(WILSON, P., ZEKIA, VASSILIADES AND JOSEPHIDES, JJ.)

THE CYPRUS ASBESTOS MINES LIMITED,
Appellants-Plaintiffs,

v.

1. THEOCHARIS LOIZOU SCOUFARIS,
2. THE BANK OF CYPRUS LTD.,
Respondents-Defendants,
(*Defendants No.* 2 *and* 3).

(*Civil Appeal No.* 4448)

Civil Wrongs—Conversion—Stealing money—The thief is liable either in tort viz. *conversion or on a quasi contract at the election of the plaintiff—The Civil Wrongs Law, Cap.* 148, *sections* 39, 42 *and* 63—*The receiver of the money so stolen is liable jointly with the thief as aforesaid.*

Banker—Position of the Bankers sued along with the thief and the receiver (supra) *and who* (*a*) *accepted from the receiver in good faith and without any knowledge the aforesaid stolen monies deposited by the receiver, and* (*b*) *parted with the monies by paying the whole amount of the said deposit account to the depositor-receiver after delivery of the judgment by the trial Court whereby both the receiver* (*not the thief*) *and the Bankers were dismissed from the suit, the Court holding that it had not been established that the monies so deposited by the receiver as aforesaid have any connection with the monies found to have been stolen by the defendant No.* 1 (i.e. *the thief*) *The Bankers are not liable, even though the Appellate Court, reversing the judgment of the trial Court, held that on the evidence the monies so deposited with the Bankers were the monies stolen, and adjudged the defendant No.* 2 i.e. *the receiver jointly liable with the thief* (*defendant No.* 1) *to pay to the appellants-plaintiffs the whole amount so withdrawn from the Bank* (*respondent No.* 2—*defendant No.* 3).

Practice—Appeal—Inferences to be drawn from findings of fact not in controversy—An Appellate Court is in as good a position as the trial Court to evaluate such facts and draw the proper inferences—The Civil Procedure Rules, Order 35, *r.* 8.—*The Courts of Justice Law,* 1960 (*Law of the Republic No.* 14/1960) *section* 25 (3).

Practice—Judgments—Declaratory judgments—The Civil Procedure Rules, Order 27, *r.* 4.

Practice—Interim injunctions—The Civil Procedure Law, Cap. 6, section 4 (1)—Whether the trial Court has power to issue an interim injunction pending determination of an intended appeal against their judgment—Question left open.

Evidence—Proof in civil cases on the balance of probabilities.

The Civil Wrongs Law, Cap. 148, sections 39, 42 and 63 provide :

" 39. Conversion consists of an unlawful physical act which affects any movable property and asserts a claim to deal therewith in a manner inconsistent with the rights of any person entitled to the immediate possession thereof.

42. In any action brought in respect of the conversion of any movable property the Court may, having regard to the circumstances of the case, in addition to or in substitution for any other remedy by this Law provided, order the return of the property converted.

63. Notwithstanding anything contained in the Contract Law no person shall recover any compensation in respect of any breach of contract, or of an obligation resembling those created by contract, if such breach also constitutes a civil wrong and compensation or other relief has been awarded for such civil wrong by any Court to such person or to any person through whom such person claims."

The appellants (plaintiffs) brought an action in the District Court of Nicosia against defendants No. 1, 2 and 3, claiming thereby (i) that the defendants No. 1 and 2 be ordered and adjudged to pay to them £6,488, being the sum stolen by them from the plaintiff Company's safes at Amiandos sometime during the night between the 22nd of February, 1956 and 23rd February, 1956, and/ or which they or either of them removed from the said safes unlawfully and converted it to their own use ; (ii) a declaration that all money deposited by the defendant No. 2 with the defendants No. 3 (The Bank of Cyprus Ltd.) is money which belongs to the plaintiff Company and not to the defendant No. 2, and is money derived from the theft referred to in para. (i) above ; (iii) an order of the Court requiring the defendants No. 3 to hold all money so deposited and mentioned in para. (i) above for the account and benefit of the plaintiff Company and not for the account and benefit of the defendant No. 2 ; (iv) such other relief as the plaintiff Company will be found entitled to and (v) interest and costs against the defendants 1 and 2.

