THE HIGH COURT
JUDICIAL REVIEW

2004 No.357 J.R.

BETWEEN

MARCEL BERNARUS JOHANNES VOLKERING,
BASTIAAN PAUL MOSTERD
CAROLUS NIOLAAS MARIA GROENEWEGEN
AND BEHEERSMIJ HELLING BV

APPLICANTS

AND
DISTRICT JUDGE GERARD HAUGHTON
AND THE MINISTER FOR JUSTICE EQUALITY AND LAW REFORM

RESPONDENTS

Judgment of Mr.Justice Roderick Murphy dated the 15th day of July, 2005.

1. Issue
The Office of the Public Prosecutor at the District Court of Breda in the Netherlands had requested that certain evidence be taken in aid of a Dutch judicial investigation into the alleged evasion of corporation tax by a company called Flugel N.V.("Flugel") which is involved in the manufacture and sale of an alcoholic beverage.The applicants, whom it was alleged were closely associated with that company, had been identified as suspects in that investigation.It was alleged that licence fees were wrongly paid by Flugel to an Irish registered company called International Licensing Limited ("ILS"), thereby improperly lowering Flugel's profits and its liability to corporation tax.It was further alleged that those licence fee payments were made into a bank account held by ILS at the Bank of Ireland in Dublin.That account was the subject of the application before District Judge Haughton who had been nominated by the Minister for Justice under s.51 of the Criminal Justice Act, 1994 (hereinafter "the 1994 Act").The provision, in conjunction with the Second Schedule to that Act, establishes a procedure for the taking of evidence within the State for use in a criminal investigation or prosecution in another jurisdiction.

The applicants sought an order of *certiorari* to quash District Judge Gerard Haughton's decisions of 8th March and 31st March, 2004, regarding the receiving of evidence requested.The evidence consisted of documents being bank account opening documentation (exhibit "A") and banker's files with correspondence (exhibit "C").There was no issue in relation to the receipt of exhibit "B" which were copies of the relevant statements of the applicants held by the Bank of Ireland.

Judge Haughton had received "A" and "C" on the ground that the documents constituted an entry in a banker's book, such as would enable them to be proved within the exception to the best evidence rule constituted by the terms of the Bankers' Books Evidence Act, 1879, as amended.

There is no issue with regard to the Minister nominating a judge of the District Court "to receive such of the evidence to which the request relates as may appear to the judge to be appropriate for the purpose of giving effect to the request".

In addition no issue arises in the present application regarding the Minister being satisfied that an offence under the law of the Netherlands has been committed or that there are reasonable grounds for suspecting that such an offence has been committed and that proceedings in respect of that offence have been instituted in the Netherlands or that an investigation into that offence has been carried on there.

The issue is a net one: whether evidence received by the learned District Judge is restricted by reference to the Bankers' Books Evidence Act, 1879, as amended.

"Evidence" is defined to include documents and other articles sub-s.4(4) of s.51 of the 1994 Act.Is a nominated judge of the District Court in the context of a request for assistance in obtaining bank evidence in connection with criminal proceedings or in connection with criminal investigation limited by reference to the Bankers' Books Evidence Act, 1879, as amended.Alternatively, is the term "evidence" in the 1994 Act such as appears to the nominated District Judge to be appropriate for the purpose of giving effect to the request.

2. Grounds for judicial review
The applicants were given leave by Quirke J.on 26th April, 2004 to apply for judicial review on the following four grounds:

> (e) (i)1. The first respondent is a judge of the District Court, who it is claimed was nominated by the second respondent by notice in writing, pursuant to the terms of section 51(2) of the Criminal Justice Act, 1994, to receive certain evidence requested by the Office of the Public Prosecutor at the District Court of Breda in the Netherlands or the Cabinet Examining Judge as Breda in the Netherlands or both, and identified in a letter of request dated the 8th July, 2003 and an additional letter of request dated the 16th December, 2003.
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> 2. At a hearing before the first respondent on the 8th March, 2004, the second respondent sought to adduce documentary evidence described as 'account opening documentation' in respect of an identified bank account held with the Bank of Ireland comprising, *inter alia*, a mandate for the operation of the account; a Director's resolution, which is a list of signatories on the account; a second mandate; non- resident declaration; a list of beneficial owners of interests; a certificate of incorporation; memorandum and articles of association and beneficial ownership details.The second respondent argued, and the first respondent accepted over the objection of the applicants, that each of these documents constituted *an entry in a banker's book* such as would render them admissible in evidence under the exception to the best evidence rule provided under sections 4 and 5 of the Bankers' Books Evidence Act, 1879, as amended.The first respondent allowed the said documents to be admitted in evidence and identified as "Exhibit A".
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> 3. At a hearing before the first respondent on the 31st March, 2004, the second respondent sought to adduce documentary evidence described as 'the bank's file in relation to the particular customer and the particular bank account' comprising correspondence between the purported account holder and the bank.The second respondent argued, and the first respondent accepted over the objection of the applicants, that each of these documents constituted *an entry in a banker's book* such as would render them admissible in evidence under the exception to the best evidence rule provided under sections 4 and 5 of the Bankers' Books Evidence Act, 1879, as amended.The first respondent allowed the said

documents to be admitted in evidence and identified as "Exhibit C".

4. The said documents do not fall within the definition of *an entry in a banker's book*, properly construed, as the said decisions were wrong in law.

3. Legislation

3.1 The Criminal Justice Act, 1994 made provision for the recovery of the proceeds of drug trafficking and other offences.It created an offence of money laundering and made provision for international co-operation in respect of certain criminal law enforcement procedures and for the forfeiture of property used in the commission of crime.The Act implements Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering.Part VII updates existing criminal law procedure powers facilitating international mutual assistance in criminal investigations or prosecutions.The Act enables the State to ratify the Council of Europe Convention on Mutual Assistance in Criminal Matters (1959), the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (1990) and the Vienna Drugs Convention (1988).

Section 51 is a section under the general heading of International Co-operation.The section provides for the taking of evidence in the State for use outside the State and has been seen as setting in place a new procedure for the taking of evidence for such purpose.While there would appear to be no qualification restricting the operation of the procedure in the case of political offences, as is the case with the Extradition Acts, it requires provision to be made by the requesting State that any evidence that may be furnished would not be used for any purpose other than that specified in the request (see s.51(5)).Indeed, sub-s.7 repeals certain sections of the Extradition Acts in this regard.

