1959 Dec. 2
1960 July 7

BETWEEN:

IWAI & CO. LTD. and THE GOSHO COMPANY LTD. .... } PLAINTIFFS;

AND

THE SHIP *PANAGHIA*, COMPANIA DE NAVEGACION SAPPHO S.A. and ANGLO CANADIAN SHIPPING COMPANY LIMITED .... } DEFENDANTS.

Shipping—Damage to cargo—Writ of summons—Jurisdiction—Service of writ out of country—Notice—Admiralty Act, R.S.C. 1952, c. 1, ss. 3, 12, 18(3)(4)—Rules 14, 15, 16, 20(d), 21, 24, General Rules of the Exchequer Court in Admiralty—Sufficiency or insufficiency of affidavit of service—Court considers all material before it on motion to set aside order for service ex juris—Bills of Lading Act, R.S.C. 1952, c. 16—Water Carriage of Goods Act, 1936, R.S.C. 1952, c. 291—Appeal from order of District Judge in Admiralty dismissed.

On March 2, 1955, two Japanese corporations commenced an action in the British Columbia Admiralty District as plaintiffs against the Panamanian Steamship *Panaghia,* against Anglo Canadian Shipping Company Limited the charterer of the ship and against Compania Navegacion Sappho S.A., a Panamanian corporation, the owner of the ship, claiming damages to a quantity of pulp carried on the ship from British Columbia ports to Japan. Service of the writ of summons was made in British Columbia on the charterers who entered an appearance and filed a defence. The ship was not arrested but on April 5, 1955, on the plaintiffs' application, leave was granted by Mr. Justice Sidney Smith, D.J.A. to plaintiffs to issue a concurrent writ of summons against the defendant Compania de Navegacion Sappho S.A. and to serve notice of such writ in the Republic of Panama. Such concurrent writ was issued and on May 16, 1955 notice of the writ of summons was delivered to the resident agent of the defendant company in Panama. On the same day the agent sent the notice to New York where, largely by chance (because it was sent to the wrong agents) it reached agents of the defendant company who thought it had been served by mail and upon being advised by British Columbia solicitors that service by post was invalid did nothing about the matter. On March 22, 1957, plaintiffs obtained an interlocutory judgment by default and on July 15, 1957, a copy of the judgment was forwarded to the defendant company's agents in New York. Nearly a year later the plaintiffs proceeded with a reference to assess damages and counsel, instructed by the company's New York agents, appeared on behalf of the company and stated he reserved all defences available to the company. On October 14, 1958, motions were launched on behalf of the company first, for an order setting aside the service and all subsequent proceedings and alternatively setting aside the judgment and giving leave to appear and defend and second, for an order setting aside the writ of summons on the ground that the Court had no jurisdiction to issue it. Smith, D.J.A. ordered that the default judgment be set aside and that the

defendants have leave to defend but upheld the service made on the defendant company and he refused the application to set aside the writ of summons. The defendant company now appeals to this Court from the refusal to set aside the service of the writ and subsequent proceedings.

Held: That the appeal should be dismissed.

2. That Rule 24 of the General Rules and Orders of the Exchequer Court of Canada in Admiralty provides that notice in lieu of service shall be given in the manner in which writs of summons are served and the manner of service of a writ of summons upon a corporation is provided for by Rules 14, 15 and 16 and though the affidavit of service made by the solicitor who delivered the notice falls short of showing that there was valid service under Rule 14, service of Panamanian process upon the resident agent would have been valid service upon the appellant and the Panamanian law came within the words of Rule 15; and further it was not open to the appellant to ignore the service entirely and much later to ask the Court to set it aside.
3. That the responsibility of not knowing the true facts as to the delivery of the notice rested on the appellant, and the Court was justified in refusing to set the service aside merely because of the alleged insufficiency or irregularity in the manner in which it was carried out.
4. That the plaintiffs were justified in bringing action against both defendants as there appeared to be uncertainty as to who were the actual contracting parties.
5. That the action was properly brought against the charterers and the fact that the cargo was loaded in British Columbia and that the provisions of the *Water Carriage of Goods Act, 1936* applied, were sufficient grounds for the Court to entertain the action against the appellant.

