

I think that there must be a reference back to the arbitrators to eliminate from their award any damages arising from any of these three causes, that is smoke, noise or bustle, and that the award must be confined to damage to the land from vibration.

I think that there should be no costs of this motion. Proceedings upon this order will also be stayed for thirty days, to enable the parties to appeal if so advised.

[There was no appeal from this judgment, and the arbitrators upon the reference back reduced the item of \$4,500 to \$500. From this part of the award, viz., the award of \$500 for vibration, the company appealed to the Court of Appeal. The appeal was heard on the 30th May, 1899, by OSLER, MACLENNAN, MOSS, and LISTER, J.J.A. On the 29th June, 1899, the Court dismissed the appeal with costs, holding that, as the matters raised by the appeal were covered by the judgment of ROSE, J., the Court had no right to interfere.]

AUGUST 4TH, 1903.

DIVISIONAL COURT.

HUNTER v. BOYD.

Malicious Prosecution—Reasonable and Probable Cause—Interference in Prosecution—Evidence Shewing.

Motion by plaintiff to set aside nonsuit entered by MEREDITH, C.J., in an action for malicious prosecution, tried at Toronto. The plaintiff alleged that the defendant William Boyd (since deceased) laid an information against plaintiff for obtaining \$17.50 by false pretences from one Harkness and caused plaintiff to be tried thereon by the police magistrate, whereupon plaintiff was acquitted, and that the other defendants procured Boyd to lay the information.

G. H. Watson, K.C., for plaintiff.

W. R. Riddell, K.C., for defendants Ewart and Reed.

W. Nesbitt, K.C., and R. McKay, for defendants Gooch, Smith, and Dixon.

The judgment of the Court (FALCONBRIDGE, C.J., BRITTON, J.) was delivered by