The Second Schedule to the Act, which deals with the taking of evidence for use of outside State, has a supplementary provision as follows:

> "5. For the avoidance of doubt it is hereby declared that the Bankers' Books Evidence Act, 1879, applies to the proceedings as it applies to other proceedings before a court.."

This supplementary provision relates to the obtaining of evidence in the State in connection with criminal proceedings in a country or territory outside the State.

3.2 Bankers' Books Evidence Act, 1879, as amended

The following sections appear relevant:

> "3. Subject to the provisions of this Act, a copy of any entry in a Banker's Book shall in all legal proceedings be received as *prima facie* evidence of such entry, and of the matters, transactions and accounts therein recorded.
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> 4. A copy of an entry in a Banker's Book shall not be received in evidence under this Act unless it be first proved that the book was at the time of the making of the entry, one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody and control of the bank.
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> Such proof may be given by a partner or officer of the bank and may be given orally or by an affidavit sworn before any commissioner or person authorised to take affidavits.
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> 5. copy of an entry in a Banker's Book shall not be received in evidence under this Act unless it be further proved that the copy has been examined with the original entry and is correct.
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> Such proof shall be given by some person who has examined the copy with the original entry, and may be given either orally or on affidavit sworn before any commissioner or person authorised to take affidavits."

The schedule to the Bankers' Books Evidence (Amendment) Act, 1959 provides that:

> "(2) Expression in this Act relating to 'Bankers' Books' -
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> (a) include any records used in the ordinary business of a bank, or used in the transfer department of a bank acting as registrar of securities, whether comprised in bound volumes, loose-leaf binders or other loose-leaf filing systems, loose-leaf ledger sheets, pages, folios or cards, and
>
> (b) cover documents in manuscript, documents which are typed, printed, stencilled or created by any other mechanical or partially- mechanical process in use from time to time and documents which are produced by any photographic or photostatic process."

Section 131(2)(d) of the Central Bank Act, 1989 amends the definition as follows:

> "(a) Include any records used in the ordinary business of a bank, or used in the transfer department of a bank acting as registrar of securities, whether –
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> (i) comprised in bound volume, loose-leaf binders or other loose-leaf filing systems, loose-leaf ledger sheets, pages, folios or cards, or
>
> (ii) kept on microfilm, magnetic tape or in any non-legible form (by the use of electronics or otherwise) which are capable of being reproduced in a permanent, legible form."

The amendment from books to records used in the ordinary business of a bank in the 110 years since the 1879 Act reflects the revolution in record keeping and data processing.

4. Evidence regarding the documentation at issue

4.1 Mr.Donal Martin, Head of Accounts in the Treasury Department of the Bank of Ireland, appeared as a witness in the course of the application before District Judge Haughton.Mr.Martin confirmed that he brought with him documentation relating to the account at issue but did not claim any direct or first hand knowledge of any of the matters recorded in it.The documentation produced by

Mr.Martin and which it was sought to adduce in evidence consisted entirely of copy documentation and was divided into three categories.

Mr.Martin identified the first category of documents produced by him as follows:

> "I have a mandate for the operation of the account; a Director's resolution, which is a list of signatories on the account; a second mandate; non-resident declaration; a list of beneficial owners of interest; a certificate of incorporation; memorandum and articles of association and beneficial ownership details."That documentation was admitted in evidence over the objection of the applicants and given the designation "Exhibit A".

Mr.Martin produced a second category of documents in the form of bank statements.The witness explained that those statements had been printed out from what the witness described as "the electronic accounting system of the bank".They were described by him in the following terms:

> "Firstly, it is a statement on the account from opening, which is 3 October 1997, until the account was closed on 12 December 2000.It is a listing of all of the transactions, customer generated and otherwise, effectively debits and credits on each value and posting date on the account.There is also supplementary information in relation to payment information, funds coming in and out of the account."

No objection was taken to the admission of this material, once it had been properly proved under the 1879 Act.The applicants accept that it falls squarely within the definition of 'an entry in a banker's book' under s.3 of the 1879 Act.The bank statements concerned were duly admitted in evidence and given the designation "Exhibit B".

Mr.Martin produced a third category of documents.He accepted the description of them as coming 'within the umbrella title … of the bank's file in relation to the particular customer and the particular bank account'.The witness described the contents of that file as follows:

> "It is effectively correspondence between the customer and ourselves, and also correspondence from the customer secretary of ILS, International Licensing Services and ourselves."

Subject to the terms of ruling by District Judge Haughton, those documents were admitted into evidence over the objection of the applicants and were given the designation "Exhibit C".

4.2 In the hearing before the first respondent, objection was made on behalf of the applicants to the admission of that documentation in evidence on the basis that it did not, and could not, fall within the definition of 'an entry in a banker's book' such as to meet the threshold condition for the application of the 1879 Act.

The first respondent ruled as follows (in response to the submission in reply on behalf of the second respondent that the documentation did fall within the relevant statutory definition):

> "I accept that submission being the provisions of section 9, subsection 2 of the Act which says that:
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> > 'This Act related to banker's books [this is at paragraph (a)] includes any records used in the ordinary business of the bank.'
>
> It was part of the ordinary business of the bank to open accounts.It is a statutory obligation on the bank to have produced to it certain documentation in order to open those accounts for the bank to be able to prove compliance with legislation.The bank therefore must keep records in relation to the opening of accounts and other business to show compliance with these obligations.Any of those records to my mind, form part of the ordinary records or the records of [the] bank used in the ordinary business of the bank.
>
> I am satisfied that all of the account opening information including the production of the documentation for identification purposes by those opening bank accounts do form part of the records of the bank generated in the ordinary business of the bank."

4.3 In ruling on the applicant's objection, the first named respondent stated as follows:

> "I am satisfied that my ruling on the last occasion was correct.The letter from an account holder to a bank instructing the bank to make a transfer out of an account or to deal with an account which the bank otherwise would not be entitled to do without their authority is, in my view part of the books of the bank, just the same as a cheque is.A cheque is a document signed by an account holder giving the bank authority to deal with the account by transferring money out of it.No commercial organisation could exist and function in the current times without the facility of being able to write to, fax a bank or otherwise authorise a bank or similar facility to deal with accounts.We are not dealing with issues back in the 1870s.I accept that the Dadson case was in 1983 but again, as I say, there is a clear distinction between the letters referred to there and I would have no hesitation in holding that if one of the letters that Mr.Martin proposes to produce is a similar letter to the one produced in the *Dadson* case, I would have no hesitation in finding that it is inadmissible and not relevant.But I am satisfied, as I say, that insofar as letters directing matters to be done on the accounts, as I have described before, are admissible."

