

1979 November 14

[A. LOIZOU, J.]

THE TRADE DEVELOPMENT BANK OF GENEVA,
Plaintiffs,

v.

1. PROMACHOS SHIPPING COMPANY LIMITED,
2. THE SHIP "WILLIAM" EX "OCRA" EX "KAYODE BAKARE", C/O DEFENDANTS NO. 1,
3. CIAKOS INTERNATIONAL S.A.,

Defendants.

AND AS AMENDED BY ORDER OF THE COURT DATED 19.6.1978

THE TRADE DEVELOPMENT BANK OF GENEVA,
Plaintiffs,

v.

1. PROMACHOS SHIPPING COMPANY LIMITED,
2. THE OWNERS AND PARTIES INTERESTED IN THE SHIP "WILLIAM" EX "OCRA" EX "KAYODE BAKARE",
3. CIAKOS INTERNATIONAL S.A.,

Defendants.

(Admiralty Action No. 201/78).

Admiralty—Practice—Action in rem against ship—No service of writ of summons in the mode envisaged by rules 15, 16 and 17 of the Cyprus Admiralty Jurisdiction Order, 1893—Appearance in Court by counsel, on behalf of owners of ship, who expressed intention to apply for leave to intervene in the proceedings—Not an unconditional appearance to the writ of summons and does not amount to a waiver of the need for service on the res and to an acceptance of service by counsel whilst the res was not within the jurisdiction—Judgment in the absence of defendant ship and her counsel—Set aside as having been irregularly obtained—Rules 83 and 84 of the above Order.

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On June 12, 1978, the plaintiffs issued a writ of summons in a "mixed action in rem and in personam" against the defendants

and on the same day they obtained, by means of an *ex parte* application an order prohibiting defendants 1 "from selling, alienating, charging, and/or mortgaging defendant 2 ship until further order". The time named in the writ of summons for appearance of the parties before the Court was the 13th July, 1978, and by such time only defendants 1 had been served with copy of the writ of summons. On this date (July 13, 1978) at 9.15 a.m. the Court, in the presence of Counsel for the plaintiffs and defendants 1 made an order extending the validity of the above order relating to the prohibition of dealings with the defendant ship. Later on on the same day the Court made the following record:

"Time: 11.40 a.m.

Mr. Mavrellis appears on behalf of Eckhardt & Co., and informs the Court that he intends to apply for leave to intervene in the proceedings.

Court: An application under the rules may be made to that effect".

Counsel for the plaintiffs was not present when this record was made.

The plaintiffs filed their petition on January 8, 1979 and on January 16, the Court after hearing evidence in the absence of the defendants or their counsel gave judgment "as per claim". No service of the writ of summons had been effected on defendants 2 in the mode envisaged by rules 15, 16 and 17 of the Cyprus Admiralty Jurisdiction Order, 1893 or in any other mode, prior to the above judgment.

On May 15, 1979 Eckhardt and Co. and Desquaces Heme S.A., alleged owners of the ship defendant 2, filed an application for:

"(a) An order of the Court setting aside the judgment obtained in the above action on 16.1.79 against the defendant vessel 'WILLIAM' for irregularity and/or

(b) An order of the Court setting aside the judgment obtained in the above Action on 16.1.79 in all respects in which the said judgment affects the defendant ship 'WILLIAM'".

The grounds of irregularity as set out in the application were as follows:

- (a) The said judgment was entered against the defendant ship "WILLIAM" although she had never been served with the writ issued in the above action. 5
- (b) The proceedings against the defendant ship "WILLIAM" being proceedings in rem were not and are not effective until now because the said ship was not and did not come within the jurisdiction.

Counsel for the plaintiffs contended that defendants 2 entered an unconditional appearance by advocate (Mr. Mavrellis) on July 13, 1978 and waived thereby the need of proper service; that the statement made by Mr. Mavrellis on July 13, 1978 showed knowledge of these proceedings on the part of the owners of defendant 2 ship, and by this knowledge the object of the service had been, "consummated", that is, it brought home to the defendants the existence of the claim; that even if there was no service on the res an appearance could validly be entered by the owners and there was no irregularity at all in the proceedings; and that the writ should be deemed to have been served on defendants 2 the date they entered the alleged appearance. 10 15 20

