BELCHER, C.J., SERTSIOS, J., FUAD, J. 1928.

March 27.

[BELCHER, C.J., SERTSIOS, J., FUAD, J.]

DIANELLOS & VERGOPOULOS

v.

THE KING'S ADVOCATE.

MANUFACTURE TOBACCO DUTY—EFFECT OF LAW 1 OF 1923—INCREASE IN RATE OF DUTY—METHOD OF COLLECTION—"BANDEROLLES"—LICENCE TO MANUFACTURE UNDER LAW 29 SAFER, 1292—POINT WHEN MANUFACTURE IS "COMPLETE."

Appeal of plaintiff from the judgment of the President of the District Court of Nicosia (sitting alone).

Paschalis, Senior, for appellants (plaintiffs).

The Attorney-General for respondent (defendant).

The facts appear sufficiently from the judgment of the Chief Justice.

Judgment. THE CHIEF JUSTICE: This is an appeal from a judgment of the District Court of Nicosia in an action wherein appellants as plaintiffs claimed from the Government of Cyprus a refund of £214 19*s.* 2*cp.* being the difference between excise duty at 3*s.* 6½*cp.* on 1,646½ okes of tobacco and excise duty at 6*s.* 3*cp.* on the same quantity of tobacco. The £214 19*s.* 2*cp.* was paid by appellants under protest, on being claimed by Government at the time of coming into force of the Law No. 1 of 1923 which raised the duty from the lower to the higher rate. The learned President found that a sum equal to the difference between the two values on 99½ okes of tobacco which was in the appellants' factory manufactured and ready for issue when the duty was raised, should be refunded, but he made no order as to the rest of the sum claimed, and made no order as to costs.

No evidence was adduced in the case and it is stated that the facts are agreed. I, therefore, take them as I find them set forth or referred to in the notes of the learned Judge.

Before there was any special Cyprus legislation on the subject of tobacco excise, the defendants established a tobacco factory in Nicosia under the provisions of the Turkish Law 29 Safer, 1292. Under that law, several provisions of which are set out in the printed form of tobacco manufacture licence as issued to appellants' predecessor on 13th March, 1907, duty was paid by means of the purchase of banderolles to be affixed to the packages of manufactured tobacco (in the form of loose pipe tobacco or made up into cigarettes). The duty payable under that

law was paid, it is argued, once and for all when the banderolles were bought. The issue, on sale, of a banderolle was a definite licence to put out from the factory so much manufactured tobacco as the banderolle (by the weight indicated on it) was good for, and all the manufacturer had to do was to see that the tobacco bore the banderolle before it left his factory. That is to say, although the Government might raise the rate of duty, the old banderolle would still be good for the same quantity of tobacco as formerly; the sale of banderolle being thus the issue for cash of an irrevocable licence with respect to the amount of tobacco it was expressed to cover.

The sale of the banderolle may have been the vital point of liability to duty under the Law of 12 Safer, but if it was, that is not the case now, for though the use of banderolles to denote duty is preserved in practice, the wording of Section 23 of Law 22 of 1899 (which, apart from alterations in rate of duty, is what we have to deal with) shows plainly that, in the view I take of the nature of the duty now in force, any payment for banderolles could only be a general payment on account of what duty might thereafter become payable on manufacture, a payment made in the same way as but in respect of a different kind of liability from, that which was the case under the Turkish law, many of the provisions of which are kept alive by the current practice. Even if Government by its form of receipt on payment for banderolles purported to divest itself in advance of a right which might, by virtue of an alteration in the law, accrue in the future, *i.e.*, a right to duty at a higher rate, that would at best be a moral obligation only, and it is enough to say that I do not think any such moral obligation is implicit in the procedure followed, which is simply one of obvious convenience. The cardinal fact to be kept in mind in this case (it is perhaps covered by the issue framed on 15th June, 1923), is that what is now collected is a duty on the manufacture of tobacco, not a charge for the sale of licences. What attracts the duty is the fact of manufacture, and sub-section (3) shows when it is that that point is reached; namely when the tobacco has become capable of consumption. At this stage I may say (for a reason which will appear later) that the members of this Court, having visited the factory in question, consider that manufacture is complete at latest when the tobacco has left the drying room. Now if this is a duty on manufacture, as clearly from the wording of the law it is, it does not become payable until manufacture takes place, and when manufacture does take place, the rate of duty to be paid is the rate in force at the time of manufacture, a rate which the Cyprus Legislature may

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and does alter from time to time. It is not necessary to decide how far the Law of 12 Safer is still in force; no one has suggested that the old charge for banderolles is payable as well as the new duty. But how much unmanufactured tobacco was there in the appellants' manufactory at the time the new duty came in ? I have stated what the Court thinks is the line between manufactured and unmanufactured tobacco. But the onus was clearly on appellants, who best were in a position to know what they had in hand to prove how much was manufactured and, therefore, not liable to the increase. They offered no evidence on this head, and we must accept the figures as stated and on those figures, taken as representing the quantity of unmanufactured tobacco on the premises on 18th January, 1923, and the difference between the two rates of duty on that quantity, I think the appellants are not entitled to any repayment, further than the sum of £13 found due to them by the learned Judge. The appeal must, therefore, be dismissed.

No order as to costs.

Sertsios and Fuad, JJ., concurred.

Appeal dismissed.

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March 27.

[BELCHER, C.J., SERTSIOS, J., FUAD, J.]

LOIZO CHR. TSOLAKIDES

v.

SOFOCLES P. DEMETRIADES.

LIABILITY OF AGENT FOR LOST CHEQUE—AGENCY—ENGLISH OR OTTOMAN LAW—CYPRUS COURTS OF JUSTICE ORDER, 1882, CLAUSE 25—TRANSACTION NOT SO CONDUCTED AS TO EVIDENCE INTENTION THAT ENGLISH LAW SHOULD APPLY—MEJELLE, ARTICLES 1461 AND 1463.

Appeal by defendant (the appellant before a District Court) from the judgment of that Court dismissing his appeal from the judgment of a Village Judge.

Triantafyllides for appellant (defendant).

N. Pierides for respondent (plaintiff).

The facts are sufficiently disclosed in the judgment of the Court as delivered by the Chief Justice.

Judgment: The appellant, who was defendant in the Court of the Village Judge of Larnaca, was ordered by that Court to pay the plaintiff respondent £20 with interest