

HON. MR. JUSTICE LENNOX.

OCTOBER 6TH, 1913.

MCGREGGOR v. CURRIE ESTATE.

5 O. W. N. 90.

Executors—Action against—Evidence to Establish Contract between Plaintiff and Testator—Corroboration—Laches—Acquiescence—Statute of Limitations—Trust—Company — Shares — Delivery of—Dividends—Appropriation—Waiver—Costs.

Action against the executors of one Currie, deceased, to compel the transfer to the plaintiff of ten shares of capital stock of the Ford Motor Company, pursuant to an alleged contract between the plaintiff and the deceased, or for damages or other relief.

LENNOX, J., gave plaintiff judgment declaring him entitled to the 10 shares, holding that plaintiff had established a definite contract. That the Statute of Limitations had no application. That deceased was trustee for plaintiff of these ten shares, they being specific and ear-marked.

A. R. Bartlett, and Urquhart, for the plaintiff.

A. C. McMaster, for the defendants.

HON. MR. JUSTICE LENNOX:—There seemed to be unanimity of opinion at the trial as to the good character, good faith, and truthfulness of the plaintiff. This does not dispense with the necessity for corroboration; but, granted that this statutory requirement is complied with, the testimony to the plaintiff's unimpeachable character, and my own observation of the manner in which he gave evidence, disinclines me to accept without question the very severe comments now made upon his testimony by counsel for the defendant.

I find that there is sufficient corroboration of the plaintiff's evidence as to the alleged contract. There is quite sufficient in support of the evidence of the plaintiff to induce me to believe that the plaintiff's story is probably true, to believe that it is true; and in fact there is evidence which could hardly be forthcoming except upon the hypothesis of the truthfulness of the plaintiff's story. See *Wilson v. Howe*, 5 O. L. R. 323; *Radford v. MacDonald*, 18 A. R. 167; *Green v. McLeod*, 23 A. R. 676; *Parker v. Parker*, 32 U. C. C. P. 113.

But to justify a recovery in this action I must believe that the plaintiff's story of the making of a contract is true, as well as find that there is evidence corroborating it. Naturally enough, it is argued that the plaintiff's inaction for so many years after the time he thought he was entitled to delivery of