Held, that the action against defendants 2 being one in rem service of the writ of summons on them, had to be effected in the mode envisaged by rules 15, 16 and 17 of the Cyprus Admiralty Jurisdiction Order, 1893 and no service in such mode has been effected; that though in admiralty actions in rem no service of the writ of summons shall be required where counsel for the defendant agrees to accept service and undertakes in writing to enter an appearance, the appearance of counsel (Mr. Mavrellis) on July 13, 1978, does not amount to an unconditional appearance to the writ of summons on behalf of the defendant ship or its owners or the persons interested in it, nor does it amount to a waiver of the need for service on the res, nor to an acceptance of service by the advocate whilst the res was not within the jurisdiction; and that, accordingly, the judgment of this Court obtained against defendants 2 must be set aside as having been irregularly obtained. 25 30 35

Held, further, that the plaintiffs themselves do not appear to

5 have considered defendants 2 as having entered an appearance in the action because they have not served a copy of their petition on any of the defendants, more so on defendants 2 as it should have been done (see rules 83 and 84 of the Cyprus Admiralty Jurisdiction Order, 1893); that plaintiffs could obtain judgment against the defendants upon proof of due service of the writ of summons on them (see rule 41 of the aforesaid Order); that there had been at the time no service effected on defendants 2, the ship; and that, therefore, the obtaining of the judgment, in so far as 10 these defendants were concerned, was irregular as under the said rule 41, it is upon proof of the due service of the writ of summons that a plaintiff may proceed to prove his claim as against a defendant who did not appear.

Application granted.

15 **Application.**

Application for an order setting aside the judgment obtained in the above action on 16.1.79 against the defendant ship "WILLIAM".

20 *E. Psillaki (Mrs.),* for the applicants Eckhardt and Co., and Desquaces Heme S.A.

A. Triantafyllides with *E. Lemonaris,* for the respondents-plaintiffs.

Cur. adv. vult.

25 A. LOIZOU J. read the following judgment. This is an application by Eckhardt and Co., and Desquaces Heme S.A., for:-

- 30 (a) An order of the Court setting aside the judgment obtained in the above action on 16.1.79 against the defendant vessel "WILLIAM" for irregularity and/or
- (b) An order of the Court setting aside the judgment obtained in the above Action on 16.1.79 in all respects in which the said judgment affects the defendant ship "WILLIAM".
- (c) Any other order that the Court may deem just.
- (d) Costs.

35 The grounds of irregularity as set out in the application are as follows:

- (a) The said judgment was entered against the defendant

ship "WILLIAM" although she had never been served with the writ issued in the above action.

- (b) The proceedings against the defendant ship "WILLIAM" being proceedings in rem were not and are not effective until now because the said ship was not and did not come within the jurisdiction. 5

The facts of the case relied upon in support of this application are set out in the affidavit, which as far as material reads as follows:

2. During May 1978 Messrs. Eckhardt & Co. K.G., of Hamburg ('Eckhardt') were negotiating with the above-named defendants 1 who were the registered owners of the ship "WILLIAM" (hereinafter referred to as 'the vessel') the purchase of the vessel. 10
3. The defendants 1 supplied Eckhardt with a Certificate from the Registrar of Cyprus Ships legalised by the Cyprus Consul in Piraeus showing the vessel to be registered under Cyprus flag in the ownership of the defendants 1 free of mortgages and other encumbrances. A photocopy of the said Certificate is shown to me and is attached hereto marked *exhibit 'A'*. 15 20
4. Following the production of *exhibit 'A'* to Eckhardt the negotiations between Eckhardt and defendants 1 were successfully completed on 8/6/1978 when the usual memorandum of agreement for the sale of the vessel at a price of U.S. 200,000.—was entered into between Eckhardt and the defendants 1. A photocopy of the said memorandum of agreement is shown to me and is attached hereto marked *exhibit 'B'*. 25
5. On 9/6/78 Eckhardt paid and discharged the sale price for the vessel and obtained from defendants 1 a bill of sale duly executed and legalised by the Cyprus Consul in Piraeus transferring all shares in the vessel to Eckhardt. A photocopy of the said bill of sale is shown to me and is attached hereto marked *exhibit 'C'*. 30 35
6. The defendants 1 undertook to deposit the aforesaid *exhibit 'C'* with the Registrar of Cyprus Ships and obtain a certificate of deletion of the vessel from the Cyprus

Registry in view of the sale of the vessel to Eckhardt, being non-Cypriots.

