CAYMAN ISLANDS

Reported
2-12-82

IN THE COURT OF APPEAL

CAYMAN ISLANDS CIVIL APPEAL NO. 5 of 1982

BEFORE: THE HONOURABLE MR. JUSTICE KERR, P. (AG.)
THE HONOURABLE MR. JUSTICE ROWE, J.A.
THE HONOURABLE MR. JUSTICE WHITE, J.A.

IN THE MATTER of the Evidence (Proceedings in other Jurisdictions) (Cayman Islands) Order 1978

AND

IN THE MATTER of the Confidential Relationships (Preservation) Law 1976 as amended

AND

IN THE MATTER of the Grand Court (Foreign Process) Rules 1977

AND

IN THE MATTER of the Extradition Act 1870

AND

IN THE MATTER of Proceedings pending in the United States District Court for the District of Columbia

BETWEEN: THE UNITED STATES OF AMERICA

AND ROY R. CARVER
JOSEPH C. LEMIRE
LIONEL W. ACHUCK
JON T. STEPHENS
INTERCONEX, INC.

Mr. Norman Hill, Q.C., instructed by Steve McField and Associates for appellant.

Mr. R.D. Alberga, Q.C. and Mr. John Martin for the Attorney General of the Cayman Islands.

May 31; June 1 - 4; ~~December~~ DECEMBER 2ND 1982

ROWE, J.A.:

By statutory instrument No. 1890 of 1978 entitled "The Evidence (Proceedings in other Jurisdictions) (Cayman Islands) Order 1978, Her Majesty in Council extended to the Cayman Islands the provisions of the United Kingdom's Evidence (Proceedings in other Jurisdictions) Act 1975 (with the necessary exceptions and modifications to formal parts

thereof in order to render the Act relevant to the Cayman Islands). This Imperial Order makes provision for the Grand Court of the Cayman Islands (hereinafter referred to as the Grand Court) to receive applications from territories outside the Cayman Islands for assistance in obtaining evidence for use in those territories in civil as well as in criminal proceedings. If such an application relates to civil proceedings, section 1 (b) of the Schedule to the Imperial Order, which is in exactly the same language as section 1 (b) of the Imperial Act referred to above, states that the Grand Court has jurisdiction to hear the application if, inter alia, it is satisfied that the civil proceedings have either been instituted before the requesting court or its institution before that court is contemplated. If either of these conditions precedent is satisfied, the powers of the Grand Court to give effect to the application for assistance are contained in section 2 of the Schedule to the Imperial Order. Subsections (1), (2), (3) and (4) of section 2 all have relevance to this appeal and I will set them out below:

> "2.- (1) Subject to the provisions of this section, the Grand Court shall have power, on any such application as is mentioned in section 1 above, by order to make such provision for obtaining evidence in the Cayman Islands as may appear to the court to be appropriate for the purpose of giving effect to the request in pursuance of which the application is made; and any such order may require a person specified therein to take such steps as the court may consider appropriate for that purpose.
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> (2) Without prejudice to the generality of subsection (1) above but subject to the provisions of this section, an order under this section may, in particular make provision -
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> (a) for the examination of witnesses either orally or in writing;
>
> (b) for the production of documents;
>
> (c) .....
>
> (d) .....
>
> (e) .....
>
> (f) .....

"(3) An order under this section shall not require any particular steps to be taken unless they are steps which can be required to be taken by way of obtaining evidence for the purposes of civil proceedings in the court making the order (whether or not proceedings of the same description as those to which the application for the order relates); but this subsection shall not preclude the making of an order requiring a person to give testimony (either orally or in writing) otherwise than on oath where this is asked for by the requesting court.

(4) An order under this section shall not require a person -

(a) to state what documents relevant to the proceedings to which the application for the order relates are or have been in his possession, custody or power; or

(b) to produce any documents other than particular documents specified in the order as being documents appearing to the court making the order to be, or to be likely to be, in his possession, custody or power."

Special provision is made in the Imperial Order for giving assistance when the request from the foreign court is in relation to criminal proceedings. By section 5 of that Order, the provisions of sections 1 - 3 of the Order (which relate to civil proceedings) are made applicable to criminal proceedings with certain stated exceptions. The first important exception is that it is not enough that proceedings of a criminal nature should be contemplated in the requesting country; they must have actually been instituted. And the second important exception is in these terms:

"5 (1 (c) No order under section 2 above shall make provision otherwise than for the examination of witnesses, either orally or in writing, or for the production of documents."

It is to be observed at this stage that whereas section 2(2) gives an unexhaustive list of six separate orders that the Grand Court may make in a request touching civil proceedings, when the request relates to criminal proceedings only those enumerated in section 2(2) (a) and (2) (b) are permissible. That subsection was, however,

expressly made to be without prejudice to the generality of subsection (1) of section 2. To these provisions I will return.

There is pending in the United States District Court for the District of Columbia, an Indictment No. 8100342 which charges five accused persons, namely: Roy A. Carver, Joseph C. Lemire, Lionel W. Achuck, Jon T. Stephens and Interconex Inc. on seven counts, five of which are alleged to be in violation of United States Code Title 18 paragraph 1343 and the other two counts in violation of Title 18 paragraph 2314. This indictment was presented by a grand jury and in support of the application for the judicial assistance of the Grand Court, Mr. John D. Arterberry an attorney of the United States Department of Justice swore to an affidavit on October 30, 1981, in which he summarised the facts upon which the grand jury based its findings. That affidavit reads in part:

> "3. Through my familiarity with the documents obtained in this matter and the statements of witnesses, I can state that the following facts, in part, formed the basis for the grand jury's finding of probable cause in this matter, and can be established by the United States in a trial on the indictment in this case."
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> "In early 1976 Raytheon Middle East Systems Company (hereinafter Raymes) required the construction and transportation of modular homes to be delivered to Saudi Arabia in connection with Raytheon's air defence system contract with Saudi government. The homes were to house Raytheon employees working on the air defence project and also Saudi military personnel, once the sites became operational.
>
> Recognizing that the contracts for the modular homes would involve substantial shipping costs, the defendants devised a scheme to exploit this situation by manipulating Raytheon procurement procedures so that defendant Interconex, Inc. would receive transportation sub-contracts with nearly $3 million in inflated charges. This scheme was accomplished by inducing the prime contractor, International Modular Systems Limited, hereinafter (IMS) to award shipping sub-contracts to defendant Interconex, after IMS had been awarded prime contracts from Raytheon through a bid evalution process manipulated by the defendants.
>
> The defendants' scheme called for the diversion of the excess shipping costs to foreign banks to disguise and conceal the existence and subsequent distribution of the scheme proceeds. To that end IMS was further induced by the defendants to shift portions of the shipping sub-contracts with defendant Interconex to Generation Holdings

"Limited, an entity controlled by one or more of the defendants. Thus between September and December 1976, Raytheon unwillingly paid approximately $2.1 million in excess shipping costs under the contracts, which funds IMS then caused to be transferred to Generation Holdings account at the Credit Swiss in Geneva, Switzerland. This 2.1 million dollars represents the amount that Raytheon was defrauded by this scheme, Raytheon avoided further losses by cancelling the shipping sub-contract upon discovery of the inflated trans-portation charges.
At the direction of defendant Lionel W.Achuck, the Generation Holdings Administrator distributed approximately $1 million of these funds to defendants Roy A. Carver and Joseph C. Lemire by means of checks payable to Redcon Establish-ment and Redcon Limited, companies controlled by Carver and Lemire, and another $1 million of these funds to Coraldo Trust Reg. a company controlled by defendant Jon T. Stephens."

