

FIRST DIVISIONAL COURT.

JUNE 12TH, 1917.

*D. v. B.

Trial—Action for Breach of Promise of Marriage—Jury—Prejudice—Address of Counsel for Plaintiff—Allusion to Nationality of Defendant—Alien Enemy—Improper Admission of Evidence—Inflaming Minds of Jury—Substantial Wrong—Judicature Act, sec. 28—Excessive Damages—New Trial.

Appeal by the defendant from the judgment of LATCHFORD, J., upon the verdict of a jury at the trial, in favour of the plaintiff for the recovery of \$5,000 damages and costs in an action for breach of promise of marriage.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, JJ.A.

I. F. Hellmuth, K.C., for the appellant.

Peter White, K.C., and J. J. Gray, for the plaintiff, respondent.

FERGUSON, J.A., read a judgment in which he said that the plaintiff was a Russian Jewess, 19 years of age; the defendant was born in Galicia, Austria, educated in Canada, and was a barrister and solicitor in Ontario.

The plaintiff did not prove actual damage, and the verdict of \$5,000 was almost entirely sentimental.

The fact that the defendant was of Austrian birth was contrasted with the plaintiff's Russian nationality and made use of to prejudice the defendant with the jury. The plaintiff's counsel should not in his address have made use of the defendant's Austrian origin as he did: *Slazengers Limited v. C. Gibbs and Co.* (1917), 33 Times L.R. 35; *Gage v. Reid* (1917), 38 O.L.R. 514.

Evidence was improperly admitted and presented to the jury for consideration to the effect that the defendant's near relatives insulted, slandered, and otherwise persecuted the plaintiff. There was a deliberate attempt on the part of the plaintiff and her counsel to prejudice the jury with evidence and suggestions of misconduct by the defendant's near relatives.

Evidence was improperly admitted to shew the effect upon a Jewish girl's reputation of a man's declining to marry her after taking out a marriage license. The jury may have been greatly impressed and misled by this.

Reference to *Smith v. Woodfine* (1857), 1 C.B.N.S. 660, 667; *Halsbury's Laws of England*, vol. 16, p. 277, para. 508; 5 Cyc. 1014 et seq.