- 5 7. The Certificate of deletion promised by defendants 1 as above was not forthcoming and Eckhardt appointed us to deal with matter on/or about 4/7/78. We then discovered that an interlocutory injunction preventing dealings with the vessel was obtained in the above Action on 12/6/78 and was entered in the ship's file on 13/6/78 at 10 a.m. In an effort to find out more about the matter we appeared in Court on 13/7/78 and stated Eckhardt's interest in the proceedings and their intention to intervene.
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- 15 8. We watched closely the above proceedings until we were convinced that they should not in fact concern Eckhardt because they were effective as against defendants 1 and 3 only whilst the vessel in which Eckhardt's interest laid did not and would not come within the jurisdiction.
- 20 9. The vessel was further sold in Spain by Eckhardt to Desquaces Heme S.A., of Gijon, Spain ('Desquaces') for scrapping, under a bill of sale dated 25/8/78, a photocopy of which is shown to me and is attached hereto marked *exhibit D*. In view of this sale and in view of the continuous promises by defendants 1 to Eckhardt that their lawyer was doing everything to solve the problem which was due only to a misunderstanding, Eckhardt withdrew their instructions to our office.
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- 30 10. The plaintiffs in the above action brought an action against the vessel in Spain where they proceeded to arrest the vessel. Desquaces appointed Mr. Jose Maria Alcantara, advocate of Messrs. Goni & Co., of Madrid to defend the above Spanish proceedings. Desquaces were recently faced with the default judgment obtained in the above action on 16/1/79 ('the judgment') which the plaintiffs in the above action are trying to enforce in Spain and/or in Cyprus. In view of this, Desquaces contacted Eckhardt and they have both instructed us to apply for the setting aside of the judgment."
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In concluding paragraph 12 thereof it is prayed that even if the defendant vessel was served and without prejudice to the

rest of their case, it would be fair and just and in the interest of justice, to set aside the said judgment as they “would have had a good defence to the claim and irreparable damage shall be suffered by the owners if they are not allowed to put forward such a defence.”

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The facts relied upon in support of the opposition are set out in the accompanying affidavit in which the contents of the applicants’ affidavit are denied. It is asserted therein that all the parties to the above proceedings have been properly served and that the applicants Messrs. Eckhardt and Co., have been represented in the above proceedings, have known of them and their knowledge must also be imputed to the second applicants who have “allegedly dealt with Eckhardt subsequently to Eckhardt appearing in the proceedings”. Extensive reference is made therein to various facts and circumstances, which for the purposes need not be repeated herein.

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The history of the proceedings that is relevant to this application is as follows:—

On June 12, 1978, the plaintiffs issued a writ of summons in a “mixed action in rem and in personam” against the defendants and on the same day they obtained, by means of an *ex parte* application an order—hereinafter referred to as “the order”—prohibiting defendants 1 “from selling, alienating, charging, and/or mortgaging defendant 2 ship until further order”.

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The order was made returnable on June 19, 1978. On June 19, 1978, counsel for the plaintiffs stated before the Court that service has not been effected and applied that the order be made returnable on another date. Thereupon the Court directed that the order be made returnable on the 13th July, 1978.

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On the same day, that is the 19th June, the Court entertained the application for the amendment of the title in the action with regard to defendants 2, who were until then described as the ship “William ex Ocra ex Kayode Bakare”, for its change by the insertion of the words “Owners and parties interested in” immediately after the word “The” and before the word “Ship”. In this way defendant No. 2 would be described as follows: “The owners and parties interested in the ship William ex Ocra

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ex Kayode Bakare, of Limassol". This application was granted and eventually the title of the action was amended as ordered.

There appears to be no real explanation for this amendment, particularly so as it is common ground that the action remained
5 one in rem as far as the defendant ship, defendant 2 was concerned. Under the Cyprus Admiralty Jurisdiction Order 1893 rule 7, "Every writ of summons shall set forth ... the name of every plaintiff and defendant where the action is in personam and in the case of an action in rem the name of the ship or the
10 nature of the property sought to be affected by the action." Moreover in the model writ of summons in an action in rem under letter "A" of Schedule I to the Rules the title of the action refers to the ship as defendant and then it is addressed to "To C.D. of and E.F. of, the owners of the ship and all
15 others interested in the said ship."