5. Submissions on behalf of the Applicants

5.1 Mr.Gardiner S.C.on behalf of the applicants referred to the reasons given by the first named respondent, as nominated judge of the District Court in allowing exhibits "A" and "C" as being bankers' books.Counsel submitted that the case presents a specific question of law about the proper interpretation of the term "entry in a banker's book" as is used in s.3 of the Bankers' Books Evidence Act, 1879, as amended, the question is, he submits, significant because s.3 of the 1879 Act creates a special statutory exception to the rule against hearsay or the best evidence rule, or both, whereby a copy of an entry in a banker's book may be received as prima facie evidence of its contents.

Counsel referred to the evidence of Mr.Martin with regard to the three exhibits and to the reasoning and decision of the learned District judge in relation thereto.

Counsel referred to the applicable law.In *O'C.v.P.C.D.*[1985] 265 at 273-4, Murphy J.had referred to the amendment of the 1879 Act by the 1959 Act by the inclusion of the word "record".That case considered *R.v.Jone*s [1978] 1 W.L.R.195 (letters not being records); to *R.v.Dadson* [1983] 77 Cr.App.R 91; *Barker v.Wilson* [1980] 1 W.L.R.884 and to *Williams v.Williams* [1998] 1 Q.B.161.

Counsel further referred to the Central Bank Act, 1989 extending the definition of record.

It was submitted that the application of the foregoing definition of 'an entry in a banker's book' to the documentation at issue in this case leads to the same conclusion as was reached in both *O'C v.P.C.D.*and *Williams v.Williams* – i.e.that the documentation concerned does not fall within the terms of the Bankers' Books Evidence Act, 1879.

As noted by the court in *O'C v.P.C.D.*the question of whether letters contained in a bank correspondence file could be construed as 'bankers' books' was dealt with by the English Court of Appeal in the 1983 case of *Reg.v.Dadson*.The letters at issue in that case were two copy letters from the bank concerned to the appellant in that case.Each of those letters related to a separate cheque drawn by the appellant on his account, and each requested that the cheque concerned should be represented only after sufficient funds had been lodged in his account to meet it.In giving judgment for that court (composed of Lord Justice Watkins, Mrs.Justice Heilbron and Sir John Thompson), Heibron J.stated the position in law as follows:

> "Whilst the Bankers' Evidence Act enables evidence to be admissible in a court by the production of copies, rather than originals, it does so provided only that the book, one of the types referred to in that section, is one of the ordinary books of record of the bank, and the entry was made in the ordinary course of business.It is therefore manifest that those letters could not be brought within the clearly expressed language of that Act.They are not 'bankers' books' and in the judgment of this Court they should not have been admitted."

In the subsequent English High Court decision in *Barker v.Wilson* [1980] 1 W.L.R.884, which is not cited in *O'C v.P.C.D.*, it was held that the definition of "bankers' books" in s.9 of the Act and the phrase "a copy of an entry in a bankers' book" in s.4 were wide enough to include any form of permanent record kept by the bank of transactions relating to the bank's business; and that, accordingly, where microfilm was used by a bank to record the payment of cheques by photographing the names of the payee and other matters, the microfilm was itself an entry in a banker's book.That decision seems entirely uncontroversial within its terms, i.e.that the microfilm records of a bank may be proved within the terms of the 1879 Act just as may be the records stored in a bank's electronic accounting system.But it cannot be held to establish that any document held by a bank that has been produced by way of photograph or photocopy and which the bank considers it desirable to hold for regulatory or any other non-record purposes may be held to come within the rubric of the 1879 Act.

The analysis which Murphy J.set out in *O'C v P.C.D.*finds additional support in the subsequent English Court of Appeal decision in *Williams v.Williams* [1988] 1 Q.B.161.In that case the documents at issue were paid cheques and credit slips relating to specific accounts with a named bank.It was the practice of the bank concerned to retain paid cheques and credit slips in unsorted bundles in the branch at which the relevant accounts were held.Having set out the provisions of the 1879 statute as originally enacted, the Court of Appeal (per Donaldson M.R., with whom Parker L.J.and Waller J.concurred) dealt with its evolution in the United Kingdom in the following way:

> "The Act in this form clearly contemplated that the banks had a series of books of various kinds which, in the course of the ordinary business of the bank, were in everyday use in that clerks made entries, that is to say, wrote in them.The transfer of any of those books to the court, with a consequent inability to make such entries and indeed to consult the books, would have been a very considerable inconvenience.Hence the power to provide certified copies not of the books, but of the relevant entries in the books.However, there was no need for this power to extend, and it did not extend, to papers (including cheques and paying-in slips) which were retained in the bank's possession, but did not constitute an 'entry in a banker's book.'
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> In 1979 Parliament recognised that banks had replaced 'books' with more sophisticated forms of 'entry' recording 'matters, transactions and accounts' and by section 51(1) of, and paragraph 1 of Schedule 6 to, the Banking Act, 1979, it amended the Act of 1879 by substituting a new definition of 'bankers' books' in the following terms:
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> > '9(2) Expressions in this Act relating to 'bankers' books' include ledgers, day books, cash books, account books and other records used in the ordinary business of the bank, whether those records are in written form or are kept on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval mechanism.'
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> However, and this was regarded by counsel as highly significant, Parliament did not amend sections 3, 4 and 5 of the Act of 1879 which continued to refer to 'a copy of an entry in a banker's book'.The Parliamentary intention was, therefore, that section 3, incorporating the new definition should read: '… a copy of any entry in a ledger, day book, cash book, account book or other record used in the ordinary business of the bank, whether those records are in written form or are kept on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval mechanism shall in all legal proceedings be received as prima facie evidence of such entry and of the matters, transactions and accounts therein recorded.
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> Sections 4 and 5 fall to be construed similarly.
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> …
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> In this situation, Mr.Ryder, appearing for the applicant, has to submit, and does submit, that the bundles of cheques and paying-in slips constitute bankers' books, within the modern definition and that adding each cheque or paying-in slip to the bundle constitutes the making of an entry in those books.Whilst I would be prepared to accept that the cheques constitute part of the bank's records used in the ordinary business of the bank (*Reg.v.Jones (Benjamin)* [1978] 1 W.L.R.195, a case concerned with a bill of lading put in evidence under the Criminal Evidence Act, 1965), I am quite unable accept that adding an additional cheque or paying-in slip can be regarded as making an 'entry' in those records.Putting the matter in another way, 'other records' in the new definition has, I think, to be construed *ejusdem generic* with 'ledgers, day books, cash books and account books' and unsorted bundles of cheques and paying-in slips are not 'other records' within the meaning of the Act."

