

On all grounds I do not see how this action could be successfully sustained against defendants, and it should stand dismissed with costs.

MEREDITH, J., gave reasons for the same conclusion.

MAGEE, J., concurred.

CARTWRIGHT, MASTER.

FEBRUARY 17TH, 1905.

CHAMBERS.

TORONTO INDUSTRIAL EXHIBITION ASSOCIATION
v. HOUSTON.

Evidence—Foreign Commission—Refusal of Motion—Irrelevant Testimony.

Motion by plaintiffs for a commission to England to obtain evidence of witnesses living there.

In January, 1904, plaintiffs made an agreement with Major Rose, the officer commanding the band of the "Black Watch," to bring the band to play at the exhibition to be held at Toronto in August and September, 1904, for a weekly payment of £100.

On 16th April, 1904, plaintiffs made an agreement with defendant, reciting the contract with Rose, and undertaking to furnish the band to defendant for a 4 weeks' tour of concerts throughout Canada to begin on 11th September and end in time to allow the band to go back by steamer sailing from Montreal on 8th October.

This action was brought to recover from defendant \$2,917 and interest, and for an account of the profits of the concert tour, and payment of a percentage thereof, under the terms of the agreement of 16th April.

After examinations for discovery of defendant by plaintiffs, and of plaintiffs' manager by defendant, this motion was made. Plaintiffs sought to examine Rose and the band-master of the Coldstream Guards.

F. R. MacKelcan, for plaintiffs.

Grayson Smith, for defendant.

THE MASTER.— . . . The statement of defence (1) denies the validity of the agreement of 16th April and alleges that it is ultra vires of plaintiffs, and (2) alleges material