Under Order 75 rule 3 of the Rules of the Supreme Court an action in rem must be begun by writ in the form No. 1 or 2 in Appendix and according to the said forms the defendant is described as follows "the owners of the ship 'X' defendants"
20 and it is addressed "to the owners of and other persons interested in the ship of the port of".

This amendment therefore has not changed the nature of the action against defendant 2, which was and remained an action in rem.

25 On June 9, an *ex parte* application was filed (A) praying for an order allowing service of the writ of summons in the action on defendant No. 2, the ship, by delivering certified copy thereof at the registered office of defendant No. 1, i.e. Troodos Street 8(a), Limassol; and (B) for an order of the Court allowing
30 service of the writ of summons as regards defendant No. 3 by notice thereof to Mr. Elias Marangoudakis, an officer of defendant No. 3 in Athens 82 Vrisiidos.

On the same day the Court dealt with this application and counsel appearing for the applicants plaintiffs withdrew prayer
35 (A) hereinabove set out and applied for an order under prayer (B). The latter order was granted and a direction was made that appearance should be entered within 40 days from the service of the notice as ordered.

On July 6, an application was made to the registry for the

service of two writ of summonses on “defendant” at Limassol. The registry of this Court asked on July 10, the Registrar of the District Court of Limassol to cause “one writ of summons, one order in Admiralty Action No. 201/78 (13/7/78) to be served on the persons whose names appear below and supply me with an affidavit of service in due course: Promachos Shipping Co., Ltd., of Limassol (Troodos No. 8(a))”. 5

No writ of summons appears to have been sent for service on defendants 2, obviously for the very reason that defendant ship was neither at Limassol nor at any other Cypriot port at the time. The amended writ of summons and the order were served as requested on July 11, 1978, “by leaving same with Christoforos Nicolaou for the defendants Promachos Shipping Co., Ltd., the said Christoforos being a clerk in charge for the address of service of the said defendants”. 10 15

On July 13, 1978 an appearance was entered by counsel for defendants 1, who stated that he opposed the application. The record of the Court of that day reads as follows:-

“ Date: 13th July, 1978 (time 9.15 a.m.)
For the applicant: No appearance. 20
For the defendants 1/respondents: Mr. Valiantis for Mr. Mylonas.

Valiantis: I oppose the application.

Court: Opposition to be filed within two months from to-day. 25

Application fixed for hearing on 7th October, 1978, at 9:15 a.m.

Mr. Lemonaris appears now and having been informed of the opposition to be filed and the adjournment of the case for hearing, he invites the attention of the Court to the effect that the order originally was given for two months and it may be extended so that it will cover the period until after the hearing. 30

Court: The validity of the order made extended until the 10th November, 1978. 35

(Sgd.) A.N. LOIZOU,
J.

Time: 11.40 a.m.

Mr. Mavrellis appears on behalf of Eckhardt & Co., and informs the Court that he intends to apply for leave to intervene in the proceedings.

5 *Court*: An application under the rules may be made to that effect.

(Sgd.) A.N. LOIZOU,
J."

10 It is with regard to the significance and legal effect of this second part of the record that the main argument in the present proceedings as to whether proper service has been effected on defendants 2 or not turned.

15 On October 7, the Court in the presence only of counsel for the plaintiffs and for defendants 1 made an order adjourning the case "to 17th December for service on any defendant who has not as yet been served and directions as to pleadings". It also extended the validity of the order "up to the 31st December 1978". No proceedings of any kind, however, took place on the 17th December, and no directions for pleadings were made
20 on such day or on any other date.

On November 11, the Court made an order allowing service of notice of the writ of summons on defendants 3 by registered post addressed to Ciacos International S.A. Avenue, Lloyed George 6, Brussels Belgium.

25 The record of the Court dated 17th November, reads as follows:

17th November, 1978.

For the plaintiffs: Mr. Lemonaris.

30 For defendant 1: Mr. Papaphilippou.

Defendant ship not served.

Defendant 3 not served.

35 *Mr. Lemonaris*: The order is that appearance should be entered within one month after service, which is in accordance with the agreement effected 72 hours after posting the registered letter, so we need one more month.

Court: Case adjourned for directions on the 8th January, 1979 at 9.15 a.m. and service on the defendant ship and for appearance of defendants 3.

(Sgd.) A.N. LOIZOU,
J."

On November 29, an affidavit was filed on behalf of the plaintiffs to the effect that notice of the writ of summons was posted by airmail to defendants 3 on the 15th November, 1978.

