

The Ontario Weekly Notes

Vol. II.

TORONTO, JUNE 28, 1911.

No. 40.

COURT OF APPEAL.

JUNE 17TH, 1911.

GOWGANDA-QUEEN MINES v. BOECKH.

Company—Calls upon Shares—Action to Recover—Alleged Misrepresentation by Agent—Delay in Repudiation—Agreement by Counsel to Abandon Contentions on Law—Questions for Jury—General Verdict—Issue of Shares at a Discount—Proof of By-law not Made at Trial—Plaintiffs Permitted to Put in Copy—Statutory Meeting—Evidence of Holding—Allotment—Delay in Proceeding to Avoid—Ontario Companies Act, secs. 106, 107, 108.

Appeal by the defendant from the judgment of BOYD, C., in favour of the plaintiffs, after trial before him with a jury, in an action to recover calls upon shares of the capital stock of the Gowganda-Queen Mines, Limited, alleged to be subscribed for by the defendant.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, and MAGEE, J.J.A.

J. W. McCullough, and S. W. McKeown, for the defendant.
W. R. Smyth, K.C., for the plaintiffs.

Moss, C.J.O.: . . . The chief defence set up in the pleadings was that the defendant was induced to subscribe by false and fraudulent representations, upon discovering which the defendant had repudiated his subscription, and upon these issues of fact the parties went to trial by jury. The learned Chancellor submitted to the jury the questions and received the answers following:—

“(1) Was the defendant, Boeckh, misled by any statement of Greig? A. No.

“(2) If so, what was the statement or statements? (No answer.)