The trial Court regarding defendant No. 1 found that he did steal the sum of £6,488 from the safes of the Company and adjudged him to pay the said amount to the plaintiff Company. But the trial Court dismissed the claims against defendants No. 2 and 3 because from the evidence they could not possibly draw the conclusion that the money deposited by defendant No. 2, totalling £5,405, with the Bank (defendant No. 3), came from the money stolen by defendant No. 1.

The plaintiff Company appealed against the dismissal of their claims in respect of defendants No. 2 and 3 and also against the dismissal of an application seeking an order against defendant 2 restraining him to withdraw money deposited with the Bank, (defendant No. 3), pending the determination of the appeal.

It has been stated before the Court of Appeal that the sums lodged with the Bank (defendant No. 3), were after the dismissal of the claim against defendant 2 by the trial Court withdrawn by him and therefore, no order could now be issued against the Bank (defendant No. 3) for the lodgments made. The appellant, relying on Order 27, rule 4, wanted a declaration regarding defendant No. 3.

The High Court allowing the appeal with regard to respondent No. 1 (defendant No. 2) :

Held, (1) the decision of the trial Court on facts turns virtually on the inferences to be drawn from undisputed facts and from the facts found by the trial Court. In reviewing decisions based on inferences from facts not in controversy, this Court is in as good a position as a trial Court to evaluate such facts as no question of credibility arises ; *Montgomerie and Co. Limited* v. *Wallace-James.* (1904) A.C. 73, at p. 75 *per* Lord Halsbury L.C., *applied.*

(2) On the other hand, we have to bear in mind that we are dealing with a civil case where we may act on the preponderance of probabilities ; *Hornal* v. *Neuberger Products Ltd.* (1957) 1 Q.B. 247, *followed.*

(3) The cumulative effect of the evidence adduced—no doubt circumstantial in nature so far as the identifying of the money stolen with the sums lodged by defendant No. 2 (respondent 1) is concerned—in our view leads one safely to the conclusion that the sums lodged by defendant No. 2 (respondent No. 1) with the Bank, defendant No. 3, (res-

pondent No. 2) between 23.4.56 and 29.6.56 totalling £5,405 were part of the money stolen from the safes of the appellant-plaintiff Company on the 22nd February 1956 by the defendant No. 1.

(4) The evidence has established that defendant No. 2 (respondent No. 1) was a receiver at some time before he made the deposits with the Bank of the money stolen by defendant No. 1 with knowledge of the theft. The taking of possession of stolen money by a receiver, with knowledge of the theft, with a view to keeping it for the thief or dealing with it in a manner inconsistent with the right of the owner entitled to the immediate possession thereof, constitutes an act of conversion for which the receiver and the thief are jointly liable.

(5) The appeal against respondent No. 1 (defendant No. 2) is therefore, allowed and the judgment of the trial Court will be amended by substituting the following order as regards defendant No. 2 :

"Defendant No. 2 is also adjudged to pay the sum of £5,405 as money belonging to the plaintiff company, stolen by defendant No. 1 and converted by defendant No. 2 to his or their use, with interest from the date of judgment. The plaintiff company is not to recover more than £6,488 with interest from either or both of them."

The High Court, in dismissing the appeal against the Bank (respondent No. 2—defendant No. 3) :

Held, (1) the plaintiff in our view was entitled, before the defendant Bank parted with the money, to an order restraining defendant No. 2 from withdrawing the money lodged with the Bank (defendant No. 3), and the service of a notice of such an order on the said Bank, which was a party to the proceedings only as a stakeholder, would have been the appropriate course. Defendants No. 3 accepted the monies deposited by defendant No. 2 in good faith and without any knowledge that the money lodged was connected with the money stolen.

(2) As to the refusal by the trial Court to grant an interim order restraining defendant No. 2 from obtaining the money deposited with the Bank (defendant No. 3) pending the determination of the appeal :

The points of law involved not having been adequately argued before us and a decision on the pont being devoid of any practical effect at this stage we do not propose to deal with it.

(3) The appellant Company is entitled to the following declaration :

"The sums lodged by defendant No. 2 with the Bank, defendant No. 3, between 23.4.56 and 29.6.56, totalling £5,405, belonged to the plaintiff Company and were part of the money stolen by defendant No. 1. Defendant No. 3 accepted the said lodgments in good faith without any knowledge that the money lodged had any connection with the theft."

