

and might serve the process in such action upon a shareholder resident out of the jurisdiction; and also that, where any question is raised as to the validity of any call, an action may be brought in the Supreme Court for the purpose of determining the validity of the call and the right to sell, and that process in such action may be served on a shareholder resident out of the jurisdiction.

On the 24th April, 1918, the plaintiffs discontinued the first action, and commenced this action on the 31st May, 1918; in it they alleged that a call was made on the 18th October, 1917, and they claimed: (1) a declaration that the shares standing in the names of the defendants were not fully paid and were assessable and subject to call, that the call made was valid, and that the plaintiffs were entitled to sell the shares; and (2) an order for the sale of the defendants' shares under the direction of the Court.

In sub-sec. (6) added to sec. 151, it is provided that process in such an action as is declared maintainable may be served upon a shareholder resident out of the jurisdiction "in the same manner and subject to the same conditions as process is permitted to be served out of the jurisdiction in cases provided for by the Consolidated Rules." The learned Judge was of opinion that the "conditions" referred to were not the cases set out in Rule 25 in which service might be allowed, but the regulations as to application, evidence, and procedure for effecting service stated in Rules 26 to 30.

It was argued that the sub-sections added to sec. 151 were not applicable to the plaintiff company; that the call in question in this action depended for its validity upon an Act passed in 1907, upon the petition of the company—7 Edw. VII. ch. 117; that the payment of the call must, therefore, be enforced, if at all, in the manner laid down by that Act, and not otherwise; and that the plaintiff company had not been given statutory power to maintain the action or to serve notice of the writ out of Ontario. It was not necessary to decide that point upon the present motion, because, whichever way it was decided, there was another point which could not be decided upon the material before the Judge upon this motion, and which, if decided in favour of the plaintiffs, seemed to authorise the institution of the action and the making of the order for service out of Ontario.

Neither in the statement of claim nor in the affidavit upon which the order giving leave to issue the writ was based was there any reference to the special Act of 1907; and the plaintiffs contended that the call did not depend for its validity upon the special Act. The question whether the call sought to be enforced was one which could be supported apart from the special Act was, obviously, a question which could not be determined until all the facts were brought out at the trial of the action.