He then illustrated this distribution by a chart.

Mr. Arterberry gave a further affidavit sworn to on January 12, 1982 in which he dealt specifically with the Cayman Connection.

He said in paragraph 5:

"The materiality of the testimony of the following named foreign witnesses, and of other evidence sought in the Cayman Islands, and the proof of the unavailability of these witnesses in the United States is set forth below:-

Witnesses

A. David Challice, Barclays Bank International Limited - Grand Cayman.

At least $294,000.00 of the bribe funds received by Carver and Lemire were deposited into an account held by International Resource Management Consultants at Barclays Bank International Limited in Grand Cayman. International Resource Management Consultants was a Cayman Island Company controlled by Carver and Lemire. The deposits were made by means of a $200,000.00 wire transfer to Barclays Bank account from a Swiss Bank account controlled by Carver and Lemire and by means of two checks payable to Carver's wife, Heidrun, which were endorsed by Mr. Challice, a Barclays Bank Officer, and deposited into the same International Resource Management Consultants account at Barclays Bank ....."

"B ....."

"C. Cyrus Regnart, Bank of Nova Scotia, Grand Cayman.

Redcon Limited, another Cayman Island entity controlled by Carver and Lemire, held an account at the Bank of Nova Scotia in Grand Cayman. That account received at least $500,000.00 of the bribe funds paid to Carver and Lemire. These funds were

> "deposited into the account by means of three checks, two payable to Redcon Limited and the third payable to Redcon Establishment, a Liechtenstein entity controlled by Carver and Lemire. Cyrus Regnart, a bank officer, is believed to have been employed at the bank during the relevant period."

The affidavit further stated that both Mr. Challice and Mr. Regnart had advised the Cayman Islands police department that they would not voluntarily testify in the United States nor produce or authenticate the records of Barclays Bank or of Nova Scotia.

On the basis of the facts sworn to by Mr. Arterberry in support of the allegations contained in the Indictment referred to earlier, the United States Government approached the Government of the Cayman Islands and requested that Government to use its good offices to secure the testimony in the United States of, inter alia, the officials of the Bank of Nova Scotia and of the Barclays Bank International Limited, and for the production in the United States of America of bank records in connection with the accounts of International Resource Management Consultants at the Barclays Bank and of Redcon Limited at the Bank of Nova Scotia. The Banks and their officers refused to co-operate. Another administrative procedure was resorted to. Under the provisions of section 3(2) (b) (iii) of the Confidential Relationships (Preservation) Law (Law 16 of 1976) of the Cayman Islands as amended by Law 26 of 1979, hereinafter referred to as the (Confidential Relationships Law) a disclosure of confidential information to a constable of the rank of inspector or above, who is specifically authorised by the Governor of the Cayman Islands in that behalf for the purpose of investigating an offence committed or alleged to have been committed outside the Cayman Islands which offence, if committed in the Island, would be an offence against its laws, would not be prohibited or in any way regulated by the provisions of the Confidential Relationships Law. An Inspector of Police acting under the

authorization of the Governor endeavoured to obtain the relevant Bank records referred to above and to obtain statements from Mr. Challice and Mr. Regnart, but he did not succeed. Accordingly, the Government of the Cayman Islands, declined to take any further persuasive action and advised the United States Government to adopt alternative strategies, if it was so minded, but advised that in that event it would have to proceed through its own attorney at law and could no longer depend upon the good offices of the Attorney General of the Cayman Islands.

And so it came about that a formal request for international judicial assistance by the United States District Court for the District of Columbia to the Grand Court dated February 10, 1982, came before the Grand Court by summons filed on March 18, 1982. As a result of an Order made by the learned Chief Justice of the Cayman Islands on the hearing of this Summons, a Supplemental Request was issued by the United States District Court in the same proceedings dated April 20, 1982, and this Supplemental Request came before the Grand Court by means of a Summons filed April 27, 1982. The portion of the Request relevant to this appeal is set out below:

> "This Court further requests the Grand Court to make orders pursuant to the Evidence (Proceedings in other Jurisdictions) (Cayman Islands) Order 1978 and Confidential Relationships (Preservation) Law as amended and the Bankers and Trust Companies Regulations Law as amended to permit the following witnesses to give evidence on all matters raised by the indictment and matters directly related thereto and to produce documents as set forth in the following schedule."
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> "David Challice and the proper Officer of Barclays Bank International Limited - Grand Cayman, as custodian of record to produce all correspondence, ledgers, day books, account books, and all other books, documents and papers used in the ordinary course of business relating to the account or accounts held by International Resource Management Consultants, including all records relating to the account or accounts held by International Resource Management Consultants, including all records relating to the receipt of $294,000.00 on or about June 27, 1977, and two checks ($44,000 and $50,000) payable to Heidi Carver and deposited into the account or accounts on or about November 4, 1977, and of the

> "subsequent disposition of the said funds. Cyrus Regnart, Bank of Nova Scotia - Grand Cayman, to produce all correspondence, ledgers, day books, account books, and all other books, documents, and papers used in the ordinary course of business relating to the account or accounts held by Redcon Limited, including all records relating to the receipt of $500,000 which funds were credited to the account or accounts by means of three checks ($300,000; $100,000; and $100,000) payable to Redcon and deposited into the account or accounts on or about November 8, 1977, and the subsequent disposition of the said funds. The proper officer of the Bank of Nova Scotia as custodian of records to produce all correspondence, ledgers, day books, account books, and all other books, documents, and papers used in the ordinary course of business relating to the account or accounts held by Redcon Limited, including all records relating to the receipt of $500,000, which funds were credited to the account or accounts by means of three checks ($300,000; $100,000; $100,000) payable to Redcon and deposited into the account or accounts on or about November 8, 1977, and the subsequent disposition of the said funds."