(4) The defendant Bank (defendant No. 3) having parted with the money lodged by defendant No. 2 after the delivery of judgment by the trial Court in favour of defendant No. 2, no order or declaration in any form could be made affecting defendant No. 3.

Appeal against defendant No. 2 allowed with costs here and in the Court below. Appeal against defendant No. 3 dismissed with costs. Judgment of the Court below as regards defendant No. 2 amended accordingly. Declaration in favour of the appellant Company as stated above.

Cases referred to :

Montgomerie & Co. Limited v. *Wallace-James* (1904) A.C. 73, at p. 75, *applied* ;

Benmax v. *Austin Motor Co., Ltd.*, (1955) 1 All E.R. p. 326.

Hornal v. *Neuberger Products Ltd.*, (1957) 1 Q.B. 247, *followed.*

Appeal.

Appeal against the judgment of the District Court of Nicosia (Evangelides and Ioannides D.JJ.) dated the 23.7.63 (Action No. 3381/57) dismissing plaintiffs' action whereby they claimed, *inter alia*, £6,488 being a sum stolen by the defendants from the plaintiff Company's safes at Amiandos some time during the night between the 22nd and 23rd February, 1956.

St. G. McBride, for the appellants.

St. Pavlides, for respondent No. 1.

C. Phanos, for respondent No. 2.

Cur. adv. vult.

The facts sufficiently appear in the judgment of the Court delivered by ZEKIA, J.

WILSON, P.: I agree with the judgment to be given by Mr. Justice Zekia in this case.

ZEKIA, J.: Appellant Company had instituted an action against defendants claiming (i) that the defendants No. 1 and 2 be ordered and adjudged to pay to the plaintiff Company £6,488 being the sum stolen by the defendants from the plaintiff Company's safes at Amiandos some time during the night between the 22nd of February, 1956 and 23rd February, 1956, and/or which they or either of them removed from the said safes unlawfully and converted it to their own use ; (ii) A declaration that all money deposited by the defendant No. 2 with the defendants No. 3 mentioned in paragraph 6 (*b*), 6 (*c*), 6 (*d*), 6 (*e*) and 6 (*h*) of the statement of claim is money which belongs to the Company and not to the defendant No. 2, and is money derived form the theft referred to in paragraph (5) of the statement of claim ; (iii) An order of the Court requiring the defendants No. 3 to hold all money so deposited and mentioned in paragraph (6) of the statement of claim for the account and benefit of the Company and not for the account and benefit of the defendant No. 2 ; (iv) Such other relief as the Company will be found entitled to ; and (v) Interest and costs against the defendants No. 1 and 2.

The cause of action against defendants No. 1 and 2 is given in paragraphs 5, 6, 8 of the statement of claim. Paragraph 5 reads : " In the night between the 22nd and 23rd February, 1956, the defendants No. 1 and 2, without the Company's knowledge or consent, stole from the Company's safes at Aminados £6,488 and applied them to their own use. By so doing the said defendants wrongfully deprived the Company of the use and possession of the said sum and converted the same to their own use ". Paragraph 6 reads : " Of the money so stolen and converted by the defendants as aforesaid, the defendant No. 2 made the following deposits in his name with the defendants No. 3 at their Nicosia Head Office, namely ", (details as to the dates and sums lodged with the Bank of Cyprus by defendant No. 2 are given in the same paragraph). Paragraph 8 reads : " All the sums mentioned in paragraph (6) of the statement of claim are derived from the theft referred to in paragraph (5) of this statement of claim ".

Other facts pleaded in the statement of claim are rather of a probative nature. Defendants No. 1 and 2 denied all

material facts constituting a cause of action against them. Defendants No. 3, the Bank, admitted by paragraph (5) of their statement of defence that sums totalling £5,393.815 mils on 16.11.57 stood to the credit of defendant No. 2. It was denied that the money lodged by defendant No. 2 was to their knowledge stolen money. In paragraph 7 the Bank stated that they would abide by any judgment and/or order which the Court would issue.

