

G. Russell, for the petitioner.

R. McKay, K.C., for the company.

SUTHERLAND, J., in a written judgment, said that the petitioner had on affidavit stated his belief that the company was hopelessly insolvent, for the reasons given in para. 10 of the petition, which was based on the company's financial statement of the 31st March, 1919, in which, as the petitioner stated, the company's assets were valued at higher figures than were reasonable, and there was in fact a deficit of from \$1,500 to \$5,000, instead of a surplus.

No material in answer was filed on behalf of the company. It was contended for the company that the petitioner had not brought himself within sec. 3 of the Act by proving the facts on which it would be proper to find that the company was to be deemed insolvent; that it had not been shewn that in fact, at the time the application was made, the company was unable to pay its debts or was insolvent: *Re Cramp Steel Co. Limited* (1908), 16 O.L.R. 230; *Re Harris Maxwell Larder Lake Gold Mining Co. Limited* (1910), 1 O.W.N. 984.

With some doubt, the learned Judge concluded that the material was not sufficient on which to base an order.

Petition dismissed without costs.

SUTHERLAND, J..

DECEMBER 31ST, 1919.

RE McCONKEY ARBITRATION.

Arbitration and Award—Motion to Set aside Award—Construction of Lease—Previous Judgment of Court on Special Case Submitted by Arbitrators—Effect of—Refusal to Entertain Application.

Motion on behalf of the Toronto General Trusts Corporation for an order that an award made on the 13th October, 1919, be set aside or remitted back to the arbitrators for reconsideration, on the following among other grounds:—

(1) That an error in law appeared on the face of the award, in that the arbitrators had allowed the tenant the value of the items or articles set out in para. 7 of the award.

(2) That the items or articles referred to in para. 7 of the award were not part of the buildings and improvements for which the landlord was obliged to pay under the terms of the lease between J. H. Richardson, lessor, and William R. Wilson, lessee, dated the 1st November, 1896, referred to in the award.