APPEAL from an order of the District Judge in Admiralty for the British Columbia Admiralty District.

The appeal was heard before the Honourable Mr. Justice Thurlow at Ottawa.

C. C. I. Merritt, Q.C. for appellant (defendant) Compania Navegacion Sappho S.A.

J. R. Cunningham for respondents (plaintiffs).

The facts and questions of law raised are stated in the reasons for judgment.

THURLOW J. now (July 7, 1960) delivered the following judgment:

This is an appeal from an order made by Mr. Justice Sidney Smith, District Judge in Admiralty of the British Columbia Admiralty District on an application of the defendant Compania de Navegacion Sappho S.A. to set aside the service of the writ of summons or notice thereof

1960
IWAI & Co. LTD. *et al.* *v.* THE SHIP *Panaghia* *et al.*
Thurlow J.

and all subsequent proceedings against that defendant and, in the alternative, to set aside a default judgment which had been obtained against that defendant. Smith, D.J.A., set aside the default judgment and gave leave to defend but upheld the service which had been made on that defendant. The defendant now appeals from the refusal to set the service aside.

The action was commenced on March 2, 1955, by the respondents, two Japanese corporations, as plaintiffs against the Panamanian steamship *Panaghia,* Anglo Canadian Shipping Company Limited, a Canadian corporation carrying on business in British Columbia and the charterer at the material time of the ship, and Compania de Navegacion Sappho S.A., a Panamanian corporation, the owner of the ship, as defendants, for damages to a quantity of pulp carried in the ship from British Columbia ports to Japan. The ship was not arrested. On April 1, 1955, the writ of summons was served in British Columbia on the defendant Anglo Canadian Shipping Company Limited, on whose behalf an appearance was entered on April 6, 1955 and a defence was subsequently filed. On April 5, 1955, on the plaintiffs' application, leave was granted by Smith D.J.A. to the plaintiffs to issue a concurrent writ of summons against the defendant Compania de Navegacion Sappho S.A. and to serve notice of said writ in the Republic of Panama. A concurrent writ was, accordingly, issued on April 22, 1955, and on May 16, 1955 notice of the writ of summons was delivered to the resident agent of the defendant Compania de Navegacion Sappho S.A. at Avenida Central 8-40 in Panama City in the Republic of Panama. The delivery of the notice was made by a solicitor who, in his affidavit sworn on the following day and filed on June 16, 1955, gives that address as the office and principal place of business of the defendant in the Republic of Panama.

The resident agent in an affidavit filed in support of the appellant's motion denies that he had any authority under Panamanian law to receive foreign process on behalf of the defendant and states that Avenida Central 8-40 is the address of his law firm, but nowhere in any of the affidavits filed is it denied that that address was the office and place of business of the defendant in the Republic of Panama. At the time of the delivery of the notice, the resident agent declined to accept it, but it was left and later on the same

