

## HIGH COURT DIVISION.

SUTHERLAND, J.

APRIL 23RD, 1917.

## RE SINGER AND KATZ.

*Arbitration and Award—Motion to Set aside Award Valid on its Face—Objections to Award—Witnesses not Sworn—Arbitration Act, R.S.O. 1914 ch. 65, schedule A., cl. (j)—No Objection Raised before Arbitrators—Exclusion of Parties during Sitzings of Arbitrators—Absence of Mistake—Award Covering all Matters in Dispute—Dismissal of Motion.*

Application by Moses D. Katz and Esther Katz to set aside an award of three arbitrators made upon a submission of all the differences and disputes outstanding between the applicants, on the one side, and Jacob Singer and Solomon Singer, on the other side, arising out of a partnership in the business of manufacturing and dealing in tallow.

The application was heard in the Weekly Court at Toronto.

N. D. Tytler, for the applicants.

J. Singer, for the respondents.

SUTHERLAND, J., in a written judgment, set out the facts and dealt with the many grounds upon which the application was based. Most of the grounds related to questions of evidence and fact; these were all decided against the applicants.

It was objected that the arbitrators did not at the arbitration take the viva voce testimony of witnesses under oath, as required by the Arbitration Act, R.S.O. 1914 ch. 65, schedule A., cl. (j). No objection was, however, taken to this during the course of the arbitration; none of the witnesses on either side appeared to have been sworn before giving their testimony. The point was not now open to the applicants: Russell on Awards, 9th ed., p. 141; *Ridoat v. Pye* (1797), 1 B. & P. 91; *Biggs v. Hansell* (1855), 16 C.B. 562.

Another ground of objection was, that the arbitrators, at their sittings, at times excluded the parties to the arbitration. There was no satisfactory evidence to support this objection. No mistake in the legal principles upon which the award was based was manifest, and the arbitrators did not admit any such mistake.

The submission was wide in its terms. The findings of fact were full and definite, though the manner in which they were