It is to be noted that the original request of February 10, 1982, contained this express request:

> "And this court further requests that you will be pleased to cause the evidence of the said witnesses to be reduced into writing and recorded by means of videotape."

The amended summons of April 27, 1982, asked, inter alia, for an Order that the examination of the witnesses be videotaped and for an Order of Inspection in the following terms:

> "And further for an order pursuant to Section 8 of the Evidence Law 1978 authorizing John D. Arterberry, Attorney of the United States Department of Justice or any other lawful representative of the United States of America, to inspect and take copies of all entries in any ledgers, day books, cash books, account books or correspondence and in any other books used in the ordinary course of business of Barclays Bank International Limited, Grand Cayman, The Bank of Nova Scotia Limited, Grand Cayman, Anglo-Dutch Insurance Company, Grand Cayman and the Registrar of Companies, Cayman Islands relating to all the matters, transaction and accounts raised by the indictment and matters, transaction and accounts directly related thereto."

The learned Chief Justice in his judgment of April 1[illegible], 1982, refused to make an order for the inspection of documents and for the videotaping of the proceedings, and he made no order in respect of the two commercial banks or of their officers Mr. Challice and Mr. Regnart. In his further order

of May 12, 1982, he did not resile from any of the positions he had taken in April. As a consequence of his later order the United States Government appealed to this court and the six grounds of appeal filed and argued sought to show that in refusing the requests (a) for Messrs. Challice and Regnart to give evidence, (b) for the custodian of the records of the Bank of Nova Scotia Limited and Barclays Bank International Limited to produce the requested documents, (c) for the video-taping of the evidence of witnesses and (d) for the inspection of the banks documents, the learned Chief Justice erred in law.

When an application is made to the Grand Court of the Cayman Islands for international judicial assistance, that Court acts in accordance with the procedure contained in Order 70 of the Rules of the English Supreme Court. Order 70/1 prescribes that the application must be made ex parte and it is provided in Order 70/1-6/25 that if an order is made, which must perforce be ex parte, an application may be made by summons supported by affidavit to discharge the order. The effect of these provisions is that an ex parte order made by the Grand Court on a request for judicial assistance is in the nature of a provisional order which can only become absolute if the person to whom it is directed does not seek to have it discharged or if his challenge to the order is rejected. It further means that the ex parte order must be served upon the person to whom it relates - and so give him an opportunity to challenge it.

It was common ground that the principles which govern the exercise of the jurisdiction to grant requests for international judicial assistance in England are applicable to the Cayman Islands and I can do no better than to quote certain passages from the judgment of Summerfield, C.J., of April 19, 1982, as to what these principles are:

> "As to the procedure for application of this nature, my view is that O.70 (in conjunction with the rules specified therein of O.39) of the English Rules of the Supreme Court 1965 apply by virtue of section 20 of the Grand

"Court (Civil Procedure) Rules. The Grand Court (Foreign Process) Rules do not appear to be appropriate.

"In England the general principles which should be followed in relation to a request from a foreign court for assistance in obtaining evidence for the purpose of proceedings in that court is that the English Court will ordinarily give effect to such request so far as is proper and practicable and to the extent that is permissible under English law. This principle reflects judicial and international comity and it conforms with the provisions of the Hague Convention and the 1975 Act as it conformed with the spirit of the former statutes. It is the duty and the pleasure of the English Court to do all it can to assist the foreign Court, just as the English Court would expect the foreign court to help it in like circumstances. Just as the English Court ought-to give full faith and credit to a foreign judgment, so should it give full faith and credit to the request of a foreign court for evidence to assist its proceedings.

In dealing with a request for evidence from a foreign Court, the English Court has first to decide whether it has jurisdiction to make an order to give effect to the request, and secondly, if it has, whether as a matter of discretion it ought to make or refuse to make such an order. As a matter of jurisdiction, in the ordinary way and in the absence of evidence to the contrary the English Court should be prepared to accept the statement of the foreign Court in its request that the evidence is required for the purpose of civil or criminal proceedings, as the case may be, in that court. On the other hand, the form of the letter of request is not conclusive; the Court must examine the request objectively by the nature of the testimony sought, and it has to look at the substance of the matter, but it may have regard to what was said in the foreign Court when the request for evidence was issued. If there is any doubt about the matter, the English Court may allow the parties to refer back to the foreign Court or Judge who issued the request for evidence.

As a matter of discretion, again in the ordinary way, the English Court should exercise its discretion to make the order asked for unless it is satisfied that the application would be regarded as falling within the description of frivolous, vexatious or an abuse of the process of the Court. The English Court has power to accept or reject the foreign request in whole or in part, whether as to oral or documentary evidence; and it can and should delete from the foreign request any parts that are excessive either as regards witnesses or as regards documents. The English Court will act on the principle that it should solve what it can, but should decline to comply with the foreign request in so far as it is not proper or permissible or practicable under English law to give effect to it. The English Court, moreover, ought not to embark on the process of restructuring or re-casting or re-phrasing the foreign request so that it becomes different in substance from the original request. The Court has no power so to

> "modify the original foreign request as to substitute a different category of documents for the category which has been requested by the foreign Court".

In support of his several grounds of appeal Mr. Hill argued firstly, that section 2 of the Imperial Order stands by itself and gives a wide power to the Court notwithstanding any other law to the contrary. By this he meant that the domestic statutes of the Cayman Islands ought not to be looked at in determining the circumstances in which international judicial assistance could be afforded by the Grand Court. In so far as this argument proceeded on the basis that the common law rules relating to the duties of bankers to disclose information cannot be derogated from by statutory enactment unless the statute expressly, unambiguously and unequivocally so states, it does not in my view have merit. The decision of the Court of Appeal in Tournier v. National Provincial and Union Bank of England Ltd (1924) 1 K.B. 461 is subject to any statutory provision in the Cayman Islands and the principles adumbrated in that case cannot be relied upon in a case of this nature without reference to the provisions of sections 7 and 8 of the Evidence Law and of the provisions of the Confidential Relationships Law of the Cayman Islands. Notwithstanding the apparent clarity of the language of section 2 of the Imperial Order, it must be read in conjunction with the domestic statutes of theCayman Islands and in a case where the disclosure of confidential information is sought from the books of bankers resort must be had to the provisions of the Evidence Law.

Provision is made in section 7 of the Evidence Law for the method in which proof of entries in banker's books may be obtained.