1960
IWAI & Co. LTD. *et al.* *v.* THE SHIP *Panaghia* *et al.*
Thurlow J.

day he forwarded it to New York, where some ten days afterwards, and largely by chance, because it was in the first instance sent to the wrong party, it reached agents of the defendant Compania de Navegacion Sappho S.A., who apparently had authority to deal with it. These agents appear to have been unaware that the notice had been delivered to the resident agent of the appellant in Panama and to have been under the impression that the plaintiffs' solicitors had attempted to serve the notice by post. They sought advice from British Columbia solicitors as to the validity of the service and, on being advised that service of the notice by post in the United States would not be proper service, they neither caused an appearance to be entered nor, so far as appears, did they make any further inquiries to ascertain the facts as to what had occurred with respect to the notice. Almost two years later, on March 22, 1957, the plaintiffs obtained an interlocutory judgment by default. On July 4, 1957, the plaintiffs' solicitors, as a matter of courtesy, forwarded a copy of the default judgment to the British Columbia solicitors who had been consulted by the appellant and on July 15, 1957, a copy of the judgment was forwarded by the latter to the appellant's agents in New York. Almost a year later, during which evidence was taken on commission in Japan, the plaintiffs proceeded with a reference to assess their damages and, a notice by telegram having been sent to the resident agent of the appellant in Panama of the date fixed for the final hearing on such assessment, counsel, instructed by the appellant's New York agents, attended the hearing on behalf of the appellant and stated that he reserved all defences available to the appellant and that he had no doubt the appellant would wish to apply to set aside the proceedings on the ground that the writ had not been served on it. Thereafter, on October 14, 1958, and October 29, 1958, respectively, motions were launched on behalf of the appellant in the first of which application was made for an order setting aside the service and all subsequent proceedings and, alternatively, setting aside the judgment and giving the appellant leave to appear and defend, and in the second of which application was made for an order setting aside the writ of summons on the ground that the Court had no jurisdiction to issue it. The

1960

IWAI & CO. LTD. *et al.* *v.* THE SHIP *Panaghia* *et al.*

Thurlow J.

grounds argued by the appellant in support of the present appeal and upon which it had asked that the service be set aside were as follows:

(*a*) That Compania De Navegacion Sappho S.A. is not a necessary or proper party to the action and the Order for service ex juris dated the 5th of April, 1955 ought not to have been made.

(*b*) That the affidavit upon which the said Order was made is irregular and insufficient to support the said Order, in that no facts are set out verifying the grounds of the ex parte motion for leave to serve ex juris.

(*c*) That Compania De Navegacion Sappho S.A. was not personally or properly served with the said Notice of Writ of Summons in accordance with the Rules of Court or at all.

With respect to ground (*c*) it is provided by Rule 24 of the General Rules and Orders of the Exchequer Court of Canada in Admiralty that notice in lieu of service shall be given in the manner in which writs of summons are served. The manner of service of a writ of summons upon a corporation is provided for by Rules 14, 15, and 16, which are as follows:

14. A writ of summons against a corporation may be served upon the mayor, or other head officer, or upon the town clerk, clerk, treasurer or secretary of the corporation and a writ of summons against a public company may be served upon the secretary of the company, or may be left at the office of the company.

15. A writ of summons against a corporation or a public company may be served in any other mode provided by law for service of any other writ or legal process upon such corporation or company.

16. If the person to be served is under disability, or if for any cause personal service cannot, or cannot promptly, be effected, or if in any action, whether *in rem* or *in personam,* there is any doubt or difficulty as to the person to be served, or as to the mode of service, the Judge may order upon whom, or in what manner service is to be made, or may order notice to be given in lieu of service.

The affidavit of service made by the solicitor who delivered the notice, in my opinion, falls short of showing that there was valid service under Rule 14 for it does not state that the resident agent of the appellant to whom the notice was delivered was an officer, clerk, treasurer or secretary of the company, nor is the company shown to have been a public company within the meaning of that rule. Nor was the procedure of Rule 16 invoked. It does, however, in my opinion, appear from the several affidavits and the statement of facts filed by the appellant's solicitors that service of Panamanian process upon the resident agent would have been valid service of such process upon the appellant and,

