[TRIANTAFYLLIDES, P., STAVINIDES, L. LOIZOU, HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Applicant,

v.

THEOCHARIS THEOCHARIDES AND OTHERS,

Respondents.

(*Criminal Application No.* 1/73).

Evidence—Bankers' books—Entries therein—Criminal proceedings before an Assize Court—Bank not a party thereto—Order under section 6 *of the Bankers' Books Evidence Act,* 1879*—It can be made by the trial Court—The Evidence Law, Cap.* 9, *section* 3; *the Courts of Justice Law,* 1960 (*Law No.* 14 *of* 1960) *section* 3 *et seq.—See also section* 17 *of the Interpretation Law, Cap.* 1.

Bankers' Books—Entries therein—Admissibility in evidence and conditions of such admissibility—The (English) Bankers' Books Evidence Act, 1879*—Applicable in Cyprus—If and to what extent the said Act affects the common law position—Section* 6 *of the said Act does not relieve the Bankers from being compellable at common law in any cases—But only in cases where the contents of their books can be proved in the manner provided by the said Act.*

The Supreme Court dismissed this application, made by the Attorney-General to set in motion the machinery provided by the (English) Bankers Books Evidence Act, 1879, on the sole ground that it ought to have been made to the trial Court.

This is an application to the Supreme Court made by the Attorney-General in connection with the trial of a criminal case before the Assize Court of Nicosia. The application is made under section 6 of the (English) Bankers Books Evidence Act, 1879. There is no dispute that this Act is to be applied in Cyprus by virtue of section 3 of the Evidence Law, Cap. 9, which reads as follows:

"3. Save in so far as other provision is made in this Law or has been made or shall be made in any other Law in force for

the time being, every Court, in the exercise of its jurisdiction in any civil or criminal proceeding, shall apply, so far as circumstances may permit, the law and rules of evidence as in force in England on the 5th day of November, 1914".

The application was duly served on the two Banks concerned which are not a party to the said criminal proceedings—, as well as on accused in the said criminal case. It is to be noted that the effect of an order under section 6 of the English Act (*supra*) is that the Bankers concerned are allowed to prove the entries in their books by copies verified orally, or on affidavit, as being correct, and as being made from their ordinary books, and as having been entered also at the time in the usual and ordinary course of business. Then, under the said section, a Banker is to be relieved from being compelled to attend and produce his books in any proceedings to which his bank is not a party, so long as the contents of these books can be proved in the manner provided by the preceding sections.

Dismissing the application, the Supreme Court:-

Held (1). We are of the view, not only because of the provisions of section 3 of the Evidence Law, Cap. 9, (*supra*) but, also, in the light of the structure of our judicial system (see section 3 et seq. of the Courts of Justice Law, 1960, Law 14/60) and because of section 17* of the Interpretation Law, Cap. 1*, that the trial Court is competent to make the order applied for.

(2) And as this application should have been made to such Court in the first instance, it has to be dismissed.

(3) We are not expressing any view on the question whether there also exists competence of a Judge of the Supreme Court to make such an order; we leave it open.

Application dismissed.

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* *Section* 17 of the Interpretation Law, Cap. 1 reads:

" 17. Whenever any Act of Parliament is extended or applied to the Colony, such Act shall be read with such formal alterations as to names, localities, Courts, offices, persons, moneys, penalties, and otherwise as may be necessary to make the same applicable to the circumstances".

Per curiam: It would seem that this application to us has been made because of the impression that unless an order under the said section 6 of the English Act was made there did not exist other legal means to compel proof of the banking transactions of the accused during the relevant period. It would, therefore, be useful, in this respect, to refer to a case which has not been mentioned in argument, but which shows what is the position in law in the matter (see *Emmott* v. *The Star Newspaper Company* [1892] 62 L.J. Q.B. 77).

Note: And the Supreme Court, after referring to the said case, went on:

In the light of this judgment the required evidence may possibly be placed before the trial Court without there existing any need for an order under section 6 of the said Act.

Cases referred to:

Emmott v. *The Star Newspaper Company* [1892] 62 L.J. Q. B. 77.

Note: This case is referred to in Halsbury's Statutes of England, 3rd ed., Volume 12, p. 849.

Application.

Application by the Attorney-General of the Republic under section 6 of the Bankers' Books Evidence Act, 1879, for an order directing the Managers and/or any officers of the Barclays Bank International Ltd. and the Bank of Cyprus Ltd. to appear as witnesses in Criminal Case No. 10649/72, pending before the Assize Court of Nicosia, to give oral evidence and produce any Bankers' Books and/or accounts and/or other documents kept by them relating to the accused.

