

defendant in endeavouring to introduce evidence at the trial of the plaintiff's nationality could not be too severely condemned. It was inexcusable; and, by reason of that, there should be no costs of this appeal.

RIDDELL, J., said that he would be very glad if the authorities and the law would permit the Court to grant a new trial in this case. He was satisfied that the conduct of the defendant's counsel was inexcusable; but the authorities did not permit the Court to order a third trial.

LENNOX, J., reluctantly concurred in dismissing the appeal. The case was a peculiar one, and what was done should be marked as far as possible with disapproval.

There was some ground for saying that the verdict of the jury was perverse.

But the main point was, that counsel, who understood the matter thoroughly, and knew that he should not attempt to prove the nationality of the plaintiff, persisted in attempting to do so, or rather in making the suggestion to the jury. The effect upon the minds of the jurors was just as damaging as if counsel had succeeded in getting the evidence before the jury.

In attempting to prove that the plaintiff had been convicted upon many occasions, counsel accomplished as much or more than he would have accomplished if he had got the evidence in.

ROSE, J., concurred.

Appeal dismissed without costs.

SECOND DIVISIONAL COURT.

DECEMBER 7TH, 1917.

*NORTHERN LUMBER MILLS LIMITED v. RICE.

Mechanics' Liens—Action to Enforce Lien for Materials—Period of Credit not Expired as to Part of Claim—Premature Action—Right to Prove Claim for Immature Part of Claim in Action Properly Brought in Respect of Mature Claims—Mechanics and Wage-Earners Lien Act, R.S.O. 1914 ch. 140, secs. 24, 25, 32, 37, 39.

Appeal by the defendant from the judgment of the Judge of the District Court of the District of Temiskaming in favour of

*This case and all others so marked to be reported in the Ontario Law Reports.