while the statement that the resident agent had no authority under Panamanian law to accept foreign process may well be correct, the Panamanian law, pursuant to which service of Panamanian process might be made on him, appears to me to fall within the meaning of the words "any other mode provided by law for service of any other writ or legal process upon such corporation or company" in Rule 15 when that rule is read in relation to the provision of Rule 24. Moreover, under the English rules corresponding to Rules 14, 15, and 24, it would appear that it is the practice to regard service as good if it is carried out by a method prescribed or authorized by the local law. *Vide Annual Practice 1960,* pp. 116 and 155. In any event, however, and whether or not the delivery of the notice to the resident agent was a mode of service authorized by the Panamanian law in the particular circumstances, I am of the opinion that it was not open to the appellant to ignore entirely the service so made and, at a much later time, to ask the Court to set it aside. A mere enquiry by the appellant's agents of the plaintiffs' solicitors during the 30-day period following the delivery of the notice would have elicited the information that the notice had in fact been delivered to the resident agent in Panama and, if the appellant's agents in New York were at that time lulled into a false security by thinking that the plaintiffs had endeavoured to serve the notice by sending it by post to an address in the United States, the information sent them in July, 1957 that a judgment had been secured should have put them on their enquiry as to how the judgment could have been obtained. Nevertheless, they did nothing until they received through the registered agent in Panama notice of the final hearing upon the assessment of damages. They then made inquiries and learned the facts and subsequently moved to set aside the service and all subsequent proceedings on the grounds which I have set out. In these circumstances, and particularly having regard to the fact that the responsibility for not knowing the true facts as to the delivery of the notice rested on the appellant and to the lack of any adequate explanation as to why the appellant made no move to set aside the judgment or the service in the year following receipt of notice of the judgment, I think the learned Judge was justified in refusing to set the service

1960
IWAI & Co. LTD. *et al.* v. THE SHIP *Panaghia* *et al.*
Thurlow J.

aside merely on the grounds of insufficiency or irregularity, which have been urged, in the manner in which it was carried out.

In the reasons for judgment on the appellant's motion, Sidney Smith D.J.A. did not discuss grounds (*a*) or (*b*), and I do not have the benefit of his reasoning thereon. The explanation for this may conceivably lie in the fact that, strictly speaking, these grounds did not arise on the notice of motion, since they constituted an attack on the order for service *ex juris*, whereas the notice of motion asked only that the service and subsequent proceedings against the appellant be set aside and did not ask that the order for service *ex juris* also be set aside. On the appeal, however, these grounds were argued by both sides without objection on this point by counsel for the respondents, as if the setting aside of the order as well had been asked for, and I think the matter now falls to be determined on that basis.

Of the several instances set out in Rule 20 of the General Rules and Orders of the Exchequer Court of Canada in Admiralty, in which service out of the jurisdiction may be allowed, only that described in clause (*d*) is invoked. This is as follows:

> 20. Service out of the jurisdiction of a writ of summons or notice of a writ of summons, may be allowed by the Judge whenever:—
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> * * *
>
> (*d*) Any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the district or division in which the action is instituted;

By Rule 21 it is then provided:

> 21. Every application for leave to serve a writ of summons, or notice of a writ of summons, on a defendant out of the jurisdiction shall be supported by affidavit, or other evidence, stating that in the belief of the deponent the plaintiff has a good cause of action, and showing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or not, and the grounds upon which the application is made; and no such leave shall be granted unless it shall be made sufficiently to appear to the Judge that the case is a proper one for service out of the jurisdiction.

In *The Brabo*[1] Lord Porter, in commenting on the English equivalent of Rule 20(*d*), said at p. 338:

> Primarily the jurisdiction of the courts in this country is territorial in the sense that the contract or tort sued upon must have some connexion with this country or the defendant must be served here. To this principle

[1] [1949] A.C. 326

Or. II, r. I (*g*) is an exception and enables foreigners domiciled abroad to be impleaded in this country provided an action is properly brought against someone duly served within the jurisdiction and the party outside the jurisdiction is a necessary or proper party to that action. The rule is not only an exception to but also an enlargement of the ordinary jurisdiction of the court and should not, in my opinion, be given an unduly extended meaning. The observation of Farwell L.J. in *The Hagen*, [1908] P. 189, 201, and of Lord Sumner in *John Russell & Co. Ld. v. Cayzer, Irvine & Co. Ld.*, [1916] 2 A.C. 298, 304, both quoted by Scott L.J., [1948] P. 33, 39, point out the care which should be taken before the jurisdiction is exercised. No doubt it is in some circumstances desirable that persons not usually subject to the jurisdiction should be brought before our courts in order that a case may be fairly and fully disposed of, but the right to add the foreigner should be sparingly used, more particularly in a case where the party within the jurisdiction may not be subject to any liability and therefore the action would fail as against the only person or persons who could be sued here were it not for the rule.