The trial Court regarding defendant No. 1 found that " he did steal the sum of £6,488 from the safes of the Company " and adjudged him to pay the said amount as per claim. But the Court dismissed the claims against defendants No. 2 and 3 because from the evidence they could not possibly draw the conclusion that the money deposited by defendant No. 2 came from the money stolen by defendant No. 1 and that " from the facts proved it could not be logically inferred that the money deposited was part of the stolen money because that money could have been derived from other sources and the burden of proof is not upon the defendant to prove from where he received that money " (*see* judgment at p. 98 of the record). Plaintiff Company appealed against the dismissal of their claims in respect of defendants No. 2 and 3 and also against the dismissal of an application seeking an order against defendant No. 2 restraining him to withdraw money deposited with the Bank (defendant No. 3), pending the determination of the appeal.

Grounds 1, 2 and 3 of the appeal amount in effect to a submission on behalf of the appellant Company that the decision of the Court as to the facts is against the weight of evidence. The remaining grounds of appeal relate to points of law to which I shall refer later in this judgment.

The decision of the trial Court on facts turns virtually on the inferences to be drawn from undisputed facts and from the facts found by the Court. In reviewing decisions based on inferences from facts not in controversy, this Court is in as good a position as a trial Court to evaluate such facts as no question of credibility arises. We hardly need to cite an authority on this point. Lord Halsbury in the House of Lords in *Montgomerie & Co. Limited* v. *Wallace-James* (1904) A.C. 73 said at p. 75) :

> " But where no question arises as to truthfulness, and where the question is as to the proper inferences to be drawn from truthful evidence, then the original tribunal is in no better position to decide than the judges of an Appellate Court."

(See also *Benmax* v. *Austin Motor Co., Ltd.*, (1955) 1 All E.R. p. 326). In our Civil Procedure Rules, Order 35, r. 8, dealing with the powers of the Court of Appeal it is provided " The Court of Appeal shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been made, etc." See also section 25 (3) of the Courts of Justice Law, 1960.

We proceed to tabulate hereunder dates, figures and the main relevant facts for ascertaining the actual owner of the monies deposited by defendant No. 2 with defendant No. 3, the Bank.

Facts

	Dates
£6,488 stolen by defendant No. 1 from the safes of the appellant Company at Amiandos.	On 22. 2.56
Defendant No. 1 convicted by Limassol Assizes to 3 years' imprisonment.	On 10. 5.56
Defendant No. 1 released from prison.	On 9. 7.58
Lodgments by defendant No. 2 with the Bank (defendant No. 3) as it appears in the statement of defence of the said Bank :—	
he lodged on a fixed deposit, for one year, the sum of £100 (attracting interest at the rate of 4% per annum) which sum *plus* its interest *i.e.* £104 on his instructions was transferred on the 9.5.57 to a Savings Account which he opened on the 29.6.56.	On 23. 4.56
he lodged on a fixed deposit, for two years, the sum of £220 (attracting interest at the rate of 4 ½% per annum).	On 8. 5.56
he lodged on a fixed deposit, for two years, the sum of £2,700 (attracting interest at the rate of 4 ½ per annum).	On 11. 5.56
he lodged on a fixed deposit, for two years, the sum of £1,210 (attracting interest at the rate of 4 ½%).	On 16. 5.56
he lodged on a fixed deposit, for one year, the sum of £1,175 (attracting interest at the rate of 4% per annum), which sum *plus* its interest *i.e.* £1,222 he transferred on the 7.8.57 to his said Savings Account.	On 29. 6.56
The Savings Account, referred to hereinbefore, showed on 16.11.57 a credit in favour of defendant No. 2 of the sum of £1,263,815 mils.	
the total sum standing to the credit of the defendant No. 2 was the sum of £5,393.815 mils.	On 16.11.57

In September, 1957, police discovered the lodgments of the aforesaid large sums of money by defendant No. 2. He was charged, under section 303 of the Criminal Code, Cap. 13 (now section 309 of the Criminal Code, Cap. 154), with possessing money reasonably suspected of being stolen property, and he was acquitted. Defendant No. 2 in his statement to the police as to how he came to possess the money lodged with the Bank gave an unbelievable story which he did not even attempt to support by his own evidence. Defendant No. 2 is a married man, with two children, who might be described a poor man. His daily wage in 1952 was 11/6 and in 1956 910 mils. His annual income from his property was only £50. Both defendant No. 1 and 2 were employed by appellant Co. Defendant No. 1 was a cashier and defendant No. 2 a carpenter, both working at Amiandos. Between the years 1951 and 1955 defendant No. 2 borrowed small sums ranging from £10 to £30 which he took time to pay. On 11.1.55 he borrowed £10 from the plaintiff Company, with defendant No. 1 as guarantor, which sum he repaid by instalments on 9.6.55. It is remarkable how this man came to possess big amounts of cash not less than £5,400 between the dates of lodgments with the Bank (defendant No. 3) *i.e.* between April and June, 1956.

