

respondents to the appeal (the present applicants) are to have all their costs paid by the individual members of the council (or, if more convenient, by the township corporation in the first instance).

SECOND DIVISIONAL COURT.

JANUARY 31ST, 1917.

*GAGE v. REID.

Trial—Jury—Prejudice—Nationality of Plaintiff—Evidence Improperly Admitted—New Trial—Costs.

Appeal by the plaintiff from the judgment of MIDDLETON, J., at the trial at Belleville, upon the findings of a jury, in favour of the plaintiff, for the recovery of \$3 damages and Division Court costs, in an action for false imprisonment, with a set-off to the defendant of the excess of his costs in the Supreme Court of Ontario, in which the action was brought, over the costs to which he would have been entitled had the action been brought in a Division Court.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, KELLY, and MASTEN, JJ.

D. O. Cameron and J. B. Mackenzie, for the appellant.
Edward Bayly, K.C., for the defendant, respondent.

MEREDITH, C.J.C.P., in a written judgment, said that the defendant, being sued for false imprisonment, was allowed to give evidence, wholly irrelevant to the issue, that the plaintiff was a subject of a nation then and now at war with Great Britain, and, based upon that evidence, counsel for the defendant was permitted to urge the jury to assess the plaintiff's damages, because of his nationality, at little or nothing. It was a plain case of a mistrial; and there must be a new trial. The plaintiff's costs of this appeal to be paid by the defendant forthwith; the costs of the first trial to be disposed of by the Judge at the second trial.

RIDDELL and KELLY, JJ., agreed in the result.

MASTEN, J., read a dissenting judgment, in which he referred at length to the evidence and the course of the trial, and also to numerous authorities. He said, in conclusion, that it appeared