> "7 (1) Subject to the provisions of the Banks and Trust Companies Regulation Law (Revised) and the Confidential Relationships (Preservation) Law and to subsection (2) a copy of an entry in a banker's book certified by an officer of such bank in an affidavit made before a Justice of the Peace or by oral testimony to be a true copy is receivable in every court as prima facie evidence of such entry and of the matters, transactions and accounts therein recorded.
> 7 (2) No Bank or officer of such bank shall in any proceedings before any court in which the bank is not a party, be compellable to produce any banker's book the contents of which can be proved under subsection (1) or appear as a witness to prove the matters therein recorded, unless by order of a court made for special cause."

One of the enactments to which section 7 above is made subject, is the Bank and Trust Companies Regulations Law (Revised). That statute has no relevance to these proceedings. The other enactment is of great significance not only to this case, but for the economic well-being of the Cayman Islands. Except as is provided in section 2 of the Confidential Relationships Law, no one may disclose confidential information, which is defined to include information concerning any property which the recipient thereof is not, otherwise than in the normal course of business authorised by the principal to divulge, except under the procedure outlined in section 3A. All the provisions of section 3A are relevant to this appeal but for the moment I will content myself in referring to subsection (1) thereof:

> "Whenever a person intends or is required to give in evidence in, or in connection with, any proceeding being tried, inquired into or determined by any court, tribunal or other authority (whether within or without the Islands) any confidential information within the meaning of this law, he shall before so doing apply for directions and any adjournment necessary for that purpose may be granted."

Where a request is made to a banker for the production of a certified copy of entries in his books, he may be perfectly willing to accommodate the requisitioning party. But because of section 3A of the Confidential Relationships Law, he must apply for directions under that Law before he can give the evidence. On the other hand, the banker may be unwilling to give any co-operation. Suppose as in the instant case, he refuses to take any steps whatever to comply with the request. What must the requesting party do? If he serves him with a subpoena duces tecum, the banker may ignore it. And if he so acted he would have authority on his side to buffer his action. According to Paget on Banking, in the chapter dealing with the relations of a banker to his customer, at p. 170:

> "It is very improbable that a banker would even now be simply served with a subpoena duces tecum in proceedings to which he was not a party. If he were, he might disregard it, the only legitimate method of compelling his attendance being the special order under section 6."

In Arnott v. The Star Newspaper Company (1893) 62 L.J.Q.B. 77 the Divisional Court in England construed sections 2 and 3 of the Bankers' Evidence Act of 1879, the provisions of which are similar to sections 7 and 8 of the Evidence Law of the Cayman Islands. Lord Coleridge C.J. after setting out the common law position in regard to the duty of a banker to supply evidence, referred to the provisions of the Act and then concluded:-

> "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."

Later he said:

> "If there were evidence that the banker was setting the Act at defiance and would do nothing, then the Court 'may' interfere with an order."

The opinion of Smith L.J. was to the same effect. He said:

> "It is a mistake to say that section 6 absolves a banker from coming in person, or from producing his books in every case to which his bank is not a party. It only does so when he craves the aid of, and follows out the provisions laid down in sections 2 - 5. Then comes section 7, which gave rise to the discussion in Arnott v. Hayes. There it was laid down that the two objects of the Act were - first, to give relief to bankers from the production of bank-books, unless, under special circumstances, it became advisable to have the actual books produced;....."

Mr. Hill submitted that the words "special circumstances" are wide, comprehensive and flexible words in relation to which a court ought not to lay down any exhaustive definition and he referred us to the second edition of Words and Phrases Legally Defined, at p. 94 for support. I do not dissent from his proposition. What are special circumstances must depend upon the facts of each case. Mr. Alberga in his very helpful presentation agreed that if a banker flatly refused to co-operate with a requesting party and declined to provide examined copies of his books that refusal could amount to special cause within the meaning of section 7 (3) of the Evidence Law. In my view there were factors in this case which could amount to special cause. Evidence was being sought for use in a foreign judicial tribunal and if the actual books were not produced before the examiner, the evidence obtained would be useless in the foreign tribunal. There was no question of the bankers' [illegible]

being taken out of the jurisdiction and the minor inconvenience to the bank to take its books/the examiner and produce them would be greatly outweighed by before the court's obligation to take all necessary steps to give effect in comity to the foreign request. All earlier efforts by the United States Government to obtain the information from the bankers in circumstances where the Confidential Relationships Law would not be applicable had been unsuccessful. Therefore, in the face of the bankers' intransigence there was no method by which the requesting party could gain access to the bankers' books without the order of the Court made for special cause. In my view special cause was abundantly made out.

But even if special cause is shown under section 7 (3) that is not an end of the matter as in the instant case the accounts from which evidence is being sought is not in the names of any of the defendants indicted in the requesting Court. An undoubted rule which applies to applications for inspection of bankers' book prior to the trial, equally applies in my view to an application for examined copied of the bankers' books or for the production of these books. That rule as to inspection is best exemplified in the case of South Staffordshire Tramways Company v. Ebbsmith (1895) 2 Q.B. 669 where the issue was whether an order for inspection under the section 7 of the Bankers' Books Evidence Act of 1879 could be made when the account was in the name of a person not a party to the action and if so in what circumstances. Lord Esher, M.R. at page 674 said:

> "The application is for an order to inspect before the trial an account which is prima facie not that of a party to the suit. I am disposed to think that the rule of conduct which the court would observe in relation to such an application though it is impossible to define it exhaustively would be that, if the court satisfied that in truth the account which purported to be that of a third person was the account of the party to the action against whom the order was applied for, or that, though not his account, it was one with which he was so much concerned that items in it would be evidence against him at the trial, and there were no reasons for refusing inspection, then they might order the inspection but unless they were so satisfied, they ought not to do so ..... I think that the party asking for the inspection ought to be able to show the Court strong grounds for suspicion, almost amounting to certainity, that there are items in the account which would be material evidence against the defendant upon the matters in issue. I requested counsel for the plaintiffs to tell me which grounds he had for the suggestion that there were items of that character in this account."

In applying the principles adumbrated by Lord Esher M.R. to the facts of the instant case, one finds that the allegations in the indictment supported by the affidavit of Mr. Arterberry are that International Resource Management Consultants, a Cayman Islands Company was controlled by the defendants Carver and Lemire and that some $294,000 U.S. were transferred to its account by means of a transfer of $200,000 U.S. from a Swiss bank account controlled by Carver and Lemire and by two cheques payable to Carver's wife. And further that Redcon Limited was controlled by Carver and Lemire and that company received $500,000 U.S. from a Liechtenstein entity controlled by the said Carver and Lemire. These allegations were so specific that in my view they would easily have satisfied Lord Esher when he propounded his test of "suspicion, almost amounting to certainity". Lord Esher was prepared to accept the argument of Counsel as to the effect of the pleadings. In the instant case, in the face of the affidavit of Mr. Arterberry, there was ample evidence which the learned Chief Justice could have taken into consideration on the exparte application.