In the absence of any explanation on his part as to how he came to possess these big amounts of money, which might reasonably be considered as possible, in the circumstances of this case, the reasonable inference would be that defendant No. 2 came to possess this money unlawfully. On the other hand, we have to bear in mind that we are dealing with a civil case where we may act only on preponderance of probabilities.

> " In a civil action where fraud or other matter which is or may be a crime is alleged against a party or against persons not parties to the action, the standard of proof to be applied is that applicable in civil actions generally, namely, proof on the balance of probability, and not the higher standard of proof beyond all reasonable doubt required in criminal matters ; but there is no absolute standard of proof, and no great gulf between proof in criminal and civil matters ; for in all cases the degree of probability must be commensurate with the occasion and proportionate to the subject-matter. The elements of gravity of an issue are part of the range of circumstances which have to be weighed when deciding as to the balance of probabilities." (*Hornal* v. *Neuberger Products Ltd.* (1957) 1 Q.B. 247).

There remains the examination of the nexus between the stolen cash from the safes of the appellant Company and the cash which unlawfully found its way into the hands of defendant No. 2 and it was deposited with the Bank by him. It is an undisputed fact that a big amount of currency notes was stolen on the 22nd February, 1956, from the safes of the Company and has not been recovered since : and that between April and June of the same year amounts totalling £5,405 were lodged by defendant No. 2 with the Bank (defendant No. 3). The big sums lodged were maturing shortly before defendant No. 1 was expected to be released from prison. There was no evidence whatsoever that big sums of monies were robbed of persons or other companies in some way or other during the material period. It would be highly unlikely that the police or the public would not have come to know about it had such sums been stolen from others. If the sums involved were small sums not amounting to several thousands one might feel some difficulty in connecting the sum stolen and the sum lodged. In addition we have the following facts : Defendants No. 1 and 2 are second cousins and close friends. The former is the godfather of the child of the latter. Also defendant No. 2 visited defendant No. 1 in prison on 18.7.56 and on 22.9.57. From the evidence adduced it is abundantly clear that defendant No. 1, who is the person proved to have robbed the appellant Company, was closely associated with defendant No. 2.

It was also unlikely that the currency notes taken away from the safes of the appellant Company were exchanged with any similar currency notes before the lodgments. Such an attempt would have aroused suspicion. The trial of defendant No. 1 was closed and he was sent to prison for 3 years on the 10th May, 1956. The big lodgment of £2,700 as a fixed deposit for two years was made on the following day, the 11th May, 1956. On the 16th May, 1956 another sum of £1,210 was lodged as fixed deposit for two years and on the 29th June, 1956, the sum of £1,175 was lodged as fixed deposit for one year. Defendant No. 2 knew by the end of the trial of Defendant No. 1 that the currency notes stolen could not be identified by their serial numbers or by any distinctive marks so he had no reason or fear not to lodge the same currency notes taken away from the safes. It is also significant that the big lodgments by defendant No. 2 with the Bank (defendant No. 3) started soon after defendant No. 1 was convicted and sent to prison.

The cumulative effect of the evidence adduced and to the main part of which we have endeavoured to refer above—

no doubt circumstantial in nature so far as the identifying of the money stolen with the sums lodged by defendant No. 2 is concerned—in our view leads one safely to the conclusion that the sums lodged by defendant No. 2 with the Bank (defendant No. 3) between 23.4.56 and 29.6.56 totalling £5,405 were part of the money stolen from the safes of the appellant Company on the 22nd February, 1956.

The result we have reached so far entitles the appellant Company to a declaration that sums lodged by defendant No. 2 with the Bank (defendant No. 3) between 23.4.56 and 29.6.56 totalling £5,405 belonged to the appellant Company, derived from the money stolen by defendant No. 1 from the safes of the said company on the 22nd February, 1956, at Amiandos. The appellant Company in this case elected to sue defendants No. 1 and 2 in tort, trover or conversion, and did not pursue their claim on a quasi-contract basis as money had and received by both defendants.

