

because the proceedings were initiated by a "dispute," instead of in some other way. There had been no appeal from the Recorder's decision; and, in considering the plea of *res judicata*, all that need be examined into was the question whether the Recorder did in fact decide, as between the plaintiff and Perkins, or whether the plaintiff was estopped from shewing that the Recorder did not decide, the question raised by this action.

What the plaintiff had to establish, in order to succeed before the Recorder, was that (1), as between himself and Perkins, the mining claim was partnership property, and (2) that Nelson was affected by knowledge of the relations between the plaintiff and Perkins. There was nothing to shew whether the Recorder held against the plaintiff as to both the facts which the plaintiff had to establish, or as to only one, and, if as to only one, which one. The Recorder may have based his order upon a finding that Nelson, as transferee from the recorded holder, was not affected by the relations between the plaintiff and Perkins, and therefore that it was proper that the mining claim should continue to stand on the records in his office in the name of Nelson.

The defendant not having proved that there had been a previous adjudication upon the matter in controversy in this action, the plea of *res judicata* failed.

There should be judgment declaring that the defendant was bound to account to the plaintiff for his dealings with mining claim M. R. 5868, and there should be a reference to the Master at Haileybury to take the accounts. The defendant must pay the plaintiff's costs down to judgment; subsequent costs reserved until after report.

ORDE, J., IN CHAMBERS.

DECEMBER 17TH, 1920.

TORONTO GENERAL TRUSTS CORPORATION v. ARENA
GARDENS LIMITED.

Appeal—Application for Leave to Appeal from Order of Judge Refusing to Set aside Receiving Order—Rule 507—Judgment Creditors—Realisation of Security by Trustees for Bondholders—Collusion—Remedy—Estoppel—Merits—Refusal of Application.

Motion by the Toronto Hockey Club for leave to appeal from the order of LATCHFORD, J., ante 236.

J. F. Boland, for the applicants.

A. C. McMaster, for the bondholders.

R. O. Daly, for the plaintiffs.