

—————

THE BANKERS' BOOKS EVIDENCE ACT OF 1879.
(43 Vic. No. 7.)

AS AMENDED BY

The Statute Law Revision Act of 1908 (8 Edw. VII. No. 18).

An Act to Amend the Law with reference to Bankers' Books Evidence.

[Assented to 16th September, 1879.]

[*Preamble repealed by The Statute Law Revision Act of 1908, s. 2, title Acts.*]

1. Short title.—This Act may be cited for all purposes as "*The Bankers' Books Evidence Act of 1879.*"

2. Interpretation clause. [39 & 40 Vic. c. 48 s. 2].—In this Act the following terms within inverted commas shall have the meanings set against them respectively that is to say—

“Bank” shall mean and include any person partnership corporation or company engaged in the ordinary business of banking by receiving deposits and issuing bills or notes payable to the bearer at sight or on demand and also any Government Savings Bank established under any law in force for the time being

“Legal Proceedings” shall include all proceedings whether preliminary or final in all Courts of Justice both criminal and civil and also all proceedings whether preliminary or final by way of arbitration examination of witnesses assessment of damages compensation or otherwise in which the person presiding over the same has power to administer an oath

“The Court” shall mean the court judge magistrate arbitrator or other person authorised to preside over the said legal proceedings for the time being and shall include all persons judges or officers having jurisdiction and authorised to preside over or to exercise judicial control over the said legal proceedings or the procedure or any steps therein

“A Judge” shall mean a judge of the Supreme Court of the Colony of Queensland or of any District Court thereof.

The Act referred to in the marginal notes to this and the other sections of this Act is the Bankers' Books Evidence Act, 1876, which has been repealed and replaced in England by the Bankers' Books Evidence Act, 1879 (42 & 43 Vic. c. 11), for which see Halsbury's Statutes of England, Vol. 8, p. 236. These portions of the marginal notes do not appear in the Act as enacted and have not been inserted by amendment.

District Courts were abolished by the repeal of the District Courts Acts by The Supreme Court Act of 1921, s. 3, title SUPREME COURT.

3. Entries in books by affidavit admissible in evidence. [39 & 40 Vic. c. 48 s. 3.]—From and after the commencement of this Act all entries in ledgers day books cash books and other account books of any bank shall be admissible in all legal proceedings as *primâ facie* evidence of the matters transactions and accounts recorded therein on proof being given by the affidavit in writing of one of the partners managers or superior officers of such bank or by other evidence that such ledgers day books cash books or other account books are or have been the ordinary books of such bank and that the said entries have been made in usual and ordinary course of business and that such books are in or come immediately from the custody or control of such bank

Provided always that in any legal proceedings to which any bank shall be a party the cheques bills promissory notes orders for payment of money and other vouchers from which the entries in the ledgers day books cash books or other account books adduced in evidence on behalf of such bank in such proceedings purport to have been made shall be also produced in addition to such entries and affidavit or other evidence

And the production of any cheques bills promissory notes orders for payment of money and other vouchers signed by or by some person duly authorised on behalf of the person firm or company whose account has been debited with the amount thereof respectively in any such book together with an entry verified by affidavit as aforesaid as to such book and as to such debit entry or with an entry proved by other evidence as aforesaid shall be *primâ facie* evidence of payment thereof respectively having been in fact made by the bank to or for the use of such person firm or company.

This section can only be availed of where s. 5, *post*, has been complied with. See *Union Bank v. Mason* (1900), 9 Q.L.J. 294. This Act applies to all books kept by the bank, whether or not they are in daily use, and also to the successors of the bank by whom the entries were made (*Idiots' Asylum v. Handysides* (1906), 22 T.L.R. 573).

For the effect of this Act on the law and practice as to discovery, see *Waterhouse v. Barker*, [1924] 2 K.B. 759.

For cases, see the English and Empire Digest, Vol. 3, pp. 307-309.

Bankers' Books Evidence Act of 1879. ss. 4-7.

4. Originals need not be produced. [39 & 40 Vic. c. 48 s. 4.]—Copies of all entries in any ledgers day books cash books or other account books used by any such bank may be proved in all legal proceedings as evidence of such entries without production of the originals by the oath of a person who has examined the same stating the fact of the said examination and that the copies sought to be put in evidence are correct.

This section does not render copies admissible where the original entry would not be admissible (*Hart v. Minister for Lands* (1901), 1 N.S.W.S.R. 133).

Under a somewhat similar section it was held that a bank might prove the entries in books by secondary evidence of the copies without producing the originals (*Oriental Bank Corporation v. Smith* (1879), 1 A.L.T. 76).

The copies need not be examined by an officer of the bank (*R. v. Albutt* (1910), 75 J.P. (Eng.) 112).

5. Proviso as to notice to parties in a suit. [39 & 40 Vic. c. 48 s. 5.]—Provided always that no ledger day book cash book or other account book of any such bank and no copies of entries therein contained shall be adduced or received in evidence under this Act unless five days' notice in writing or such other notice as may be ordered by the court containing a copy of the entries proposed to be adduced and of the intention to adduce the same in evidence shall have been given by the party proposing to adduce the same in evidence to the other party or parties or their or his attorney or agent to the said legal proceedings and that such other party or parties is or are at liberty to inspect the original entries and the accounts of which such entries form a part and where such bank is a party to the proceedings that the other party or parties thereto is or are at liberty to inspect the cheques bills promissory notes orders for payment of money and other vouchers in respect of which such entries were made.