A. Evangelou, Counsel of the Republic, for the Applicant.

L. Clerides with *A. Angelides*, for the Respondent-Accused.

X. Clerides, for the Respondent Barclays Bank International Ltd.

A. Papageorghiou, for the Respondent Bank of Cyprus Ltd.

The decision of the Court was delivered by:-

TRIANTAFYLLIDES, P.: We are dealing with an application made by the Attorney-General of the Republic in connection with the trial of a criminal case, 10649/72, which is proceeding before the Assize Court of Nicosia.

The application has been made under section 6 of the Bankers' Books Evidence Act, 1879. There is no dispute that this Act is to be applied in Cyprus by virtue of section 3 of the Evidence Law, Cap. 9.

The application has been served on the two banks concerned, the Barclays Bank International Ltd. and the Bank of Cyprus Ltd., as well as on the accused in the said criminal case.

We have considered the question of the competence to make an order under section 6 and we are of the view, not only because of the provisions of the said section 3 of Cap. 9, but, also, in the light of the structure of our judicial system (see section 3 et seq. of the Courts of Justice Law, 1960, 14/60) and because of section 17 of the Interpretation Law, Cap. 1, that the trial Court is competent to make the order applied for; and as this application should have been made to such Court in the first instance, it has, in any case, to be dismissed on this ground. We are not expressing any view regarding whether there also exists competence of a Judge of the Supreme Court to make such an order; we are leaving this question open.

But we would like, in any event, to observe that the matter concerned has arisen, before, and been dealt with by, the trial Court, and this application to us has been made, because of the impression that unless an order under section 6 was made there did not exist other legal means to compel proof of the banking transactions of the accused during the relevant period, that is from the 1st September, 1969, to the 1st September, 1971.

It would, therefore, be useful, in this respect, to refer to a case which has not been mentioned in argument, but which can be found referred to in the notes to section 6 of the 1879 Act in Halsbury's Statutes of England, 3rd ed. vol. 12 849, and which shows what is the position in law in the matter: In *Emmott v. The Star Newspaper Company* [1892] 62 L.J. Q.B. 77, Lord Coleridge, C.J., stated the following, in dealing with an application under section 7 of the Bankers' Books Evidence Act, 1879:

" What was the duty of a banker in regard to the supplying of evidence at the time when this Act was passed? It was the same as that of any other person. He was obliged to attend under a subpoena with his books if their contents were receivable in evidence. But this was said to be a grievance in the case of bankers, and to cause to that class a peculiar and practical hardship in disturbing their business and displacing their business books, filled as they were with the details of other people's affairs quite external to the matters in dispute. The Act, or rather the original Act of 1876, which the Act of 1879 repeals, and for which it is substituted, was passed to give a sensible and reasonable relief for this particular class of persons, but not to alter the whole of the rules of evidence so as to place bankers in a different position in regard to giving evidence from any other subjects of the Queen. Bankers are not to be so differently treated, nor was any such change intended. They remain bound at common law to attend and to produce their books under subpoena, except in so far as the inconvenience may be modified by the statute. That is to say, they are allowed by the Bankers' Books Evidence Act, 1879, to prove the entries in their books by copies verified orally, or on affidavit, as being correct, and as being made from the ordinary books of the bank, and as having been entered also at the time in the usual and ordinary course of business. Then, under section 6, a banker is to be relieved from being compelled to attend and produce his books in any proceedings to which his bank is not a party, so long as the contents of these books can be proved in the manner provided by the preceding sections, unless by order of a Judge made for a special cause. The section does not say that he is not to be compellable in any cases where the contents of the books could formerly be proved at common law, but only in cases 'where their contents can be proved in the manner provided by this Act'. If the banker does not choose to follow out these provisions of the Act, he is left with the old burden of personal attendance and production of the books. The construction contended for by the defendants would otherwise give a banker an unreasonable amount of relief. If the banker will not attend or supply the copies required at the trial, he must be subpoenaed to produce the books at the trial as before the Act. If he will not take the course pointed out by the Act, or attend under the subpoena, he

will find himself in a bad way at the trial. That would be an attempt to defy the jurisdiction of the Court, and could be dealt with as such".

and Smith, L.J., stated:-

"What is the true meaning of the Act? That bankers were not in any case to which their banks were not a party to be compelled to appear or to produce their books? I do not think that this is the construction of sections 6 and 7. Sections 2 to 5 were passed for the benefit of bankers, to enable them to prove entries by copies, and to verify the copies on oath, either by sending a clerk to attend the trial, or by affidavit. Then comes section 6. It does not stand alone. It must be read in conjunction with sections 2, 3, 4 and 5. Taken together, the sections convey that if a banker chooses to take advantage of these first sections, he shall not be compelled, in cases to which section 6 applies, to attend or to produce his books without an order of the Court made in view of special circumstances".

In the light of this judgment the required evidence may possibly be placed before the trial Court without there existing any need for an order under section 6.

Order accordingly.