So soon as it was established that there was sufficient evidence to move the court to decide that special cause existed for ordering the banker to produce his books, it is beyond question that a Court would exercise its discretion to make the appropriate order. The next legal step which would be mandatory would be the service of that order upon all interested parties. Were this a wholly municipal case, the order of the court that speical cause existed would be immediately operative and would be effective only subject to the provisions of the Confidential Relationships Law. But as was pointed out earlier because an application for international judicial assistance must be initiated by an ex parte procedure, the first opportunity that an interested party, be he banker or other category of person, would have to contest the validity of the order would be after service thereof upon him. If he chooses not to contest the ex parte order, then he must comply with its terms. Should such an interested party seek to have the order set aside, he would after the appropriate hearing be compelled to abide the order of the Court.

Messrs. Challice and Regnart were required to give evidence in their personal capacities and they could not avail themselves of any of the provisions of section 7 of the Evidence Act. If, however, on the request for judicial assistance, an order was made for them to give evidence, in the event that evidence related to confidential information, they would fall into the category of persons required to give evidence under section 3A of the Confidential Relationships Law and would be obliged to seek directions of the Grand Court before complying with that order to give evidence. A person so required to give evidence is not afforded the option to decide whether or not it is convenient for him to give the evidence or even to apply under section 3A for directions. Under the provisions of section 3A it is mandatory for him to make the application and I might add, where a time limit is stipulated he must act within that fixed period.

One must never make the mistake of blurring the lines of the two separate jurisdictions which have an interplay when an application for international judicial assistance touches and concerns confidential information. The first question to be determined in any given case is whether a person can be required to give evidence as to confidential information and the second is to determine according to the special statutory provisions of the Cayman Islands whether, to what extent, and subject to what conditions, such a person is to be allowed to give the evidence. The two jurisdictions are vested in the Grand Court and may indeed be exercised by the same personage but the rules of law relevant to the first enquiry may be wholly otiose to the other. The judge of the Grand Court must never when exercising his functions to determine the first question, take into consideration questions of policy which might have the effect of prejudging the situation as to how he would rule on the aspect of the question when an application is made under Section 3A. In particular, the Grand Court is given guidelines as to the matters to be atken into consideration when exercising jurisdiction under section 3A of the Confidentiality Law. Section 3A (6) provides:

"In considering what order to make under this section a Judge shall have regard to:

(a) whether such order would operate as a denial of the rights of any person in the enforcement of a just claim;

(b) any offer of compensation or indemnity made to any person desiring to enforce a claim by any person having an interest in the preservation of secrecy under this law;

(c) in any criminal case, the requirements of the interests of justice."

It would therefore appear that the policy of the legislature is that the Confidentiality Laws of the Cayman Islands should not be used as a blanket device to encourage or foster criminal activities. As Mr. Hill puts it, there is nothing in the statute to suggest that it is the public policy of the Cayman Islands to permit a person to launder the proceeds of crime in the Cayman Islands, secure from detection and punishment. I can find no disharmony between section 2 of the Imeprial Order, Section 7 of the Evidence Law and the provisions of the Confidentiality Law, as in my view each statute is relevant to different stages of the proceedings. There is nothing in the Imeprial Order to indicate that it was establishing a regime and a procedure unaffected by any provisions that may exist in the statute law of the Cayman Islands. On the contrary section 2 (3) thereof, makes particular reference to the procedures of the civil courts in the Cayman Islands. Although sections 7 and 8 of the Evidence Law are made subject to the provisions of the Confidential Relationships Law, what this means is that before a banker can supply either examined copies, or produce the originals of his books, he must seek the directions of the Grand Court under the Confidentiality Law. The final stage is reached only when the application is made to the Grand Court by the prospective witness and the Grand Court will then make an Order after considering and giving full weight to the provisions of section 3A (6).

The substantial question which next arose for decision was whether the request for judicial assistance was transmitted in a form which could be accepted and acted upon by the Cayman Court. Section 2 (4) (b) of the

Schedule to the Imperial Order which confers the jurisdiction upon the Grand Court places a limitation upon the documents the production of which can be ordered. It states:

> "An order under this section shall not require a person:
>
> (b) to produce any documents other than particular documents specified in the order as being documents appearing to the court making the order to be, or to be likely to be, in his possession custody or power."

In subsection 2 (4) (a) a court is prohibited from making an order for general discovery of documents as such an order would be in the nature of a fishing expedition. The two subsections must therefore be read together to discover the true intention of the legislature as to the documents in respect of which an order for production may be made. Section 2 (4) (b) of the Imperial Act was judicially considered by the House of Lords in Rio Tinto Zinc v. Westinghouse (1978) 1 All E.R. 434.

Lord Diplock after reference to the facts of that case said on page 463:

> "The request for the production of documentary evidence by the two RTZ companies must satisfy not only the requirements of sub-section (3) which exclude fishing discovery but also the stricter requirements of sub-section (4). Under the procedure of the High Court of England there is no power to order discovery of documents by a person not a party to the action, but such a person can be required by subpoena duces tecum to produce documents to the court or, where his evidence is taken before an examiner prior to the trial, at such examination. There is a good deal of authority cited by Lord Denning M.R. in his judgments as to how specific the reference to documents must be in subpoena duces tecum. Classes of documents, provided the description of the class is sufficiently clear, may be required to be produced on subpoena duces tecum. The requirements of 0.2 (4) (b), however, are not in my view satisfied by specification of classes of documents. What is called for is the specification of 'particular documents' which I would construe as meaning individual documents separately described."

The request for judicial assistance in that case failed on the ground of privilege. When this case was in the Court of Appeal (reported under the title Re: Westinghouse Electric Corporation (1977) 3 All E.R. 703.)

Lord Denning M.R. had suggested that the test of whether the documents should be treated as particular documents was that they should be specified with such distinctiveness as would be sufficient for a subpoena duces tecum. At page 710 the Master of the Rolls elaborated by saying:

> "The description should be sufficiently specific to enable the person to put his hands on the documents or file without himself having to make a random search, in short, to know specifically what to look for ..... The person ought not to be required to chase through masses of documents to see whether this or that may not relate to the dispute."