Although the facts established might have supported an action on quasi-contract, in the circumstances it is not open to us to consider it as such in the present action (see cases cited in Halsbury's Laws of England, Third Edition, Vol 8, p. 247, under heading "Election in the case of tort"). See also section 63 of our Civil Wrongs Law, Cap. 148.

The first claim against defendants No. 1 and 2 was based on facts pleaded in paragraphs 5, 6 and 8 of the statement of claim to which reference was made earlier in this judgment. The first relief claimed is based on an allegation that defendants No. 1 and 2 were both involved in the theft and also in the unlawful conversion of the money stolen. In other words they have been treated according to the statement of claim as joint tort feasors.

The evidence in this case, however, falls short from establishing that both defendants No. 1 and 2 acted in concert from the very start in the commission of the larceny. The evidence has, however, established that defendant No. 2 was a receiver, at some time before he made the deposits with the Bank, of the money stolen by defendant No. 1 with knowledge of the theft. It is, of course, possible that the same object may be the subject of successive acts of conversion and those committing such acts might act independently of each other. The taking of possession of stolen money by a receiver, with knowledge of the theft, with a a view to keeping it for the thief or dealing with it in a manner

inconsistent with the right of the owner entitled to the immediate possession thereof, constitutes an act of conversion for which the receiver and the thief are jointly liable.

The evidence indicates also that the deposits with the Bank (defendant No. 3), maturing at a time when defendant No. 1 was expected to be released, were made at least with the connivance of defendant No. 1.

Conversion as defined by section 39 of the Civil Wrongs Law " consists of an unlawful physical act which affects any movable property and asserts a claim to deal therewith in a manner inconsistent with the rights of any person entitled to the immediate possession thereof ". The definition of " movable property " by section 2 of the same Law includes money. Section 42 of the Civil Wrongs Law empowers the Court to order the return of the property converted. The appellant is also therefore, entitled to an order as per claim (paragraph (i)) against defendant No. 2 for the sum of £5,405.

It has been stated before this Court that sums lodged with the Bank (defendant No. 3) after the dismissal of the claim against defendant No. 2 by the trial Court were withdrawn by him and therefore, no order could now be issued against the Bank (defendant No. 3) for the lodgments made. Appellant relying on Order 27, rule 4, wanted a declaration regarding defendant No. 3.

Appeal is also made against the refusal by the trial Court to grant on interim order restraining defendant No. 2 from obtaining the money deposited with the Bank (defendant No. 3) until the determination of an appeal which was intended to be lodged by plaintiff Company in the event judgment of the trial Court went against them regarding defendant No. 2. Although the deposits made by defendant No.2 were withdrawn from the Bank (defendant No. 3) after the delivery of the judgment by the trial Court, the appellant Company wanted this point to be decided also.

As to the declaration sought regarding the Bank (defendant No. 3) the plaintiff in our view was entitled, before the defendant Bank parted with the money, to an order restraining defendant No. 2 from withdrawing the money lodged with the Bank (defendant No. 3), and the service of a notice of such an order on the said Bank, which was a party to the proceedings only as a stakeholder, would have been the appropriate course. Defendants No. 3 accepted the monies

deposited by defendant No. 2 in good faith and without any knowledge that the money lodged was connected with the money stolen.

As to the refusal by the trial Court to grant an interim order in the circumstances stated in the previous paragraph the points of law involved not having been adequately argued before us and a decision on the point being devoid of any practical effect at this stage we do not propose to deal with it.

For the aforesaid reasons the appeal against defendant No. 2 is *allowed* with costs here and in the Court below. The appeal against defendant No. 3 is *dismissed* with costs. The judgment of the trial Court will be amended by substituting the following order as regards defendant No. 2.

" Defendant (2) is also adjudged to pay the sum of £5,405 as money belonging to the plaintiff Company, stolen by defendant No. 1 and converted by defendant No. 2 to his or their use, with interest from the date of judgment. The plaintiff Company is not to recover more than £6,488 with interest from either or both of them."