On December 4, defendants 1 filed an opposition to the order and the hearing of the application for the order was adjourned to December 28th, 1978. 5

On December 21, counsel for defendants 1 gave notice that they were no longer acting for them.

On January 8, 1979, plaintiffs filed their petition and the record of the Court of the same date reads: 10

"Date: 8th January, 1979.

For plaintiffs 1: Mr. Lemonaris with Mr. Cleopas for Mr. A. Triantafyllides.

Affidavit filed.

Court: Fixed for proof on the 16th January, 1979 at 9.00 a. m." 15

It is the case for the respondents that defendants 2 entered an unconditional appearance by advocate on July 13, after the amendment of the writ and waived thereby the need of proper service; also that the statement of Mr. Mavrellis showed knowledge of these proceedings on the part of the owners of defendant 2, ship, and by this knowledge the object of the service had been, as put by learned counsel, "consummated", that is it brought home to the defendants the existence of the claim. The respondents further contended that even if there was no service on the res an appearance could validly be entered by the owners and there was no irregularity at all in the proceedings. Moreover, it was argued that the writ should be deemed to have been served on defendant 2 the date they entered the alleged appearance. 20 25 30

On January 16, 1979, the Court after hearing evidence in the absence of the defendants or their counsel gave judgment "as per claim with costs to be assessed by the Registrar." As already stated the action as against defendants 2 is an action in rem in spite of the amendment of its title. The mode of service of a writ in rem is regulated by rules 15, 16, 17 of the Cyprus Admiralty Jurisdiction Order 1893. Rule 16 with which we are mainly concerned in this case reads as follows:- 35

“ 16. In an action in rem, the writ of summons shall be served—

- 5 (a) Upon ship, or upon cargo, freight, or other property, if the cargo or other property is on board a ship, by attaching an office copy of the writ to a mast, or to some other conspicuous part of the ship;
- 10 (b) Upon cargo, freight, or other property, if the cargo or other property is not on board a ship, by attaching an office copy of the writ to some portion of such cargo or property;
- (c) Upon freight in the hands of any person, by leaving with him an office copy of the writ;
- (d) Upon proceeds in Court, by leaving an office copy of the writ with the Registrar of the Court.”

15 Moreover as stated in the British Shipping Laws, Vol. 1, Admiralty Practice (1964), para. 61, p. 28

20 “ A consideration which may lead a plaintiff to sue in personam is that service of a writ in rem can only be effected within the jurisdiction. This means that although a writ in rem and a warrant of arrest may be issued even if the res is not within the jurisdiction, in order for either to be effective the rest to be proceeded against must be, or come, within the jurisdiction unless service is accepted by a solicitor

25 Also under Order 9 rule 10 of the old English Rules of the Supreme Court (see the Annual Practice 1958) “ In admiralty actions in rem no service of writ or warrant shall be required where the solicitor of the defendant agrees to accept service and to put in bail or to pay money into Court in lieu of bail.”

30 In order to be effective and to make service of the writ and warrant unnecessary there must be as stated in the comments to the said rule “A written undertaking to enter an appearance: see *The Anna and Bertha* 64 L.T. 338 and Williams and Bruce Ad. Pr. (1902) p. 269 n.(e)”. Service, however, has not been
35 accepted by counsel in our case.

In England, as further stated in the British Shipping Laws (*supra*), para. 211 p. 91, Order 10, rule 1(3) of the English Rules

of the Supreme Court (revised), applies in actions in rem. It provides:

“ (3) Where a writ is not duly served on a defendant but he enters an unconditional appearance in the action begun by the writ, the writ shall be deemed to have been duly served on him and to have been so served on the date on which he entered the appearance.” 5

This order was taken from the Rules of the Supreme Court (Rev.) 1962 when it was a new composite Order in part taken from the former rules and part embodying the former practice. 10

The first and main question that poses for determination, therefore, is whether there has been or not an unconditional appearance on behalf of defendants 2.

The amended writ—as it appears from the copy (marked ‘A’ and attached to the affidavit of service)—served on defendants 1 on the 11th July, fixed the time at which the defendants were called upon to appear before the Court as the “13th day of July, 1978, at 9.30 a.m.”. 15

I have already quoted the record of the Court of that date of 9.15 a.m., but I consider it necessary to reproduce once more the part of the record of the Court which was taken at 11.40 hrs and which reads:— 20

“ Mr. Mavrellis appears on behalf of Eckhardt and Co., and informs the Court that he intends to apply for leave to intervene in the proceedings. 25

Court: An application under the rules should be made to that effect.”