The documents referred to in the Westinghouse case were of the most diverse, varied and complex variety. Consequently, the language of the Judges in the House of Lords must be looked at against those facts. On the other hand, the traditional description of bankers' books used by bankers in the ordinary course of business has been "ledgers, day books and account books". When therefore these terms are used in a statute or in business correspondence they must be taken to relate to the actual books used by the particular bank in the keeping of its accounts. An outsider would be at a disadvantage if he were to be compelled to know the precise system of accounting used by the bank and the precise and particular documents in which the bank's accounting records are kept. What such a third person must show is that he requires information regarding a particular transaction made on a particular day, in respect of a particular account. Where the banker is merely required to place his hands upon and to pick up the letter which forwarded the cheque, or the lodgment slip which evidenced the transaction or the cable confirming the transaction, could that be said to be in the nature of a fishing expedition? I think not. These documents are manifestly the conduits through which money may be transferred to the credit of an account and the request for their production is at least analogous to the request for the letter in reply to correspondence the existence of which is either admitted or is not denied.

I am not persuaded that any of the Judges in the House of Lords who gave opinions in the Westinghouse case, had they been discussing a case concerning bankers' books, would have established a rule that to call for the books in which a banker in the ordinary course of business accounted for a specific transaction, would not be a call for a particular document.

Accordingly, in my view, a banker to which an order was made to produce "all correspondence, ledgers, day books and account books used in its ordinary course of business" in which it recorded the receipt of a particular sum, on a particular day, which funds it credited to a particular account, would be able to place his hands directly on such records, and therefore to that extent such a description would sufficiently satisfy the statutory requirement of "particular documents etc." in section 2 (4) (b).

But the amended Request and the attendant Summons contained certain words and phrases which Mr. Alberga submitted were too wide, vague and of a fishing nature. These words of request referred to "all other books, documents and papers" and "including all records" relating to the particular accounts. It was clear from the whole tenor of the Request that the U.S. Government was not seeking an oversight of all the accounting transactions of the two entities named in the Request. Their concern was as to particular sums emanating from particular sources, which were transmitted to the banks on particular dates in specified forms and credited to particular accounts. Indeed the supporting evidence was that the returned cheques were in the possession of the U.S. Government.

Mr. Hill submitted that although the intention of the Request was manifest, if indeed the Court was of the view that there was language therein which could be considered too wide, vague or of a fishing character, which if allowed to stand could invalidate the Request, it was an appropriate case for the deletion of the offending words. Mr. Alberga while supporting the principle that the court in appropriate cases has power to sever one part of the request from the rest, submitted that in the instant case the documents requested were "classes of documents" and not "particular documents" and since the blue pencil rule could only be applied where it was possible to do so without the addition or alteration of a word, or of re-writing the Request, this was not a case in which the Court could use the blue pencil. The gravamen of Mr. Alberga's submission was that the Court could not use the blue pencil in the instant case as it would be impossible by such a procedure to transform "classes of documents" into "particular documents" and so bring them within the ambit of the relevant statutory provisions.

I need refer to no authority earlier than the Rio Tinto Zinc v. Westinghouse supra, for the proposition that the Court has an undoubted power to narrow down the ambit of the Request. Viscount Dilhorne expressed himself most strongly that this power of severance should be sparingly resorted to and only in specific circumstances. In commenting on the action taken by the Court of Appeal to salvage the Request, he said at page 453-454 of the Report.

> "In the Court of Appeal it was held that the words which so often appear in Schedule B "any memoranda, correspondence or other documents relating thereto" were too wide and the words 'relating thereto' were struck out. In their place the words 'referred to therein' were inserted."
> "That court thus recognized that a part of the letters was of a fishing character. Letters of request may take a variety of forms. Some, it may clearly appear, are wholly directed to the obtaining of evidence; some it may clearly appear are not; one part of a request may be for evidence and the remainder not. The language of others may be such that it is not possible with any degree of certainity to decide into which category they fall. If it is clear that part of the request is for the obtaining of evidence and that part is severable from the rest, it might be right to hold that that part satisfies section 1 of the 1975 Act. If it is clear that the request is substantially for the obtaining of evidence although a minor part is not, again it might be right to hold that the barrier imposed by that section was passed. The order made by the court could ignore the fishing part."

As I have already indicated I am of the view that the substantial request was one for "particular documents" within the meaning of the Schedule to the Imperial Order. The words "all other books, documents and papers" are too wide as they could lead to a fishing expedition through the entire accounts of the subjects of the Request. I am also of the view that the words "including all records" add nothing to the wide words "all other books, documents and papers" but that they fall in the same category and are likely to lead to a fishing expedition. These surplus words are clearly severable from the remainder of the Request. They form but a minor part of that Request and they ought to be deleted. Upon their deletion the Request remains gramatically agreeable and fully understandable without the necessity for the addition of any words whatever.

I turn now to consider the question of the Request for Inspection of the relevant bankers' books as contained in the amended summons. There was no mention of a request for Inspection in either the original or the amended Letter of Request. However, it is undoubted law that the Grand Court has power on the application of a party to legal proceedings to order that such a party be at liberty to inspect and take copies of any matter in a bankers' books. This is so by virtue of section 8 of the Evidence Act but such power to inspect is made subject, inter alia, to the Confidential Relationships Law. The reason for permitting inspection before trial is well set out in the judgment of Scrutton L.J. in Waterhouse v. Wilson Barker (1924) 2 K.B. 759; 1924 All E.R. Rep. 777. There he said:-

> "The power to inspect was given to any party, and there was no need for him to give notice to the other party, unless the Judge ordered him to give such notice. It appears to me that the primary object of the Act (Bankers' Books Evidence Act 1879) was to amed the law of evidence as to proof of matters recorded in bankers' books, and incidentally to facilitate proof by giving the person desiring to prove such transactions a right to see the books in order to extract the requisite evidence ..... I cannot think it was intended that the trial must commence before he could inspect and get copies and that an adjournment must take place to enable him to get his evidence."

This power of inspection is therefore ancillary to and facilitative of the primary order for discovery. In answer to the contention that inspection could only be considered at all if it formed part of the Request, I would say that the provision in section 2 (1) of the Schedule to the Imperial Order is wide enough to cover this ancillary and supportive question. The Grand Court is by this section expressly empowered to order appropriate procedures for giving effect to the Request which can include an order for "a person to take appropriate steps". If an order for inspection of a bankers' books has never been considered as an additional right of discovery, but merely facilitative of it, why on principle should a Court preclude itself from the jurisdiction to make such an order within the safeguards provided by the Evidence Act?

