

BOECKH v. GOWGANDA QUEEN MINES.

1912

*March 22,

25.

*June 4.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Company—Subscription for shares—Misrepresentations—Action for calls—Charge to jury—Misdirection—Objection—Pleading.

APPEAL from a decision of the Court of Appeal for Ontario(1), affirming the judgment for the plaintiffs (respondents) at the trial.

The respondents brought action to recover calls upon shares of their capital stock claimed to have been subscribed for by appellant. The main defence was that the subscription for the shares was procured by fraudulent misrepresentations upon discovery of which appellant had repudiated it. The jury found that he was not misled by any statements made to him and that he had delayed his repudiation for an unreasonable time after becoming dissatisfied. Judgment was entered for the plaintiffs at the trial and defendant appealed directly to the Court of Appeal, where he complained of misdirection and non-direction to the jury. His objections on these grounds were overruled for the reason that they were not taken at the trial and the jury were properly instructed as to the subject-matter. Another objection was that a question, "Do you find in favour of the plaintiffs or the defendant?" should not have been submitted, as to which the Court of Appeal held that it was taken too

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff, Anglin and Brodeur JJ.

(1) 24 Ont. L.R. 293.

1912
BOECKH
v.
GOWGANDA
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MINES.

late, and, even if it had been raised at the trial, it could not prevail, as the judge had a right to put the general question if he thought fit, if his charge was such as to enable the jury to deal with the issues by a general verdict.

A third objection that there was no proof of a by-law authorizing the sale of shares at a discount was disposed of on the ground that, as such a by-law existed, proof could have been easily made and the plaintiffs would be allowed to put in a copy before the Court of Appeal.

The court also held that an allotment made without compliance with the provisions of sec. 106 of the "Ontario Companies Act" was voidable only and could not be avoided except upon a record properly framed for the purpose.

On appeal by the defendant to the Supreme Court of Canada the judgment of the Court of Appeal was affirmed for the reasons given therein:

*Appeal dismissed with costs.**

John W. McCullough for the appellant.

W. R. Smyth K.C. for the respondent.

*Leave to appeal to Privy Council was refused, 25 July, 1912.