

A. W. Langmuir, for the applicant.
D. C. Ross, for the plaintiff, respondent.

MIDDLETON, J., in a written judgment, said that the action in the Division Court was brought to recover commission payable under an agreement for the sale of land, bearing date the 28th June, 1919. The agreement was made between the defendant and one Harding, in the form of an offer by Harding to purchase and an acceptance by Williams, in which was embodied a clause, "I agree to pay W. J. Cook the agreed commission." Whether this was the commission sued for by Collins, or whether there was another agreement with Collins was not disclosed. The defendant relied, as a defence, upon the provision of sec. 61 of the Soldier Settlement Act, 1919, 9 & 10 Geo. V. ch. 71 (Dom.), which provides that "no person, firm or corporation shall be entitled to charge or to collect as against or from any other person, firm or corporation any fee or commission or advance of price for services rendered in the sale of any land made to the Board, whether for the finding or introducing of a buyer or otherwise." The Division Court Judge found that this statute did not constitute a defence, and gave judgment for the plaintiff.

The facts were not adequately disclosed. The Soldier Settlement Board of Canada, by its letter of the 24th August, stated that Harding "has made application to this Board for assistance in purchasing your property in Reach township," and that "the Board has approved of the purchase." If this was so, the transaction was not one within the provisions of sec. 61, for it was not a sale made to the Board within the meaning of the Act.

Quite apart from this, prohibition did not lie. It was for the Division Court Judge to determine all questions of fact and law arising at a trial of a plaint properly begun in his Court. There was no appeal from his decision, and there was no remedy, even if he erred, so long as he did not by his error give himself jurisdiction. This law was so long settled that it would be only pedantry to cite cases.

The motion, on this* ground alone, failed, and must be dismissed with costs, fixed at \$25.