With respect to the contents of the affidavit required by the English equivalent of Rule 21, in *Chemische Fabrik Sandoz v. Badische Anilin und Soda Fabriks*[1] Lord Davey said at p. 735:

Rule 4 of the same order prescribes that the application is to be supported by evidence stating that in the belief of the deponent the plaintiff has a good cause of action, and no such leave is to be granted unless it be made sufficiently to appear to the court or judge that the case is a proper one for service out of the jurisdiction under this order. This does not, of course, mean that a mere statement by any deponent who is put forward to make the affidavit that he believes that there is a good cause of action is sufficient. On the other hand the court is not, on an application for leave to serve out of the jurisdiction, or on a motion made to discharge an order for such service, called upon to try the action, or express a premature opinion on its merits, and where there are conflicting statements as to material facts, any such opinion must necessarily be based on insufficient materials. But I think that the application should be supported by an affidavit stating facts which, if proved, would be a sufficient foundation for the alleged cause of action, and, as a rule, the affidavit should be by some person acquainted with the facts, or, at any rate, should specify the sources or persons from whom the deponent derives his information.

The affidavit upon which the order for service *ex juris* was obtained in the present case was made by a solicitor, who stated as follows:

1. I am a member of the firm of Macrae, Montgomery, Macrae, Hill & Cunningham, solicitors for the Plaintiffs herein and as such have knowledge of the matters herein deposed to.

2. I am advised by Counsel and verily believe that the Plaintiffs herein have a good cause of action against the Defendant Compania De Naviera Sappho S.A.

[1] (1904) 90 L.T. 733.

1960

IWAI & CO. LTD. *et al.* *v.* THE SHIP *Panaghia* *et al.*

Thurlow J.

3. In my belief the said Defendant is situated in the City of Panama in the Republic of Panama and is not a British subject.

4. The application herein for leave to issue a Notice of the Writ of Summons herein on the said Defendant Company is made upon the grounds that the said Defendant Company is a proper party to the Action herein properly brought against the Defendant Anglo Canadian Shipping Company Limited.

5. That the said Defendant Anglo Canadian Shipping Company Limited has been duly served within the British Columbia Admiralty District as evidenced by the Affidavit of Service of this deponent sworn the 1st day of April, 1955 and filed herein.

This affidavit, in my opinion, falls far short of disclosing a case for service *ex juris* under Rule 20(*d*). Nowhere in it is there any statement of what cause of action the plaintiffs have against the defendant Anglo in respect of which the action is brought, and the deponent does not even state that he believes the plaintiffs or either of them has a good cause of action against that defendant. And nowhere in the affidavit are any facts stated showing that the plaintiffs have any cause of action against that defendant. Such facts are, in my opinion, essential, for without a cause of action being shown against that defendant there is no foundation for the application of Rule 20(*d*), nor is there anything upon which the Court can determine either that the action is "properly brought" against that defendant or that the foreign defendant is a necessary or proper party to such action. For this purpose, the statements in paragraph 4 of the affidavit are entirely insufficient, being nothing but the deponent's opinion or submission on a matter which it is the function of the Court to determine. Moreover, while the deponent states that he is advised by counsel and verily believes that the plaintiffs have a good cause of action against the foreign defendant, nothing is disclosed as to what that cause of action is or what connection it has with the cause of action, if any, in respect of which the defendant Anglo has been joined. Nor does the affidavit disclose any facts upon which the discretion of the Court to grant leave in the particular case might properly be exercised. Moreover, neither the endorsement on the writ nor the statement of claim which was subsequently filed can take the place of evidence and fill these defects. *Empire-Universal Films v. Rank*[1].

