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TORONTO, MARCH 23, 1910.

No. 26.

HIGH COURT OF JUSTICE.

SUTHERLAND, J.

MARCH 11TH, 1910.

RE MACDONALD AND MACDONALD.

Arbitration and Award—Determining Price to be Paid for Shares in Company — Basis of Valuation — Terms of Submission — Evidence.

An appeal by James Fraser Macdonald from an award of arbitrators.

On the 31st January, 1906, four persons, of whom the appellant was one, then comprising the wholesale dry-goods firm of John Macdonald & Co., executed an agreement in writing, pursuant to which they transferred the assets of the partnership to a joint stock company to be incorporated. The partners took stock in the company to replace their partnership holdings. The agreement provided that, if any one of the four desired to sell his stock, he should give notice in writing to the other shareholders, who should have the right to purchase; that, should the stock not be purchased by a shareholder and remain unsold for 60 days after notice, the stock should be taken over by the remaining shareholders at a valuation to be determined by the award of arbitrators; in arriving at the value the arbitrators were not to go behind the entries in the company's books, but might take other matters into consideration; the arbitrators to fix the terms of payment, as well as the price to be paid; the stock to be taken by the remaining shareholders in proportion to the amount of stock they might hold, unless they otherwise agreed.

The appellant desiring to sell his stock, there was a voluntary reference under the agreement to three arbitrators, who made an award determining the value of the appellant's stock to be \$88,400 at the date of the award, the 16th December, 1909, and gave directions as to the manner of payment.