Counsel noted a number of points arising from the *dicta* just quoted.First, ss.3 and 4 of the 1879 Act remain unamended in this jurisdiction, just as they do in the United Kingdom.Second, applying the exercise conducted by Donaldson M.R.to the Act as it applies

in this jurisdiction (i.e.inserting the amended words of s.9 into s.3 as the operative section of the 1879 Act) provides the following result:

> "A copy of an entry in a banker's book [to include: (a) any records used in the ordinary business of a bank … whether (i) comprised in bound volume, loose-leaf binders or other loose-leaf filing systems, loose-leaf ledger sheets, pages, folios or cards or (ii) kept on microfilm, magnetic tape or in any non-legible form (by the use of electronics or otherwise) which is capable of being reproduced in a permanent legible form, and (b) covers documents in manuscript, documents which are printed typed, printed or stencilled or created by any other mechanical or partly mechanical process in use from time to time and documents which are produced by any photographic of photostatic process.] shall in all legal proceedings be received as *prima facie* evidence of such entry, and of the matters, transactions and accounts therein recorded."

The applicants contend that neither the documents in Exhibit A nor those in Exhibit C fall within the definition of 'an entry in a banker's book' properly construed and that, accordingly, the decision to permit them to be adduced in evidence pursuant to the terms of s.3 of the 1879 Act was wrong in law.

Counsel submitted that, while the Supreme Court has found that the s.51 evidence gathering process is not an administration of justice (see there could be no suggestion that provisions of the 1879 Act *Salinas de Gortari v.Smithwick & Anor*.[1999] 4 I.R.223 at 227 *per* Denham J.(Barrington and Murphy JJ.concurring)), do not, or do not strictly, apply in an application under the 1994 Act, since para.5 of the Second Schedule to the 1994 Act expressly states:

> "For the avoidance of doubt it is hereby declared that the Bankers' Books Evidence Act, 1879, applies to the proceedings as it applies to other proceedings before a court."

5.2 It was submitted that the foregoing analysis had been based on a fundamental misconception of the purpose and operation of the 1879 Act.The Act was not designed, nor does it operate, to prove compliance by a bank with its regulatory obligations.If a bank wishes to establish that it has complied with those obligations, it may readily do so by direct evidence.The bank's witness, Mr.Martin, conceded in cross-examination that what he had in mind in referring to the bank's legal obligations, were the measures it was obliged to take to prevent money laundering pursuant to the provisions of the Criminal Justice Act, 1994.The obligation imposed on financial institutions, including banks, by s.32(3) of the Act is 'to take reasonable measures to establish the identity of any person for whom it proposes to provide a service' either on a continuing basis or in respect of a transaction or series of linked transactions amounting to at least IR£10,000 in value.It follows that each such financial institution may take whatever measures it decides are appropriate, subject to the requirement that such measures are reasonable.

Counsel submitted that if any issue were to arise concerning whether the measures taken by a bank to establish the identity of any customer were reasonable measures, the bank would be able to adduce direct evidence concerning the measures it had taken.It could produce the documents concerned in evidence (whether photocopied passport details, utility bills, company registration documentation, declarations of interest, sample signatures, comparison signatures or whatever) not as presumptive evidence of the truth or validity of the information contained in those documents under the 1879 Act, but as direct evidence that the bank, in order to comply with its regulatory obligations, had required such documentation to be provided by one of its customers and that it had been.There is no basis for asserting that any document required to be produced to it by any bank in respect of its own subjective interpretation of 'reasonable measures' to establish a customer's identity, thereby becomes an entry in an ordinary book of the bank.

Counsel stated that o accept any such assertion would be to drive a coach and four through the best evidence rule, far beyond the limited exception to that rule that the 1897 Act was designed to create.After all, where the terms of the Act apply, a copy document is not merely admitted in evidence as proof of the existence of the original; it is admitted in evidence as presumptive proof of the truth of its own contents.The idea of documents held on a bank file proving as secondary evidence matters of which the bank itself has no direct knowledge whatsoever, let alone any primary evidence to give, is absurd.It would go far beyond allowing the bank to prove matters arising in the course of its ordinary business – i.e.lodgements received, payments out made, transferred effected, cheques cleared or referred back and so on – and would allow the bank to prove matters it could not possibly know, such as the identity, signature, authority and nationality of persons and the constitutional structure and financial status of companies on whose purported behalf documentation has been submitted to the bank.Statements made in correspondence to the bank, concerning propositions of which the bank had no direct knowledge whatsoever, would become presumptive evidence of their own truth, once it could be established that the correspondence concerned had been received in the context of the bank's perception of its own regulatory obligations.

Moreover, many of the documents in the first category at issue in this case – such as the account mandate, the company resolution, and the company's constitutional documentation – had plainly been required for the legal protection or commercial security of the bank or of the customer, and could not have been required to be furnished by reference to any regulatory obligation whatsoever.

5.3 The second category of documents at issue in the application – i.e.those documents described as Exhibit C – were also admitted in evidence over the objection of the applicants.That category of documents was described by the relevant witness as comprising copies of the correspondence between the account holder and the bank held by the bank on a correspondence file.

5.4. It was submitted that the ruling regarding exhibit "C" (4.3 above) was misconceived.The second respondent was perfectly entitled in principle to avail of the exception to the best evidence or hearsay rule constituted by the 1879 Act which had been amended to take account of modern conditions and modern technology.Counsel referred to the amendment of the 1879 Act by the Central Bank Act, 1989, which allowed the provision of statements printed out from the relevant bank's electronic accounting system (exhibit "B").The question of expansively reinterpreting the 1879 statute to maintain its effectiveness or utility under modern conditions did not arise.

