

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, JJ.A.

G. M. Clark, for the appellants.

W. N. Tilley, K.C., and Hammet Hill, for the defendants, respondents.

THE COURT dismissed the appeal with costs.

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### HIGH COURT DIVISION.

ROSE, J. IN CHAMBERS.

OCTOBER 29TH, 1918.

#### \*SUPERIOR COPPER CO. LIMITED v. PERRY AND SUTTON.

*Writ of Summons—Foreign Defendants—Service of Notice of Writ out of Ontario—Ontario Companies Act, sec. 151, sub-secs. (6) and (7), Added by 8 Geo. V. ch. 20, sec. 30—Action by Mining Company—Call on Shares—"Conditions" of Service—Rules 25-30—Validity of Call—Application of New Sub-sections—Special Act, 7 Edw. VII. ch. 117—Statutory Power to Maintain Action—Determination at Trial—Jurisdiction—Conditional Appearance.*

Appeal by the defendant Sutton from an order of the Master in Chambers dismissing a motion to set aside the service of the writ of summons on the appellant out of Ontario.

Peter White, K.C., for the appellant.

A. W. Langmuir, for the plaintiffs.

ROSE, J., in a written judgment, said that, in an action between the same parties, a Divisional Court decided that leave to effect service out of Ontario could not be given in an action in which all that was claimed was a declaration that certain shares of stock were not paid-up but were assessable and subject to call: *Superior Copper Co. Limited v. Perry* (1918), 42 O.L.R. 45.

By sec. 30 of the Ontario Statute Law Amendment Act, 1918, 8 Geo. V. ch. 20, assented to on the 26th March, 1918, sec. 151 of the Ontario Companies Act was amended by adding sub-secs. (6) and (7), whereby, in the event of any call on shares of the stock of a mining company remaining unpaid for a certain length of time, the company, in lieu of proceeding to sell the shares, might maintain an action in the Supreme Court for the sale of the shares,