

goods were shipped contained the following clause: "The claims, if any, for loss by damage, short delivery or any other cause, shall, in the option of the ship owner, be settled direct with the agents of the line at Liverpool, according to British law, with reference to which this contract is made, to the exclusion of proceedings in any other country." On appeal from an order setting aside the writ of summons and order for service upon the defendants on the ground that England was the proper forum of the action,

*Held* (following *Hoerler v. Hanover*, 10 C.L.R.), that where, as in the present case, a grave uncertainty exists as to the true forum of the action, the proper course is to allow service, and leave the question to be subsequently determined.

2. That the plaintiffs were entitled to such consideration owing to the difficulty of determining whether the words "to the exclusion of proceedings in any other country" should be read in connection with the words "in Liverpool," or with the words "according to British law."

3. That, however, the above stipulation was simply an attempt to determine by agreement which of two co-ordinate jurisdictions should adjudicate between the parties, and did not fall within that principle of law which on the ground of public policy holds invalid agreements to supplant the particular jurisdiction to which the parties are subject, and to substitute therefor a self-constituted tribunal.

Appeal allowed with costs.

*C. D. Macdonald*, for appellants.

*Borden*, Q.C., for respondents.

EN BANC.]

[March 7.

QUEEN v. MCNUTT.

*Information for warrant—In what respect amendable—Waiver of objection by pleading and defence—Conviction.*

In a prosecution under the C. T. Act, a warrant issued against defendant on the information of B., purporting to have been taken on the oath of the said B., but signed by another person, McM. Before the opening of the examination the Justice erased the name of B. and substituted that of McM., with the latter's assent, defendant's counsel objecting, and contending that the information should be re-sworn. The conviction, moreover, contained no provision as to costs of distress. On appeal from a decision granting a writ of certiorari to remove the conviction,

*Held*, that before a warrant could properly issue there must have been an information on oath; that the information being defective could not be amended without being re-sworn; that defendant by pleading and entering into a defence did not waive his objection to the irregularity; but that the omission from the conviction of a provision for costs of distress would form a proper matter for amendment.

Appeal allowed.