

tried and determined or an action had been brought to ascertain the validity of the claim set up. In view of the provision of sec. 5 of the Winding-up Act, that the winding-up shall be deemed to commence at the time of the service of the notice of the petition for the winding-up, the petition should not be allowed to stand. There was no exception in the statute to this absolute provision. Under sec. 14, the Court may perhaps have power to prevent the retroactive effort of a winding-up order upon an adjournment of a winding-up petition; but the learned Judge does not think so; nor does he think that the company, which was shewn to be in active operation and employing a large number of hands, should be placed in the embarrassing position which would follow any order by which the petition should be preserved.

Reference to *In re Public Works and Contract Co. Limited* (1888), 4 Times L.R. 670; *In re Gold Hill Mines* (1882), 23 Ch. D. 210, 213, 215.

Petition dismissed with costs.

MIDDLETON, J., IN CHAMBERS.

NOVEMBER 8TH, 1919

*HEISTEIN & SONS v. POLSON IRON WORKS LIMITED.

Arbitration and Award—Action Brought after Submission—Motion to Stay Proceedings—Arbitration Act, R.S.O. 1914 ch. 65, sec. 8—Previous Issue and Service of Order for Security for Costs—Election to Proceed with Action—Dismissal of Motion.

Motion by the defendants, under sec. 8 of the Arbitration Act, R.S.O. 1914 ch. 65, to stay proceedings in this action.

J. H. Moss, K.C., for the defendants.

A. C. McMaster, for the plaintiffs.

MIDDLETON, J., in a written judgment, said that objection was taken that the motion could not be now made because the defendants had taken a "step in the proceedings" by issuing and serving an order for security for costs. This, the learned Judge thought, was fatal: *Adams v. Cattley* (1892), 40 W.R. 570; *Bartlett v. Ford's Hotel Co.*, [1895] 1 Q.B. 850; *Ford's Hotel Co. v. Bartlett*, [1896] A.C. 1.

Here what was done was no merely formal thing. The order stayed the action and caused the plaintiffs to give security so that the action might proceed. This having been done, there was now