The appellant Company is also entitled to the following declaration :

> " The sums lodged by defendant No. 2 with the Bank, defendant No. 3, between 23.4.56 and 29.6.56, totalling £5,405, belonged to the plaintiff Company and were part of the money stolen by defendant No. 1. Defendant No. 3 accepted the said lodgments in good faith without any knowledge that the money lodged had any connection with the theft."

The defendant Bank (defendant No. 3) having parted with the money lodged by defendant No. 2 after the delivery of judgment by the trial Court in favour of defendant No. 2, no order or declaration in any form could be made affecting defendant No. 3.

VASSILIADES, J.: On the evidence which has just been stated in the judgment of my brother Zekia Bey, I also reach the conclusion that the first respondent, Theocharis Skoufaris, is also liable to the appellant-plaintiffs for the sum of **£5,405** out of the amount of the judgment against the first defendant, Naziris. I agree that although the first respondent cannot be sufficiently connected with the actual stealing of the appellants' money, the inference could be drawn—and should be drawn in the circumstances of this case—that he, the first respondnet, was handling appellants' stolen

money when making the deposits with the bank in his own name. He had it as the receiver of the stolen notes which he converted into his own use by making the deposits. The appellants are, therefore, entitled to judgment against him for the amount so converted. Provided that they (the appellants) shall not be entitled to collect from the first defendant and first respondent herein, any sum exceeding the total of the stolen money, plus interest under the judgment just read by my brother Zekia Bey.

The position of the second respondent (The Bank of Cyprus, Limited) is fundamentally different. They received the notes from the first respondent as currency in the ordinary course of their business, innocently and in good faith. The notes so received, were turned into credit, and could no longer be identified in their hands. They held the credit as long as they could legally do so. And they paid their debt to the first respondent when they found that they were under a legal obligation to do so, without any legal justification declining payment. Appellant-plaintiff's claim against this respondent was never well founded ; and the appeal in their case must fail.

I should now like to add that it is very unfortunate that the trial Court took the view at the conclusion of the case, that the position could not be preserved after judgment, at least for the period reasonably required to enable the appellants to take such steps as they might think necessary for the protection of their interests. The matter now is beyond adjudication, but this is one more case to demonstrate the sound reasons for which legal form, or the lack of it, should not be allowed to endanger the substance of a good claim in the hands of the court.

I would allow the appeal in the case of the second defendant (first respondent). And I agree that judgment be entered against him as formulated by Mr. Justice Zekia, with costs.

I would dismiss the appeal in the case of the third defendants (second respondents) with costs.

JOSEPHIDES, J.: I have had the advantage of reading and discussing with my learned brother Zekia, J. his judgment. I agree with his conclusions for the reasons given by him and I desire to add this only.

After the close of the hearing and before delivery of judgment by the Full District Court the appellant company

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Josephides, J.

applied to that Court praying that, in case the plaintiff's-appellant's claim against defendant No. 2 (respondent No. 1) were dismissed, the judgment of the court should be so worded and/or moulded, as to keep its jurisdiction pending the final determination of the appeal which the plaintiffs intended to file in such a case ; that the court should issue an injunction restraining defendant No. 2 (respondent No. 1) from obtaining the money deposited with the Bank of Cyprus (defendant No. 3–respondent No. 2) pending the determination of the appeal ; or that the Court might make such an order as to preserve this money pending the determination of the appeal.

The Full Court dismissed the application on the ground that (*a*) they were not empowered to grant such an order under the provisions of section 4, subsection (1) of the Civil Procedure Law, Cap. 6, and (*b*) that, even if they were, they would not be prepared to do so because they could not see that the plaintiffs-appellants had a reasonable ground of appeal against the defendant No. 2 (respondent No. 1).

As regards ground (*a*), the question whether the Court has such a power was not adequately argued before us and I would like to leave it open. As regards ground (*b*), I have no hesitation in saying that, if the Court had such a power, this would be a proper case in which to grant an interim order having regard to the circumstances of the case, and they should have exercised their discretion in favour of the plaintiffs–appellants.

Appeal against defendant No. 2 allowed with costs here and in the Court below. Appeal against defendant No. 3 dismissed with costs. Judgment of the Court below as regards defendant No. 2 amended accordingly. Declaration in favour of the appellant Company as stated above.