Counsel for the plaintiff was not present at that moment and there is nothing in the record to show that Mr. Mavrellis called and attended the Court on that date, as alleged by counsel for the respondents “in response to the command in the writ of summon:”. What happened, was that in the course of the day’s sitting of the Court, counsel from the Law firm which represented Eckhardt and Co., attended and informed it of their intention to apply for leave to intervene in the proceedings. 30
From this statement it becomes apparent that Eckhardt and Co., did not consider themselves at the time as defendants 35

in the action or as entering an appearance as the owners or persons interested in defendants 2.

5 In my view this record does not amount to an unconditional appearance to the writ of summons on behalf of the defendant ship or its owners or the persons interested in it, nor does it amount to a waiver of the need for service on the res, nor to an acceptance of service by the advocate whilst the res was not within the jurisdiction. That being so, the judgment of this Court obtained against defendants 2 must be set aside as having
10 been irregularly obtained.

The respondents themselves as plaintiffs do not appear to have considered defendants 2 as having entered an appearance in the action if one looks to the procedure followed by them in obtaining judgment in the case.

15 The petition in the action was filed on January the 8th but a copy thereof was not served on any of the defendants more so on defendants 2 as it should have been done under rule 83 of the Cyprus Admiralty Jurisdiction Order 1893, which in so far as relevant reads:

20 "The plaintiff shall within one week from the date of the appearance of the parties before the Court file a petition and serve a copy thereof on the defendant who shall, within 10 days of service upon him of the petition, file his answer and serve a copy thereof upon the
25 plaintiff"

Had they treated the defendants 2 as having made default in filing their answer, rule 84 should have come into play which reads as follows:-

30 "If the defendant shall make default in filing his answer within the time limited by the last preceding rule he shall not be at liberty, except by leave of the Court or Judge, to dispute any of the facts alleged in the plaintiff's petition, and the plaintiff may, at any time after the defendant has so made default, apply to have the action set down for
35 hearing, and the Court or Judge may give such judgment as the plaintiff may appear to be entitled to upon the facts alleged in his petition".

It is more in line with the plaintiffs having acted under rule

41 of the aforesaid order than with rules 83 and 84. Rule 41 reads as follows:-

“ If at the time fixed by the writ of summons for the appearance of the parties the plaintiff appears but the defendant does not appear, then, upon proof of the due service of the writ of summons, the plaintiff may proceed to prove his claim and the Court or Judge may either give judgment for any remedy or relief which the plaintiff may appear to be entitled to or the further hearing of the action may be adjourned”.

By the 8th January counsel for defendants 1 had withdrawn from appearing in the case. Defendants 3 had entered no appearance and the note that affidavit had been filed could only be taken as proof of due service of the writ of summons on the defendants for the purpose of the plaintiffs proceeding to prove their claim for obtaining judgment in default of appearance. There had been at the time, however, no service effected on defendants 2, the ship, hence the obtaining of judgment, in so far as these defendants were concerned, was irregular as under the aforementioned rule 41, it is upon proof of the due service of the writ of summons that a plaintiff may proceed to prove his claim as against a defendant who did not appear.

For the legal effect of the record of July 13th and the statement of Mr. Mavrellis on that date, I have already given my views and I need not repeat them here; suffice it to say that they do not amount to an appearance or waiver of the service.

Having reached this conclusion, I need not, therefore, go into an elaborate examination of the alternative ground of setting the said judgment aside on the ground that these defendants have a good defence in the action. Had I been obliged to come to that stage, I would certainly, in the circumstances of this case and particularly so because of the existence of the certificate, *exhibit 'A'*, attached to their affidavit which was issued by the Registrar of Cyprus Ships to the effect that a provisional certificate of Cyprus Registry had been issued by the Cyprus Embassy in Athens on the 9th March regarding the defendant ship and which was valid until the 8th September, 1978, and that the said vessel was free of mortgages and other encumbrances, I would have exercised my discretion in favour of setting aside the judgment against defendants 2.

For all the above reasons the judgment obtained against defendants 2 is set aside and an order is made accordingly with costs in favour of the applicants.

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*Application granted with costs.
Judgment against defendants 2
set aside.*