

HON. SIR G. FALCONBRIDGE, C.J.K.B.

JUNE 21ST, 1913.

CLARY v. GOLDEN ROSE MINING CO.

4 O. W. N. 1491.

*Company — Directors—Reduction in Number — Postponement of
Annual Meeting—Validity of—Costs.*

FALCONBRIDGE, C.J.K.B., dismissed with costs an action for a declaration that certain directors of a mining company were illegally elected.

Action by a shareholder for a declaration that the individual defendants were wrongfully holding certain offices in the defendant company, and for an injunction, mandamus, and an accounting.

R. R. McKessock, K.C., for plaintiff.

A. D. Meldrum, for defendants.

HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B.:—The case at the trial narrowed itself down to a question of the validity of the reduction of the number of directors from 5 to 3, and of the election of the 3 individual defendants as directors.

The president's reasons for causing the general meeting to be put off from July to November, viz., inability to get an auditor and lack of funds, seem to be good ones, and by-laws for these purposes were accordingly passed by the directors. All of these resigned, and it was necessary to appoint directors to carry on the company.

The action will be dismissed.

Plaintiff contended that in any event of the cause, he should have some special consideration as to costs, because he claimed that his action had the effect of compelling defendants to do their duty, as to some matters complained of in the statement of claim.

Townsend, the president, denied this under oath, and gave his own explanations.

Therefore, there is no reason why I should depart from the usual rule of giving the spoils of war to the victor.

Action dismissed with costs. Thirty days' stay.