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APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

NOVEMBER 22ND, 1917.

GAGE v. REID.

*Trial—Jury—Prejudice—Improper Course Taken by Counsel at
Second Trial of Action—Verdict for Small Sum—Perverse
Verdict—Application for New Trial—Refusal of Court to
Order Third Trial—Costs.*

Appeal by the plaintiff from the judgment of BRITTON, J., at the second trial of this action.

The second trial was ordered by a Divisional Court: see Gage v. Reid (1917), 38 O.L.R. 514.

At the second trial before BRITTON, J., and a jury, a general verdict was given for the plaintiff with \$5 damages, and judgment was ordered to be entered for the plaintiff for \$5 and Division Court costs of both trials without set-off.

The plaintiff asked for a new trial, upon the ground mainly of unfair allusion by counsel for the defendant to the plaintiff's nationality and to convictions had against him in criminal proceedings, and also upon the ground that the verdict was perverse.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and ROSE, JJ.

D. O. Cameron and J. B. Mackenzie, for the appellant.

H. S. White, for the defendant, respondent.

MEREDITH, C.J.C.P., delivering judgment at the conclusion of the argument, said that the appeal should be dismissed. The case had been tried twice, and it is seldom, if ever, that a case is set down for a third trial, where, as in a case of this kind, the jury might reasonably give \$5 damages. The act of the de-