

[Ch. Div.]

NOTES OF CASES.

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The Court has no power to either review the Sessions in a matter within their jurisdiction or to compel them by mandamus to re-hear an appeal.

RE ST. CATHARINES AND LINCOLN.

Municipal Act, Secs. 42-6—Arbitrations.

In arbitration between a city and a county under the Municipal Act the arbitrators have a large discretion; and, therefore, where arbitrators in estimating expenditures (under secs. 42, 44 5, 6), took population as a basis, and the previous five years criminal records as a basis for computing compensation for care and maintenance of prisoners, the Court refused on these grounds to interfere with their award.

CHANCERY DIVISION.

Boyd, C.]

[Dec. 14.]

IN RE ROSS.

Corroborative evidence—Statute of Limitations—Evidence Act, R. S. O. ch. 63—Executors, retainer by—Allowance of interest.

Where money is lent to be repaid when the borrower is able, his ability may be shown by a slight amount of evidence, such as is open to public observation, of a flourishing condition of his affairs, and it is not necessary to shew that the borrower is in a position to discharge the debt without inconvenience.

Where each item in an account against the estate of a deceased person is an independent transaction and stands upon its own merits, and would constitute a separate and independent cause of action, some material corroboration of the testimony of the party interested in enforcing the demand must be adduced as to each item in order to satisfy the tenth section of the Evidence Act, R. S. O. ch. 63.

Where the estate of a deceased person is insolvent, the provisions of the Act respecting trustees displace any right on the part of the executor to retain in full; and as against an executor claiming as creditor, any other creditor may set up the Statute of Limitations.

The circumstances under which interest on a claim ought to be allowed or refused in the Master's office, considered and acted on.

Boyd, C.]

[Dec. 14.]

N ELLES v. SECOND MUT. INS. CO.

Mutual Insurance Co.—Default in payment on shares—Forfeiture of shares.

The plaintiff, on becoming a member of the defendant company, agreed to accept his shares subject to the rules of the company. Rule 6 was to the effect that in case of default of payment of dues for a year, the directors might forfeit any shares so in default. The plaintiff being in default for a year and upwards, the directors declared his shares forfeited, and this proceeding was afterwards confirmed at a meeting of the shareholders. The plaintiff thereupon instituted proceedings to have such forfeiture declared invalid on the grounds, (1) that notice of the intention to forfeit had not been given to him, (2) that notice of an intention to forfeit had not been served on him in order that he might appeal to the shareholders if so advised; (3) that the resolution did not expel the plaintiff from membership, (4) that the plaintiff's name was not set forth in full in such resolution; it did not specify the shares to be forfeited, and a number of other persons were included whose shares were jointly forfeited; (5) that no notice had been given of the holding of the annual meeting for the election of directors, so that the directorate was not legally constituted, (6) that one of the directors had become insolvent under the Act of 1875, although his shares continued to stand in his name in the books of the company; (7) that it was not shown that proper and sufficient notice had been given of the meeting of the directors at which such forfeiture had been declared; (8) that the plaintiff had capital at his credit in the company out of which the arrears might have been paid; and by a by-law of the company, "all fines and forfeitures should be charged to members liable, and, if not paid, deducted from capital at the credit of such member."

Held, that these objections could not prevail, and that as to the last, this was not such a forfeiture as was referred to in the rules.

O'Gara, Q.C., and *Gormully*, for plaintiff.

Lees, Q.C., for defendant.