regard to the matters involved in this issue; or any assurance that, in pronouncing a general verdict, the jury will confine itself to the consideration of matters legitimately the subject of its findings. I would, therefore, suggest the advisability of eliminating from the exceptions in s. 112 of the Judicature Act actions for malicious prosecution."

The practice up to the passing of the Judicature Act of