Counsel submitted that the real question remained that how broad an exception has the 1879 Act created to the operation of the best evidence or hearsay rule? That question has been considered at some length by both the High Court in this jurisdiction and the English Court of Appeal (the latter in respect of a no longer identical, but still broadly similar, provision).Mr.Gardner S.C.submitted the conclusion that those courts have come to was entirely at odds with the conclusion reached by the first respondent in this case.

The approach taken by District Judge Haughton, were it to be accepted or adopted, would lead to the following incongruous – if not absurd – result in his submission.District Judge Haughton appeared to find that the bank's witness (in this case, Mr.Martin) could prove in evidence the correspondence which the bank had received but could not prove in evidence any correspondence which the bank had sent (this latter conclusion apparently reached in order to reconcile his approach with that of the English Court of Appeal in *Dadson*).Since the 1879 Act operates to admit a document as presumptive evidence of the truth of its own contents, under District Judge Haughton's approach a bank would be unable to prove what it should know (i.e.the truth of the contents of its own

correspondence) but would be able to prove what it does not know at all or may even suspect to be false, (i.e.the truth of the contents of correspondence received by it).It is submitted that an interpretation of the law capable of leading to such a result could not be correct.

6. Submissions on behalf of the respondents

6.1 The essence of the applicants' submissions was that neither account opening documentation nor correspondence passing between the bank and the customer whose account was the subject of the inquiry by the foreign requesting State came within the definition of "bankers' books" as provided for in the Bankers' Books Evidence Act, 1879, as amended.

Miss Lacey, Barrister at Law, submitted on behalf of the second named respondent that the application for judicial review was not sustainable and there is not basis in law for the allegation that the respective orders made were not made within jurisdiction.

It was primarily submitted that the documents the subject matter of the proceedings came within the meaning of the Bankers' Books Evidence Act, 1879, as amended, and, secondly and without prejudice to the first submission, that if the documents do not come within the definition of "bankers' books" then the first named respondent was entitled to receive the documentation pursuant to his powers under Part VII, s.51 and the Second Schedule to the 1994 Act.

6.2 In relation to exhibit "A" it was necessary to refer to the original purpose for which the 1879 Act was passed.This was set out succinctly in the judgment of Sir Donaldson M.R.in *Williams v.Williams* at p.794:

> "The Act in this form clearly contemplated that the banks had a series of books of various kinds which, in the course of the ordinary business of the bank, were in everyday use in that clerks made entries, that is to say wrote, in them.The transfer of any of these books to the court, with a consequent inability to make such entries, and indeed to consult the books, would have been a very considerable inconvenience.Hence the power to provide certified copies, not of the books, but of the relevant entries in the books."

Modern amending legislation, in this jurisdiction as well as in the United Kingdom, had recognised that there have been vast changes to the manner in which modern banking is conducted and it is submitted that the statutory language used in the modernised definition – i.e."records used in the ordinary business of the bank" – both recognises and confirms that increased statutory obligations of necessity require its record keeping to be ever more extended.Of particular note in this regard are the requirements imposed upon a banking institution in this jurisdiction pursuant to the provisions of s.32 of the Criminal Justice Act, 1994, (as amended by s.2 of the Disclosure of Certain Information for Taxation and Other Purposes Act, 1996) to be fully aware of the personal details/identity of its customers and to retain such details for inspection.It is submitted that the retention of such "records" is capable of being construed as occurring in the ordinary course of the business of the bank.

Whilst such records may well be kept on computerised format, it was clear that in the instant case the bank retained account opening documentation consisting of documents relevant to the identity of the account holder and authorisations in relation to the account (e.g.authorised signatories) in a paper format.Counsel referred to the copy of the transcript of the evidence of Donal Martin, Head of Accounting with Bank of Ireland's International Division wherein the witness gave evidence as to the precise nature of the documentation comprising the account opening file.The first named respondent indicated his view that such file consisting of

> "loose-leaf documents containing records in relation to the opening of a bank account – surely they are books within the meaning of the Act.... The records used in the ordinary business of the bank.It must be part of the ordinary business of [the] bank to open accounts, it must be part of that process for the bank to have documentation for that purpose...."

Counsel for the applicants accepted that latter proposition to be so.

It was also submitted that the witness's evidence indicated compliance with the provisions of ss.4 and 5 of the 1879 Act, as amended.Aside from the witness stating that in his opinion the copies were extracted from books which he was of the opinion comprised the ordinary books of the bank, he further confirmed that the entries therein were made in the usual and ordinary course of the business of the bank, that the original was in the custody or control of the bank and further that he himself was responsible for the photocopying thereof which copies he had personally checked with the originals and was satisfied that the information contained therein was accurate.

It is submitted that Mr.Martin further elucidated the position of the bank in relation to the account opening documentation during the course of cross-examination by counsel for the applicants where it was put to him that account opening documentation was not part of the ordinary books of the bank.Mr.Martin did not accept this proposition.Counsel it is accepted that it was a matter of legal interpretation as to what constitutes a "record" for the purposes of the Act nevertheless the Court is obliged in interpreting legislation which specifically refers to the "ordinary business of a bank" to take cognisance of evidence given by a senior bank official as to that institution's record keeping and the role it plays in the business of the bank.In *Bank v.Wilson*, a decision of the English Divisional Court in 1980, Caulfield J., dealing with microfilm records, stated at p.287:

> "Therefore if in this particular case the books which are held by the bank in respect of the defendant's account are really a microfilm process of the transactions which the customer ... has carried out at his bank, then that microfilm itself is within the definition contained in section 9 of the Bankers' Books Evidence Act, 1879, although it would not be in ordinary language a book.A banker's book in ordinary language would not be called a book.A book is a word which is used in many contexts."

It is submitted that, against the background of the evidence of Mr.Martin, the first named respondent was correct in holding and reiterating that the account opening documentation constituted part of the ordinary books of the bank comprised as it was of the bank's records.

It is further submitted that the additional ground of objection raised by counsel for the applicants before the first named respondent – to wit that only such documents as had been generated by the bank itself could constitute records used in the ordinary course of the business of the bank – is equally unsustainable.It is submitted that the clear language of s.9 imposes no such restriction ("any records used in the ordinary business of a bank") and a construction imposing such a limitation would offend against the fundamental principles of statutory interpretation.Counsel at no stage referred to any judicial precedent for such a narrow principle of interpretation.In this regard the second named respondent referred to the case of *Barker v.Wilson* cited above where Bridge L.J.stated:

> "So construing the definition of 'bankers' books' and the phrase 'an entry in a banker's book' it seems to me that clearly

> both phrases are apt to include any form of permanent record kept by the bank of transactions relating to the bank's business, made by any of the methods which modern technology make available …"

6.3 The second named respondent's submissions in relation to Exhibit C
Counsel referred to the first named respondent's ruling in relation to this exhibit "C".The nature of the correspondence comprising this file was set out by the witness.