Attention must be directed to the fact that "discovery of documents" under sections 2 and 5 of the Schedule of the Imperial Order is treated quite separately from the "Inspection of property". Section 5 (2) (c) supra did not

seek to set out the procedure to be followed when taking evidence from a witness orally or in writing, nor did it place any limitation upon the common law position dealing with discovery of documents. Although discovery and inspection are dealt with under separate sections of the Evidence Act, in their interpretation the Courts have treated insepction as the vehicle by which the documents required for production in evidence through discovery can be ascertained. In Arnott v. Hayes (1887) 36 Ch. D. 731 at 737: Cotton L.J. speaking of section 7 of the Bankers' Books Evidence Act 1879 said:

> "Then it enables copies of the entries to be given in evidence. How can the suitor know what entries are wanted? Only by examination of the books, and though this order gives a wider power of inspection that a suitor had before, it is an inspection for the very purposes of the Act. It was urged and I was at first struck by the observation, that this is making the Act give a power of discovery. But that is a fallacy. This is not giving the Plaintiff discovery from the Defendant to assist the Plaintiff's case, but giving him power of examination for the purposes of ascertaining what copies he will require for the purpose of being put in evidence."

Fry L.J. was equally explicit as to the nature of inspection under the Act. In his concurring speech at page 739 he said:

> "Then as to the general consideration of the Act, it is said that this order gives the Plaintiff a discovery of documents which he has no right to inspect. But this inspection is necessary for the purposes of the Act. Before the Act it was necessary to call the Banker by subpoena duces tecum, and the party could not see the Books till they were put in. The books are not now to be produced, but copies are to be used. How are copies to be obtained? The party requiring them cannot call on his adversary for copies; he therefore must himself make a copy, and he must have liberty to look at the books for that purpose."

Where the letters rogatory are in respect of criminal proceedings, the court is not empowered to order the "inspection, photographing, preservation, custody or detention of any property". This is so by virtue of sections 2 (2) (c) and 5 (1) (c) of the Schedule to the Imperial Order, However, "documents" are given specific and peculiar treatment under the Schedule, and are not be included in the general term "any property" in section 2 (2) (c). The express power which is given to the Court by sections 2 (2) (b) and 5 (1) (c) to order

the production of documents in criminal cases, in order to be effective, must include a power in the court to order inspection prior to trial. In the instant case special cause existed under section 7 of the Evidence Law for the court to issue orders for the bankers to produce their books and there was sufficient evidence before the learned Chief Justice that the defendants named in the Indictment control the companies in respect of whose accounts discovery was sought. Had the learned trial judge construed the relevant statutory provisions as enabling him to make orders for the inspection of the documents requested, I entertain no doubt that he would have exercised his discretion to make the appropriate orders.

It is not the practice in the Courts of the Cayman Islands to permit judicial proceedings to be video-taped; but at the same time there is neither statutory prohibition nor judicial authority to the contrary. We were referred to the practice in other jurisdictions and to reported cases in which orders for video-taping of proceedings before examiners were made. There is an article in the Australian Law Journal - Volume 48 p. 337 - 338 of July 1974 on the topic of Video-Tape Trials in which the author listed five purposes for which he advocated that the Australian Courts would make use of video-taped trials. These included:

> "To record evidence given abroad on commission, to be reviewed by the trial court in conjunction with the transcripts of such evidence,"

and:

> "Ideally, it would of course be an advantage for an appellate court to have available a video-tape record of the trial under appeal, in addition to the transcript of evidence contained in the appeal book."

His Honour Judge Locke sitting in the Country Court of the Judicial District of York Canada, in the case of the U.S.A. vs. General Electric Co., et al heard on November 19, 1980, made an order for the video-taping of evidence although no request therefor was contained in the letter of Request. He held that the question of video-taping was a matter of procedure and not one of substantive law.

After some hesitation the Supreme Court of Bermuda in proceedings with a similar genesis as the Request in the instant case ordered that the proceedings before an examiner in that country be video-taped.

In section 2 (3) of the Imperial Order it is provided that:

> "An order under this section shall not require any particular steps to be taken unless they are steps which can be required to be taken by way of obtaining evidence for the purposes of civil proceedings in the court making the order (whether or not proceedings of the same description as those to which the application for the order relates); but this subsection shall not preclude the making of an order requiring a person to give testimony (either orally or in writing) otherwise than on oath where this is asked for by the requesting court."

Order 70 Rule 4 amplifies the procedure for the examination of witnesses by providing that subject to the question of privilege the examination shall be taken in manner provided by Order 39 rules 5 - 10 and 11 (1) to (3). The learned authors of Halsburys Laws, 4th Edition, Volume 17 at paragraph 329 in commenting upon the above statutory and regulatory provisions say that the examination is to be taken as in the case of an ordinary examination out of court:

> "i.e. in the manner provided by R.S.C. order 39 rr 5 - 10, 11 (1) - (3) -- which apply with necessary modifications. The rules of evidence applicable in the foreign court should be applied where they are known, and even where they are not known the strict rules of English Law of evidence should be relaxed so as to admit whatever questions may be reasonably expected to throw light upon the matter in issue."

said
As I/earlier, there is no statute either permitting or inhibiting the Grand Court from ordering that the examination of the witnesses be video-taped. Both the original and the amended letter of Request contained an application that the proceedings be video-taped. When one considers that it is permissible to relax the strict rules of evidence applicable in an English Court in an examination conducted as a result of an order made on a Letter of Request expressly to assist the foreign court, is there any principle which would prohibit the video-taping of the proceedings at the request of the foreign court where that is the precise form of assistance which that court needs? During the argument the Court was informed by Counsel that without the video-tapes the evidence taken on an examination would be worthless in the U.S. Court. The advantages of video-taping were conceded in argument, that is to say, video-tapes bring the witnesses to life and show their demeanour to the tribunal which eventually has the

responsibility to determine questions of fact.

I am of the view that video-taping as requested is a matter of procedure and as this procedure is not expressly prohibited by any of the provisions of the Imperial Order it was open to the Judge of the Grand Court who has power to regulate the proceedings of his Court, to make an order for the proceedings to be video-taped. When the hearing before the Examiner subsequently takes place, a witness is privileged to object to being video-taped if, in his opinion having regard to his particular circumstances, the video-taping of his evidence would expose him to danger to life or liberty. It would then be for the Examiner to rule on the substantive objection I am of the view that the learned Chief Justice adopted too narrow a construction of the requisite statutory provisions referred to by him in his judgment and was in error when he concluded that he had no jurisdiction to order video-taping.