6. In criminal cases notice may be given before information is presented.—In any case in which any accused person shall have been committed for trial such notice as last aforesaid may be given by or to the accused person at any time after he has been so committed notwithstanding that no information against him shall have been presented to the court before which he is to be tried.

7. Power under order of judge to inspect books and take copies. [39 & 40 Vic. c. 48 s. 6.]—On the application of any party to any legal proceedings who has received such notice a judge may order that such party be at liberty to inspect and to take copies of any entry or entries in the ledgers day books cash books or other account books of any such bank relating to the matters in question in such legal proceedings and such order may be made by such judge at his discretion either with or without summoning before him such bank or the other party or parties to such legal proceedings and shall be intimated to such bank at least three days before such inspection is required.

For definitions of terms used, see s. 2, *ante*.

In an Act which provided that the Court or a judge might make the order the word "court" was held to apply only to the Court before which proceedings were being taken, but "judge" was held to apply to any judge of that Court, whether the proceedings were being taken before him or not (*Peak Hill Goldfields Ltd. v. Simpson* (1905), 7 W.A.L.R. 286).

Under a similar section it was held that an order under such section could not be made in connection with bank pay-in slips (*Lever v. Maguire*, [1928] V.L.R. 262).

This section gives unlimited power to a judge to order inspection of entries in bankers' books before trial, whether the books relate to a litigant's account or to that of a third party (see *Waterhouse v. Barker*, [1924] 2 K.B. 759, per Atkin L.J., at p. 771); but it seems that inspection of a third party's account will only be ordered when the account is in form or substance the account of a party to the litigation or kept on his behalf (see *Howard v. Beall* (1889), 23 Q.B.D. 1; and *Pollock v. Garle*, [1898] 1 Ch. 1). The power to order inspection of third party's accounts is discretionary (*Emmott v. Star Newspaper Co.* (1892), 62 L.J.Q.B. 77), and must be exercised with great caution (*South Staffordshire Tramways Co. v. Ebbsmith*, [1895] 2 Q.B. 669, per Lord Esher M.R., at p. 674; *Pollock v. Garle*, [1898] 1 Ch. 1, per Lindley M.R., at p. 5).

The jurisdiction to order inspection of entries in bankers' books under this section must be exercised in conformity with the general law as to discovery (*South Staffordshire Tramways Co. v. Ebbsmith*, *supra*). For instance, an order for inspection has been refused (1) where one party tried to get an order for inspection of bank-books and the other party had disclosed all the relevant entries in his pass-book and sworn that all other entries in the pass-book or other books of the bank were irrelevant (*Parnell v. Wood*, [1892] P. 137) (but in a fit case, where entries in the bank's books are likely to reveal more than entries in the pass-book already disclosed, the Court will make an order for inspection of the bank's books, see *Perry v. Phosphor Bronze Co. Ltd.* (1894), 71 L.T. 854; *South Staffordshire Tramways Co. v. Ebbsmith*, *supra*, per Lord Esher M.R., at p. 675); (2) where a judgment creditor could see all relevant entries in the garnishee's pass-book on discovery, for which he had an order (*Chaley v. Smith*, [1920] V.L.R. 40); (3) where the application was largely a fishing application (*Gordon v. Kerr* (1916), 33 N.S.W.W.N. 55); and (4) where the party swore that entries in the bank's book would, if disclosed, tend to incriminate him (*Waterhouse v. Barker*, *supra*).

The section creates no new power of discovery (*Arnott v. Hayes* (1887), 36 Ch. D. 731, per Cotton L.J., at p. 737) save in so far that third party's accounts are in some cases treated as the accounts of a party to the litigation (*Howard v. Beall*, *supra*; *South Staffordshire Tramways Co. v. Ebbsmith*, *supra*).

The application to inspect may be made *ex parte*, but usually the party whose account is to be examined should have notice of the application which should, unless the materiality of the inspection otherwise appears, be supported by affidavit (*Arnott v. Hayes*, *supra*; *South Staffordshire Tramways Co. v. Ebbsmith*, *supra*, per Kay L.J., at p. 667).

8. Judge may order that copies are not admissible. [39 & 40 Vic. c. 48 s. 7.]—On the application of any party to any legal proceedings who has received such notice a judge may order that such entries and copies mentioned in the said notice shall not be admissible as evidence of the matters transactions and accounts recorded in such ledgers day books cash books and other account books.

9. Bank not compellable to produce books except in certain cases. [39 & 40 Vic. c. 48 s. 8.]—No bank shall be compellable to produce the ledgers day books cash books or other account books of such bank in any legal proceedings unless a judge specially orders that such ledgers day books cash books or other account books shall be produced at such legal proceedings.

“Legal proceedings” do not include inquiries by Royal Commission (*McCormack v. Campbell*, [1930] St. R. Qd. 228).