Accordingly, were there nothing more to the case it would follow that the leave granted by the order should not be sustained, but in my opinion there are two reasons in this

[1] [1948] O.R. 235.

case why that result does not follow. First, there is the matter of delay to which I have already referred. The appellant's solicitors knew the contents of this affidavit from the time of the earliest inquiry, and even if the appellant's agents can, in the peculiar circumstances, be excused for not making any move against the order during the two years that followed, insofar as their motion and appeal are based on deficiencies in the affidavit I do not think their inaction in the year after they had notice of the default judgment can be overlooked. In *Reynolds v. Coleman*[1] Cotton L.J. dealt with a similar situation as follows at p. 461:

> This is a motion to discharge an order giving leave to serve notice of a writ out of the jurisdiction. That order was made more than a year before this application; and by virtue of service pursuant to that order, judgment was obtained in June, 1886, on the ground that the Defendant had not delivered a defence. The Defendant who is now moving does not apply on an affidavit of merits asking for leave to defend, but seeks to have the order for service discharged on several grounds.
>
> He has raised objections to the affidavit on which the order was obtained—that there was not sufficient disclosure of the real facts of the case, and that the Court was not properly informed of matters of which it ought to have been informed. Now, I do not for a moment intimate an opinion that persons applying for *ex parte* orders of this kind ought not fully and fairly to state the facts on which their application depends, but fully as I adhere to that rule, it is in my opinion too late for the Defendant, who has lain by without taking any step for more than twelve months, to ask us to interfere on the ground of those alleged irregularities, however much we might have attended to them if, immediately after the service had been made, he had applied on those grounds to discharge the order for service. Supposing, then, that he could have maintained those objections to the contents of the affidavit if he had come earlier than he has, I am of opinion that we cannot attend to them now.

The other reason why it does not follow from the mere insufficiency of the affidavit that the order for service *ex juris* should be set aside is that the question before the Court on an application to discharge an order for service *ex juris* is not merely whether the affidavit used to lead the order was sufficient for that purpose but whether on the whole of the material before the Court, when the motion is made to set the order aside the case is a proper one for service *ex juris* under the rules. *Vide The Brabo* (*supra*) and Annual Practice 1960, p. 154 and cases there cited. In

[1] (1887) 36 Ch. D. 453.

1960
IWAI & CO. LTD. *et al.* *v.* THE SHIP *Panaghia* *et al.*
Thurlow J.

Chemische Fabrik Sandoz v. Badische Anilin und Soda Fabriks (*supra*) Lord Davey appears to have considered the problem in this way when he said at p. 735:

> In the present case, if I had been in Joyce, J.'s place, I am not sure that I should have granted the leave for service abroad on Mr. Johnson's affidavit alone, but on the affidavits filed by the present appellants I think that there was enough to justify the learned judge in refusing to discharge the order.

In some cases the plaintiff, asking at a late date to file supplementary affidavits, has, in the exercise of judicial discretion, been refused leave to do so—*vide Empire-Universal Films v. Rank (supra)*—but in the present case the order appealed from recites that it is made upon reading an affidavit made by the master of the *Panaghia* and several other affidavits filed by the present appellant, several further affidavits filed by the respondents, statements of the facts pertaining to the proceedings filed by the solicitors both for the appellant and the respondents, and "the pleadings and proceedings in this action." The "proceedings" appear to include the evidence taken on commission in Japan which was sent up as part of the record on this appeal. Together, these add a considerable body of facts beyond the meagre information contained in the affidavit upon which the order was obtained. Whether the affidavits and other material filed on behalf of the respondents were admitted by consent or without objection or in spite of objections thereto does not appear, but I think I must assume that they were received and are properly before the Court. In any case, I see no good reason why they could not properly have been received by the learned judge and taken into account in determining the question before him, and I am of the opinion that they can now be taken into account in reviewing his refusal to revoke the leave to serve *ex juris*. If, therefore, the present appeal is to succeed, it must do so on the ground that on the whole of this material the case is not a proper one for service *ex juris* upon the appellant under the rules.