The essence of the applicants' submissions to the first named respondent in relation to Exhibit C – the bank file held by the bank pertaining to both the customer and the bank account and which comprised correspondence between the account holder and the bank – was that the correspondence was not a proper matter coming within the definition of bankers' books.Reliance was placed on a decision of the English Court of Appeal – *Reg.v.Dadson* [1983] 77 Cr.App.R 91, a case concerning the appellant's alleged criminal misuse of a cheque card which had been issued to him by his bank.At his trial copies of letters from the bank's correspondence file, written to him by the bank, were admitted in evidence under s.9 of the 1879 Act.He was convicted and appealed on the ground that the copy letters should not have been admitted in evidence.The Court of Appeal held:

> "While the Bankers' Books Evidence Act enables evidence to be admissible in a court by the production of copies, rather than the originals, it does so provided only that the book, one of the types referred to in that section, is one of the ordinary books of the bank, and the entry was made in the ordinary course of banking business.It is therefore manifest that these letters could not be brought within the clearly expressed language of that Act.They are not 'banker's books' and in the judgment of this Court they should not have been admitted." (at 93)

The respondent submits that it is of particular note that when the letters were admitted by the Recorder at Dadson's trial in the Crown Court the operating legislation was the original and unamended version of the wording of the 1879 Act – i.e."Expressions in this Act relating to 'bankers' books' include ledgers, day books, cash books, account books and all other books used in the ordinary business of the bank." It is immediately apparent that the court in that case was concerned not with the definition "and other **records** used in the ordinary business of the bank" but rather "all other **books** used in the ordinary business of the bank." In the circumstances the respondent submits (and leaving aside any argument in relation to the fact that this decision is not in any event binding on this Honourable Court) that its relevance to a modern definition of "bankers' books" is significantly decreased.

The case of *Dadson* was referred to in this jurisdiction in the case of *J.B.O'C.v.P.C.D.*[1985] I.R.265, a case dealing with the provisions of s.18 of the Finance Act, 1983 – to wit, an application by the Inspector of Taxes for a direction requiring the bank to furnish full particulars of all accounts maintained with the bank by the taxpayer as well as other information relating to the financial transactions of the taxpayer.Murphy J.dealt with the matter in the High Court and determined the main issue against the Inspector on the basis that his request for an order had not been made in compliance with the necessary statutory prerequisites.However, having determined that issue which essentially disposed of the matter before him, he nevertheless went on at p.271 to consider the extent of the information which a financial institution may be required to furnish under the aforesaid s.18.His comments are notably prefaced by the words – "… any further observations which I make are necessarily *obiter*".It is of further note that he again, at p.275 stated:

> "However, I repeat that the foregoing observations in relation to the meaning of the words 'books' are merely *obiter* and offered in deference to the arguments made by the parties and their request for guidance."

At p.273 Murphy J.had stated that he followed the views expressed by the Court of Appeal in England in *Reg.v.Jones* [1978] 1 W.L.R.195 to wit that a file of various letters from various people did not seem to that court to be something which could in any event properly be described as a record.He also noted that the court had expressed a similar view in *Dadson*.Counsel noted that the case of Jones referred to was not concerned with the Bankers' Books Evidence Act, 1879 but rather the English Criminal Evidence Act, 1965 and the admission into evidence of a bill of lading.

The Supreme Court, in dealing with the appeal, made no reference to the meaning of "records" or "bankers' books".

O'C V.D was referred to in the later case of *Larkins v.National Union of Mineworkers* [1985] I.R.671, a case arising out of the miners' strikes in England.The English High Court had imposed a Restraint Order against the first named defendant prohibiting it from instructing or urging any of its members to strike.The order was breached and a fine was imposed which was not paid.The Court appointed sequestrators over the property of the defendant and instructed them to prosecute proceedings in Ireland seeking the recovery of funds.They were also instructed to apply for any necessary interlocutory relief.An interim injunction was granted by Barrington J.which also included ordering Bank of Ireland Finance Limited to produce for the inspection of the sequestrators the bankers' books including correspondence or computer printouts from electronic recordings relating to any account of the first defendant held by the second defendant.

Whilst the judgment is essentially concerned with the sequestration process, Barrington J.held that the purpose of the Bankers' Books Evidence Acts was merely to facilitate bankers by allowing them in certain circumstances to prove the contents of some of their books by secondary evidence and that there was nothing in these Acts or in the decision of Murphy J.in *O'C v.D* to circumscribe the power of the High Court in an appropriate case to order the production or inspection of any of the bank's books, documents or computer printouts.He held, at p.695, that any submission to the contrary was based upon a misunderstanding of the purpose of the Bankers' Books Evidence Acts.It is also of note that in Banking and Security Law in Ireland, William Johnston, Butterworth's 1998, the author, in a footnote to para.3.07, states that the narrow meaning of "bankers' books" as applied by Murphy J.in O'C would be overtaken by the expanded definition of s.131(d) in the subsequently enacted Central Bank Act, 1989.

In the circumstances, the second named respondent submits that the correspondence file comprising Exhibit C was properly admitted by the first named respondent.

6.4 Counsel made further submissions in relation to the power of the first named respondent pursuant to the Criminal Justice Act, 1994.

Miss Lacey noted that Barrington J.in *Larkins* referred to the power of a court to Order production and inspection of bank documents and that such power is not curtailed but rather facilitated by the 1879 Act as amended.Such power to order production and inspection pursuant to s.7 has been considered, within the context of the Criminal Justice Act, 1994 provisions in relation to mutual assistance, in the case of *Gavin v.Judge Haughton and the Minister for Justice, Equality and Law Reform*, Unreported, Murphy J., 27th May, 2004.

