

The order will, therefore, declare that the purchaser is not entitled to compensation by reason of the rights of way. The purchaser should also pay the costs.

MIDDLETON, J.

SEPTEMBER 17TH, 1912.

BOECKH v. GOWGANDA-QUEEN MINES LIMITED.

Res Judicata—Action for Money Due on Subscription for Shares—Judgment in—Issues—Refusal of Leave to Amend by Setting up New Defences—Attempt to Raise in Action to Rescind Subscription—Injunction to Restrain Enforcement of Judgment—Judicature Act, sec. 57, sub-sec. 9.

Motion by the plaintiff to continue until the trial an ex parte injunction granted by FALCONBRIDGE, C.J.K.B., restraining the defendants from enforcing a judgment obtained by the defendants against the plaintiff in the High Court of Justice for Ontario, on the 29th September, 1910.

J. W. McCullough, for the plaintiff.

M. L. Gordon, for the defendants.

MIDDLETON, J.:—In the original action the present defendants sued the plaintiff for \$2,000 alleged to be due in respect of a subscription for stock. The defendant in that action resisted payment, setting up several grounds of defence. At the trial he endeavoured to rely upon certain other defences, but objection was taken that these defences had not been pleaded; and effect was given to this objection. An appeal was had from this decision; and the exercise of discretion by the trial Judge in refusing leave to amend was approved both in the Court of Appeal (24 O.L.R. 293, 2 O.W.N. 1307), and in the Supreme Court; and the Privy Council has refused leave to appeal.

The defendant in that action now conceives the idea of himself bringing an action for the purpose of rescinding his subscription for the stock in question, relying upon the very grounds which he unsuccessfully sought to set up at the trial; and he seeks in this way to secure a trial of the issues which he might have raised in the earlier action had he pleaded adequately therein.