From the affidavits and other material, it appears that, at the material times, the *Panaghia* was owned by the appellant and was under a voyage charter to the defendant Anglo, that in February, 1954, the *Panaghia* loaded in British Columbia a general cargo, including pulp consigned to the respondents, that the bills of lading for the pulp, upon which

the respondents sue, showed the pulp received on board the *Panaghia* in apparent good order and condition, and that, upon arrival in Japan, the pulp was found to have suffered damage from a number of causes, among which were moisture from other cargo stowed in the same holds with the pulp and coal dust which remained in the holds after carrying coal cargoes on previous voyages. Accordingly, having regard to the *Bills of Lading Act* and the *Water Carriage of Goods Act, 1936,* the provisions of which latter act were expressly incorporated in the bills of lading for the pulp in question, in my view, it sufficiently appears that the respondents have a plausible cause of action in contract against the carrier. Now, the bills of lading are signed by an individual with the addition "for and by authority of Master" which, though they do not bear the appellant's name, suggests at once that the appellant is the other party to them. On the other hand, they do bear the name of the defendant Anglo, and it was on behalf of Anglo and pursuant to its instructions that the master signed an acknowledgement of damage to the pulp on arrival, and there is, in my opinion, on the whole of the material a substantial question as to who, on the facts, was the carrier and the other party to the bills of lading. In *Carver's Carriage of Goods by Sea,* 10th Ed., it is pointed out at pp. 286 et seq. that the question as to who is responsible to the shippers for the performance of the contract of carriage made with them is one of fact depending on the documents and circumstances of each case and that uncertainty arises when the contract has been made with the master, for he may possibly be regarded as agent either for the owner or the charterer. In the present situation, there being uncertainty as to which of the defendants was the other contracting party, the plaintiffs were, I think, justified in bringing their action against both of them, and I am accordingly of the opinion that the material sufficiently shows that the action is properly "brought" against the defendant Anglo and that the appellant is a proper party to it within the meaning of Rule 20(*d*). *Massey v. Heynes*[1].

A case falling within the strict requirement of the rule having thus been shown, the circumstances that the cargo was loaded in British Columbia and that the provisions of the *Water Carriage of Goods Act, 1936* apply afford, in my opinion, sufficient grounds for the exercise of the Court's

[1] (1888) 21 Q.B.D. 330.

1960
IWAI & Co. LTD. *et al.* *v.* THE SHIP *Panaghia* *et al.*
Thurlow J.

discretion to entertain the action as against the appellant. The judgments in *Boston Law Book Company v. Canada Law Book Company Ltd.*[1] and *Beaver Lamb and Shearling Co. Ltd. v. Sun Insurance Office, London, England*[2], which were cited on behalf of the appellant, in my opinion are clearly distinguishable on their facts.

On the whole, therefore, I am of the opinion that there was sufficient material before the learned Judge upon which he could conclude that this was a proper case for leave to serve the appellant *ex juris* under Rule 20(*d*) and, in the words of Lord Davey in *Chemische Fabrik Sandoz v. Badische Anilin und Soda Fabriks,* to "justify [him] in refusing to discharge the order."

On the hearing of the appeal, counsel for the appellant also argued that the action could not be regarded as *properly brought* against the defendant Anglo because none of the clauses of s. 20(1) of the *Admiralty Act* was applicable and the plaintiff therefore had no right to commence the action in the British Columbia Admiralty District. In another appeal[3] in this action taken from the refusal of the learned Judge to set aside the writ of summons on the ground that the Court had no jurisdiction to issue it, I have come to the conclusion that s. 20(1) is not an exhaustive statement of the instances in which actions may be commenced in the several registries of the Court and that the Court had jurisdiction to issue the writ in this case since the endorsement on it shows claims of a kind over which the Court has jurisdiction. The defendant Anglo having been resident in British Columbia, where it was in fact served shortly after the writ was issued, I am of the opinion that the action was *properly brought* against it in the British Columbia Admiralty District.

The leave to serve the appellant *ex juris* and the service made pursuant to such leave will accordingly be sustained, and the appeal will be dismissed with costs.

Judgment accordingly.

[1] 43 O.L.R. 13.
[2] [1951] O.R. 401.
[3] [1960] Ex. C.R. 499.