Q. B. Divisional Court.] [Feb. 6, 1888.

In re CURRY.

Arbitration — Extending time for making award—Death of party—No provision for appeal—Statute of Limitations.

Two persons submitted certain matters in dispute between them to the award of a barrister of character and standing. The submission provided that the death of either party should not act as a revocation of the power and authority of the arbitrator; there was no provision for an appeal from his award. The arbitrator allowed the time for making his award to run out before entering on the reference. One of the parties had died since the submission, and the survivor now applied to the court to enlarge the time. It appeared that the Statute of Limitations had so run since the submission as to bar portions of the applicant's claim.

Held, reversing the decision of ROSE, J., that the facts of the death and the absence of the right of appeal would not warrant the court in refusing to enlarge the time, and that, under the circumstances, no injustice would be done by enlarging it.

Edwards v. *Davies*, 23 L. J. Q. B. N. S. 278; *Brown* v. *Williams*, 6 D. & L. 235; *Lord* v. *Lee*, L. R. 3 Q. B. 404; *Denton* v. *Strong*, L. R. 9 Q. B. 117, referred to.

Aylesworth, for the applicant.

H. J. Scott, Q.C., contra.

Mr. Dalton, Q.C.] [Feb. 6. 1888.

FOLEY *v.* LEE.

Action — Dismissal for non-prosecution — Motion by two defendants where there are others.

A motion by two of the defendants to dismiss the action as against them for the plaintiff's default in not proceeding to trial was refused, where it appeared that one of the defendants, a necessary party, had for apparently sufficient reasons not been served with the writ of summons, while the action had proceeded against the other defendants, and as against them was ripe for trial.

Held, that it was the duty of the applicants to have applied to the plaintiff's solicitor for information as to the state of the cause in regard to the other defendants before making such a motion.

J. M. Quinn, for the motion.

G. W. Holmes, contra.

Armour, C. J.] [Feb. 7, 1888.

ODELL *v.* CITY OF OTTAWA.

Discovery—Examination of servant of corporation.

In an action for damages, for negligence against a corporation in which the complaint was that a traction engine of the defendant's had caused an accident which resulted in injury to the plaintiff, an order was made at the instance of the plaintiff for the examination for discovery of the driver of the engine.

Aylesworth, for the plaintiff.

Watson, for the defendants.

MacMahon, J.] [Feb. 9, 1888.

REGINA *ex rel.* CHAUNCEY *v.* BILLINGS.

Municipal elections — Quo warranto — Defective material—Statement—Recognizance — Affidavit—Amendment.

Upon an application for a *fiat* for the issue of a summons in the nature of a *quo warranto* under the Municipal Act of 1883, to try the validity of the respondent's election as a municipal councillor, the statement of the relator did not show that he was a candidate or an elector who voted, or who tendered his vote, at the election, as required by sec. 185 of the Act; and the recognizance filed by the relator was not entered into before a judge or commissioner for taking affidavits, nor allowed by the judge in the manner prescribed by sec. 186, nor was it conditioned to prosecute the writ with effect, and the affidavit of the relator in support of the application did not set out fully and in detail the facts and circumstances alleged in the statement, as required by rule 2 of the rules of Michaelmas Term, 14 Vict.

Held, that these were defects in the material necessary to ground the application, not mere irregularities which could be amended at a later stage; and the *fiat*, the writ, and all proceedings were set aside with costs.