Gavin dealt with a challenge by way of judicial review to the power of Judge Haughton to issue a witness summons under s.51 of the

1994 Act and a subsequent order made by him permitting the inspection of a bank account held by the applicant.Whilst various issues relating to the alleged unconstitutionality of s.51 were raised, the court also dealt with issues arising under the Bankers' Books Evidence Act.Murphy J.analysed the provisions of s.51 of the 1994 Act and in particular referred to the power of the District Judge pursuant to s.51(2) to receive "such of the evidence to which the request relates as may appear to the judge to be appropriate for the purpose of giving effect to the request.Murphy J.also referred to para.5 of the Second Schedule – i.e.the application of the 1879 Act to the s.51 proceedings.At para 11.5 of the judgment Murphy J.states as follows:

> "The applicant seeks an order of *certiorari* quashing the witness summons issued under s.51 of the Criminal Justice Act, 1994.That relates to the Second Schedule which gives the judge like powers for securing the attendance of a witness for the purpose of **the proceedings** as the District Court has for the purpose of any **other proceedings** before that court.**The proceedings** referred to are those which the judge of the District Court has been nominated to receive evidence to which the request for assistance relates and which appears to the judge to be appropriate for the purpose of giving effect to the request.It seems to me that the application and the Bankers' Books Evidence Act, 1879 referred to para.5 of the Second Schedule to the 1994 Act does not restrict but rather facilitates the implementation of the provisions of s.51 of that Act."

Later, at para 11.8 of the judgment he held:

> "It is clear that s.6 has no application.Section 6 applies when the bank is not a party.Clearly the bank is a party in these proceedings before the District Court.Moreover, the summons is not limited to the production of bankers' books as defined by the 1879 Act as amended by the Central Bank Act, 1979, s.131."

He then went on to note that in *O'C*, Murphy J.had interpreted s.18 of the Finance Act, 1983 in such a way that "books" did not extend to correspondence.It does not appear from the judgment that the case of *Larkins* was argued before him.He further held that:

> "the reference to the Second Schedule of the 1994 Act – 'taking of evidence for use outside the state' extends to the powers the District Court had under s.13 of the Petty Sessions (Ireland) Act, 1851 to issue a summons for the purpose of compelling the attendance of a witness, *subpoena and duces tecum*."

In refusing the relief sought, Murphy J.clearly favoured the submissions advanced on behalf of the Minister – that s.51 of the 1994 Act conferred a blank power which was not qualified by the provision of the 1879 Act and that the court was entitled to summons the bank to produce documents irrespective of the provisions of s.7.It had also been submitted to him that the bank did not object to the production of the documentation sought (as was the position in the instant case) and was present in court to give the evidence.

In the light of the judgment in *Gavin* and taking into consideration the general principles enunciated in the cases of *Salinas de Gortari and Jason Brady*, it was submitted that the applicant's case had proceeded on the basis of a fundamental misconception as to the procedure under the Act of 1994.Those procedures, as set out in detail above, are *sui generis* so as to enable the State to comply with its international obligations.It was submitted on behalf of the Minister in the case of *Brady* that the intention of the Convention on Mutual Assistance in Criminal Matters done at Strasbourg in 1959 is indicated at Article 1 of the Convention whereby the contracting parties undertook to afford to each other "the widest measure of mutual assistance in proceedings in respect of offences, the punishment of which, at the time of request for assistance falls within the jurisdiction of the judicial authorities of the requesting party".The Minister repeats that submission in the context of the instant case.Further, it is submitted that the plain words of s.51(2) – "as may appear to the judge to be appropriate for the purpose of giving effect to the request" – endows the judge with a broad power to receive such of the evidence as appears *to him* to be necessary for this jurisdiction to comply with a foreign request which fulfils all the prerequisite criteria as set out in that section.As stated by McGuinness J.in *Salinas de Gortari* at p.562 – "The procedure is one governed by statute and must be considered within the bounds of the statute … the question is of a specific statutory procedure in the context of the District Court."

In this context of *sui generis* McGuinness J.observed that it was not valid to compare the s.51 procedure with an actual trial or with the police investigative procedure prior to charge under the Criminal Justice Act, 1984 or with the taking of depositions in the District Court prior to sending an accused person for trial on indictment.

In this context the second named respondent also submitted, as per the opinion of Denham J.in *Salinas de Gortari* [1999] 4 I.R.223 at p.227, that the hearing before the first named respondent is "a gathering of evidence" for a Dutch magistrate.It is not the administration of justice nor is it any part of any criminal trial in Ireland.The first named respondent at all times acted within jurisdiction and the Orders the subject matter of these proceedings were properly and lawfully made by him in the exercise of his statutorily defined functions and in light of the specifics of the letter of request.In the circumstances counsel submitted that application was not sustainable.

7. Decision of the Court

7.1 The court is indebted to the extensive and helpful submissions of counsel.

7.2 The applicants claim relief by way of judicial review in relation to orders made by Judge Haughton, the first named respondent, on 8th and 31st March, 2004, in the context of mutual assistance proceedings pursuant to the provisions of the Criminal Justice Act, 1994 and the Second Schedule thereto.The orders of Judge Haughton were made in relation to two categories of documents which were sought to be handed over by an official of the Bank of Ireland who had attended the District Court on foot of a witness summons issued to him as a representative of the bank, pursuant to s.51 of the 1994 Act.

That Act implements international law principles of international mutual assistance in criminal matters.In particular it deals with requests for assistance in obtaining evidence in the State in connection with criminal proceedings that have been instituted or a criminal investigation which has been carried out in another State.The operation of the procedure to obtain such evidence is not encumbered by any rule of dual criminality – it is not a condition that the criminal proceedings in the requesting State correspond with an offence in the State.It is clear that mutual assistance does not have exactly the same effects as extradition where the rule of dual criminality applies.

Once the Minister is satisfied that an offence under the law of the requesting State has been committed or that there are reasonable grounds for suspecting that such an offence has been committed and that proceedings or an investigation into the offence has been carried out there, he may, if he thinks fit, by notice in writing nominate a judge of the District Court to "receive such of the evidence to which the request relates as may appear to the judge to be appropriate for the purpose of giving effect to the request".

There is no issue with regard to the Minister nominating a judge of the District Court "to receive such of the evidence to which the

request relates as may appear to the judge to be appropriate for the purpose of giving effect to the request”.“Evidence” includes documents and other articles.

In addition no issue arises in the present application regarding the Minister being satisfied that an offence under the law of the Netherlands has been committed or that there are reasonable grounds for suspecting that such an offence has been committed and that proceedings in respect of that offence have been instituted in the Netherlands or that an investigation into that offence has been carried on there.