The final question with which I propose to deal on this appeal, concerns the witness Challice. He had left the jurisdiction of the Cayman Islands after the hearing of the original application on March 19, 1982. The allegation then was that he had relevant information touching the Request. Considerations peculiar to Bankers which form the subject matter of sections 7 and 8 of the Evidence Act, do not apply to Mr. Challice, an employee of the bank, who was required to give evidence in his personal capacity. The information which was required of Mr. Challice fell within the provisions of the Confidential Relationships Law and he was bound to comply with its provisions. Section 3A (1) of the Act has extra-territorial effect. The Grand Court of the Cayman Islands has jurisdiction to try a person of any nationality who, being possessed of confidential information within the meaning of that statute, discloses that information anywhere in the world without the prior permission and under the stipulations of the Grand Court. It is in material that Mr. Challice who continued to be an employee of Barclays Bank International Limited had left Cayman before the Grand Court handed down its decision. If an order was made ny the Court he could elect to obey it. A court with jurisdiction to make an order does not contemplate that the person to whom

that order is issued will refuse to obey. If Mr. Challice chose to disobey the order he would be in contempt of court with all its consequences should he ever set foot again on Caymanian territory. The order sought in respect of Mr. Challice in the form amended on Appeal, ought to issue.

For these reasons I concurred in the decision which was handed down on June 4, that the appeal should be allowed and concurred in the order proposed by the learned President (Ag.)

WHITE J. A.

On June 4, 1982 I expressed my view that the appeal should be allowed. I have read the reasons given by Rowe J.A. for allowing the appeal. I agree with them and do not wish to add anything.

KERR, P. (AG.):

Rowe, J.A. has expressed fully and with careful lucidity his reasons for concurring in the order which we made on June 4. I am in agreement with his reasons and his conclusions. For completion I append hereto the form of the order made in disposition of the appeal.

> "IT IS HEREBY ORDERED that David Challice of Barclays Bank International Limited - Grand Cayman; Edwin Gilmour of Barclays Bank International Limited - Grand Cayman; Cyrus Regnart of Bank of Nova Scotia - Grand Cayman; W. Bayko and/or Tony Connolly of Bank of Nova Scotia - Grand Cayman do attend before the Honourable Gerard D. Reilly, who is hereby appointed Commissioner, on Monday, the 5th day of July 1982, at 10:00 o'clock in the forenoon, at the Board Room of the offices of Messrs. A. Steve McField and Associates, George Town, Grand Cayman, or such other day and time as the said Commissioner may appoint, and do there submit to be examined upon oath or affirmation, touching the testimony so required and relating to the matters set forth in the LETTERS OF REQUEST for International Judicial Assistance of the United States Court for the District of Columbia, and in the Affidavit of John D. Arterberry, attached to the Affidavit of A. Steve McField filed herein and marked as Exhibit ASM 'I'.
>
> And, special cause being shown, namely that an Order is necessary in order to give effect to the Request of the United States District Court for the District of Columbia, IT IS FURTHER ORDERED:
>
> (i) that David Challice do appear and give evidence on all matters related to the receipt and disposition of the sum of $294,000 which funds were credited to the account or accounts of International Resource Management Consultants at Barclays Bank International Limited - Grand Cayman by means of wire transfer of $200,000 on or about June 27, 1977 and two checks ($44,000 and $50,000) payable to Heidi Carver and deposited to the said account or accounts on or about November 4, 1977.
>
> (ii) that Edwin Gilmour, the proper officer of Barclays International Limited - Grand Cayman, as custodian of records do produce all correspondence, ledgers, day books, account books, used in the ordinary course of business relating to the account or accounts held by International Resource Management Consultants,

"relating to the receipt of $294,000 which funds were credited to the account or accounts by means of a wire transfer of $200,000 on or about June 27, 1977, and two checks ($44,000 and $50,000) payable to Heidi Carver and deposited into the account or accounts on or about November 4, 1977 and of the subsequent disposition of the said funds, and that the said Edwin Gilmour of Barclays Bank International Limited do appear to prove the relevant matters, transactions and accounts recorded in their records.

(iii) that Cyrus Regnart of Bank of Nova Scotia - Grand Cayman do produce all correspondence, ledgers, day books, account books used in the ordinary course of business relating to the account or accounts held by Redcon Limited relating to the receipt of $500,000 which funds were credited to the account or accounts by means of three checks ($300,000 $100,000;&$100,000) payable to Redcon and deposited into the account or accounts on or about November 8, 1977 and the subsequent disposition of the said funds, and that the said Cyrus Regnart of Bank of Nova Scotia do appear to prove the relevant matters, transactions and accounts recorded in their records.

(iv) that Tony Connolly and/or W. Bayko the proper officers of the Bank of Nova Scotia as custodian of records do produce all correspondence, ledgers, day books, account books used in the ordinary course of business relating to the account or accounts held by Redcon Limited relating to the -receipt of $500,000 which funds were credited to the account of accounts by means of three checks ($300,000; $100,000 and $100,000) payable to Redcon and deposited into the account or accounts on or about November 8, 1977 and the subsequent disposition of the said funds, and that the said Tony Connolly and/or W. Bayko of Bank of Nova Scotia do appear to prove the relevant matters, transactions and accounts recorded in their records.

AND IT IS FURTHER ORDERED that the said witnesses do apply to the Grand Court pursuant to Section 3 A of the Confidential Relationships (Preservation) Law for directions as to manner of giving evidence and the production and inspection of the said documents within seven days of the service of the said order herein.

AND IT IS FURTHER ORDERED that John D. Arterberry, Attorney, United States Department of Justice, or any other lawful representative of The United States Department of

"Justice, or any other lawful representative of The United States of America, is hereby authorized to inspect and take copies of the said documents to be produced by the said witnesses herein.

AND IT IS FURTHER ORDERED, in accordance with the Request of Her Honour Judge Norma Holloway Johnson, contained in the Request for International Judicial Assistance, that a verbatim stenographic recording be made of the said evidence and that the proceedings in respect thereof be videotaped by means of videotape recording to be supplied by the authorities of The United States of America.

AND IT IS FURTHER ORDERED that the said videotape recordings be neither edited nor copied, without leave of Her Honour Judge Norma Holloway Johnson, or such other judicial authority as may be appropriate in the said United States of America.

AND IT IS FURTHER ORDERED, in accordance with the said Request of Her Honour Judge Norma Holloway Johnson, that the taking of said evidence be governed by the Federal Rules of Evidence and Procedure, save that any of the said witnesses may refuse to answer any question tending to criminate himself; AND FURTHER, that all evidentiary objections under the laws of The United States of America shall be noted and preserved for the trial court as provided in Rule 30 (c), Federal Rules of Civil Procedure.

AND IT IS FURTHER ORDERED that after the evidence has been transcribed and recorded as aforesaid, it be filed in the Registry of the Grand Court and that the Clerk of the Grand Court do forward said transcripts, exhibits and videotape recordings, together with a copy of this Order to the United States District Court for the District of Columbia, in accordance with the Grand Court (Foreign Process) Rules 1977.

AND FURTHER, that this order be served on the said witnesses and the Attorney General of the Cayman Islands."