

KELLY, J., in a written judgment, said that the defendant Sutton disputed the jurisdiction on the ground that he resided in the State of Michigan, and was appointed trustee in bankruptcy of the estate of his co-defendant by order of a Court of the United States of America, and that, under Acts of Congress of the United States, no action could be brought against him as such trustee without the consent of the Courts of the State of Michigan, and such consent had not been obtained. He contended also that in a prior action by the plaintiffs against the defendants the same relief was claimed as in this action, and it was declared that the Courts of this Province had no jurisdiction to issue a writ of summons for service upon the defendants in connection with the matters then in issue, and that consequently the question of jurisdiction was *res adjudicata*; that the Act of the Legislature of Ontario 8 Geo. V. ch. 20, sec. 30, amending sec. 151 of the Companies Act, R.S.O. 1914 ch. 178, did not apply to the plaintiff company and did not give that company jurisdiction to serve him. He also set up that the shares were fully paid up and non-assessable, and that the assessment made in 1917 was not made *bona fide* and in the interests of the plaintiffs, but at the instigation of a banking company to which certain of the shares were pledged, and that the assessments should therefore be set aside and cancelled. By amendment made at the trial, the defendant Sutton also alleged that the by-law authorising the call of October, 1917, was invalid because it had not been confirmed by the shareholders, and it did not provide for the equal assessment of all shares of the company, and the company could not forfeit the shares; that on the 10th March, 1909, the company purported to sell the defendants' shares for failure to pay a call amounting to 20 cents a share to the said banking company, and the shares so sold thereupon became fully paid-up and non-assessable, and the shares held by the defendants were part of the shares so sold, and were transferred to the defendants by the said banking company.

The learned Judge referred to *Superior Copper Co. Limited v. Perry* (1918), 42 O.L.R. 45; sub-secs. 6 and 7 of sec. 15 of the Ontario Companies Act, added by 8 Geo. V. ch. 20, sec. 30; to the order made by Rose, J., in this action: *Superior Copper Co. Limited v. Perry and Sutton* (1918), 44 O.L.R. 24; to the Ontario Act (1907) 7 Edw. VII. ch. 117; and to sub-secs. 4 and 5 of sec. 5 of the Ontario Mining Companies Incorporation Act, R.S.O. 1897 ch. 195; and other cases and statutes; and, after a close examination of the evidence bearing upon each of the defences set up, concluded that none of them availed the defendant Sutton as an answer to the action.

There should be judgment for the plaintiffs as asked in their statement of claim, with costs to be paid out of the proceeds of the sale—no costs personally against the defendants.