The issue is a net one: whether evidence received by the learned District Judge is restricted by reference to the Bankers’ Books Evidence Act, 1879, as amended.

7.3 The application for judicial review focuses on bankers’ books.
The definition of bankers’ books has undergone development not alone in the specific amendments to the 1879 Act but also in relation to:

(a) s.18 of the Finance Acts, 1983 where “books” means, in addition to bankers’ books, certain records and documents;

(b) s.907 of the Tax Consolidation Act, 1997 which has the same extended definition, and

(c) s.3 of the Central Bank and Financial Services Authority of Ireland Act, 2003 which amends the Central Bank Act, 2003 which amends the Central Bank Act, 1942 in defining “record” as meaning: any record of information, however compiled, recorded or shared and includes:

> (a) any book, a register or other document containing information
>
> (b) any disk, tape or other article from which information is capable of being reproduced visually or orally.

Section 64(5) requires the bank to provide the auditor with full information, books and records.

We are only concerned with the amendments to the 1879 Act which does not go as far as the provision of “information” to be given to an auditor and with the definition of evidence in the 1994 Act.

Under the provisions of s.51(4) of the 1994 Act, “evidence” includes documents and other articles.The nominated District Judge is empowered to receive such of that evidence as appears to the judge to be appropriate for the purpose of giving effect to the request.

The definition of “bankers’ books” as amended by the Central Bank Act, 1989, s.131(d) includes:

> “Any records used in the ordinary business of a bank, …
>
> > (i) comprised in bound volumes, loose-leaf binders or other loose-leaf filing systems, loose-leaf ledger sheets, pages, folios or cards, or
> >
> > (ii) kept on microfilm, magnetic tape or in any non-legible form (by the use of electronics or otherwise) which is capable of being reproduced in a permanent legible form.”

The English Banking Act, 1979 defines “bankers’ books” as follows:

> “Section 9(2).Expressions in this Act relating to bankers’ books include ledgers, day books, cash books, account books and other records used in the ordinary business of the bank, whether these records are in written form or are kept on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval mechanism.”

Despite the different treatment of the amendments in 1979 from those in 1989 in this jurisdiction, both definitions refer essentially to records used in the ordinary business of the bank.The evolution from entries in bankers’ books in 1879 to records in 1989 is significant.

The decision of *Williams v.Williams* [1987] 3 W.L.R.790, held that, in line with the 1979 Act, the new definition of bankers’ books is:

> “A copy of any entry in any ledger, day book, cash book, account book or any other record used in the ordinary business of a bank whether those records are in written form or kept on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval mechanism shall in all legal proceedings be received as *prima facie* evidence of such entry and of the matters, transactions and accounts therein recorded.”

The court held that cheques and credit slips were not “other records” within the meaning of the Act.Sir John Donaldson M.R., at 168 of the judgment referred to cheques not being copied unless the cheques are rejected by the electronic reader/sorter.The court was prepared to accept that the cheques constituted part of the bank’s records using the ordinary business of the bank (*R.v.Jones (Benjamin)* [1978] 1 W.L.R.195, a case concerned with a bill of lading put in evidence under the Criminal Evidence Act, 1965).The court was unable to accept that adding an individual cheque or paying-in slip can be regarded as making an “entry” in those records.“Other records” in the new English definition had to be construed ejusdem generis by “ledgers, day books, cash books and account books”.Unsorted bundles of cheques and paying-in slips were not “other records” within the meaning of the Act.

The Irish amendment in 1959 places emphasis on “any records” used in the ordinary cause of business of a bank comprised in pages, folios and cards as well as in bound volumes or in any non-legible form capable of being reproduced in a permanent legible form.Accordingly, in contrast to what Sir John Donaldson M.R.termed the new definition in England, the Irish amendment would not appear to be constricted ejusdem generis by ledgers, day books, cash books and account books.

Johnson: Banking and Security Law in Ireland (Butterworth, 1998) at 3.07 noted that the definition was not all inclusive and might include any record in a bank provided it was done so in the ordinary business of the bank.

In s.18 of the Finance Act, 1983 in the context of information to be furnished by financial institutions, “books” means:

> (a) bankers’ books, within the meaning of the Bankers’ Books Evidence Acts, 1879 and 1959, and

(b) records and documents of persons referred to in section 7(4)5 of the Central Bank Act, 1971.The word "record" is not contained in the 1879 Act, nor is the term defined in the 1959 or the 1989 Act.The dictionary definitions indicate a written or other permanent account or statement, a register, report or minute (Cassell: Concise Dictionary, 1997, for example).

Correspondence emanating from the bank's customers has been recorded by the bank is, by definition, a record.During the hearings of the District Court the case was made on behalf of the applicants that none of the documents were records used in the ordinary course of business.While there would appear to be no evidence in relation to the analysis of individual documents and they were being recorded by the banks on microfilm or otherwise, Mr.Martin believed that correspondence formed came within the umbrella title of the bank's file in relation to the particular customer and the particular bank account.

It follows that English cases may not be entirely relevant.For example, it would seem that the 1989 definition is wider than the definition of bankers' books in *T v.Dadson* [1983] 71 Cr.App.R91 at 93.Letters written by a customer to the bank and forming part of the bank's correspondence file were held not to be "bankers' books" in *R.v.Dadson* in that case.

7.4 Even if the above were not a correct interpretation of the statutory amendment, it seems clear under the provisions of s.51 of the 1994 Act that a nominated District judge is entitled to receive such of the evidence to which the request relates as may appear to that judge to be appropriate for the *purpose of giving effect to the request*.The function of the judge is merely to receive not to prove the evidence.It is more an administration than a judicial function.Neither any defect in the summons (see *Gavin v.Judge Haughton*, Unreported decision of this Court of 27th May, 2004) nor any restrictive definition of bankers' books can take away the discretion of a nominated District judge to receive such of the evidence as that judge deems appropriate.

The import of para.5 of the Second Schedule to the Act enables the District judge to receive records of the bank used in the ordinary course of its business to be received by way of secondary evidence as provided for in the Bankers' Books Evidence Act, 1879, as amended.This does not limit the right of the District judge to receive evidence held by banks in relation to the request.

7.5 The learned District Judge did not act without jurisdiction.In the circumstances the court refuses the application for judicial review.