

LAWS OF THE UNITED KINGDOM

THE BANKERS' BOOKS EVIDENCE ACT 1879

(42 & 43 Vict. c. 11)

ARRANGEMENT OF SECTIONS

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An Act to amend the Law of Evidence with respect to Bankers' Books

[23rd May 1879]

Effect of Act. This Act, which had a forerunner in the Bankers' Books Evidence Act 1876 (repealed), facilitates the proof of banking transactions.

The most important provisions are those of s. 3, in conjunction with ss. 4 and 5, *post*. The effect of the Act on the law and practice as to discovery has been disputed, but it would seem now to be settled that, while the normal limits of discovery are extended by this Act, so as to enable inspection to be obtained in certain cases of the accounts of a person not a party to the proceedings in which inspection is granted, the ordinary rules as to discovery and inspection apply, as between the parties, to inspection under this Act (*Waterhouse v. Barker*, [1924] 2 K.B. 759; [1924] All E.R. Rep. 777, C.A.).

A banker or officer of a bank must still obey a *subpoena* unless he can show that the matter sought to be proved can be proved in the way created by this Act (*Emmott v. Star Newspaper Co.* (1892), 62 L.J.Q.B. 77).

One effect of this Act is that copies of documents not themselves admissible are made admissible in evidence (see *Harding v. Williams* (1880), 14 Ch. D. 197).

For cases on the Act generally, see 3 Digest (Repl.) 376 *et seq.*

Extension. This Act is applied for the purpose of proving entries in the registers kept under the Government Stock Regulations 1965, S.I. 1965, No. 1420 (made under the Finance Act 1942, s. 47, Vol. 22, title Money), by reg. 1(5) of the Regulations.

Northern Ireland. This Act applies.

1. Short title

This Act may be cited as the Bankers' Books Evidence Act, 1879.

2. (*Rep. by the S.L.R. Act 1894.*)

3. Mode of proof of entries in bankers' books

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.

NOTES

General Note. This section must be read in conjunction with ss. 4 and 5, *post*. Its practical importance lies not only in the fact that it makes copies of entries in banker's books admissible as evidence of the entries, but also in that it makes them *prima facie* evidence of the matters recorded. Accordingly, a banker may, subject to ss. 4 and 5, *post*, prove that he has paid a cheque drawn on him by producing a copy of the relevant account book.

Prima facie evidence. See the note to the Documentary Evidence Act 1863, s. 2, p. 842, *ante*.

Effect of absence of entry. It is not clear whether the non-existence of any entry in a banker's book constitutes *prima facie* evidence of the non-existence of the alleged account (*Douglass v Lloyds Bank, Ltd.* (1929), 34 Com. Cas. 263).

Definitions. For "banker's book", see s. 9, *post*, and for "legal proceedings", see s. 10, *post*, in conjunction with the Solicitors Act 1936, s. 14, p. 877, *post*. See also the note "Bank; banker" to s. 9, *post*.

4. Proof that book is a banker's book

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 or control of the bank.

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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Application of Act. The 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, C.A.).

Definitions: For “bank” and “banker’s book”, see s. 9, *post*. See also the note “Bank; banker” thereto.

5. Verification of copy

A 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.

Such proof shall be given by some person who has examined the copy with the original entry, and may be given either orally or by an affidavit sworn before any commissioner or person authorised to take affidavits.

NOTES

Banker's book. For meaning, see s. 9, *post*. See also the note “Bank; banker” thereto.

Examined with original. The person examining need not be an officer of the bank (*R v. Albutt* (1910), 75 J.P. 112).

6. Case in which banker, etc., not compellable to produce book, etc.

A banker or officer of a bank shall not, in any legal proceeding to which the bank is not a party, be compellable to produce any banker's book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions, and accounts therein recorded, unless by order of a judge made for special cause.

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Effect of section. This section only excuses the attendance of a banker with his books where he has complied with s. 3 *et seq.*, *ante*. If he has not furnished or been willing to furnish verified copies of the required entries, the books may still be obtained by *subpoena duces tecum* (*Emmott v. Star Newspaper Co.* (1892), 62 L.J.Q.B. 77).

Definitions. For “bank” and “banker”, see s. 9, *post*; for “a judge”, see s. 10, *post*; and for “legal proceeding”, see s. 10, *post*, in conjunction with the Solicitors Act 1936, s. 14, p. 877, *post*. See also the note “Bank; banker” to s. 9, *post*.

7. Court or judge may order inspection, etc.

On the application of any party to a legal proceeding a court or judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings. An order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank three clear days before the same is to be obeyed, unless the court or judge otherwise directs.

NOTES

Powers under section. This section gives unlimited power to a judge to order inspection of a banker's books before trial whether the books relate to the account of a party to the litigation or to that of a third party (see *Waterhouse v. Barker*, [1924] 2 K.B. 759; [1924] All E.R. Rep. 777, C.A., at pp. 771, 772 and p. 783, respectively, *per* Atkin, L.J.); 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, C.A.).

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, C.A., at p. 674, *per* Lord Esher, M.R.; *Pollock v. Garle*, *supra*, at p. 5, *per* Lindley, M.R.).

See also as to naval courts-martial, the Naval Discipline Act 1957, s. 58(3), Vol. 29, title Royal Forces.

Limits to power. 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*, [1895] 2 Q.B. 669, C.A.). For instance, an order for inspection has been refused (1) where one party tries to get an order for inspection of bank books and the other party has 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 are irrelevant (*Parnell v. Wood*, [1892] P. 137, C.A.); 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, C.A.; *South Staffordshire Tramways Co. v. Ebbsmith*, *supra*, at p. 675, *per* Lord Esher, M.R.); and (2) where the party swears that entries in the bank's book would, if disclosed, tend to incriminate him (*Waterhouse v. Barker*, [1924] 2 K.B. 759; [1924] All E.R. Rep. 777, C.A.).

The section creates no new power of discovery (*Arnott v. Hayes* (1887), 36 Ch.D. 731, C.A., at p. 737, *per* Cotton, L.J.) 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* (1889), 23 Q.B.D. 1; *South Staffordshire Tramways Co. v. Ebbsmith*, *supra*).

Mode of application. 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* (1887), 36 Ch.D. 731, C.A.; *South Staffordshire Tramways Co. v. Ebbsmith*, [1895] 2 Q.B. 669, C.A., at p. 667, *per* Kay, L.J.).

The court has jurisdiction to make an order for inspection on a bank in Scotland or Northern Ireland (*Kissam v. Link*, [1896] 1 Q.B. 574, C.A.).

Three clear days. In calculating the three days, the day of the service and the day on which the order is to be obeyed must be disregarded; see, *R. v. Herefordshire Justices* (1820), 3 B. & Ald. 581; and cf. in particular, *R. v. Long*, [1960] 1 Q.B. 681; [1959] 3 All E.R. 559. See also as to exclusion of Sundays, etc. s. 11, *post*.

Definitions. For "bank" and "banker's book", see s. 9, *post*; for "court" and "judge", see s. 10, *post*; and for "legal proceedings", see s. 10, *post*, in conjunction with the Solicitors Act 1936, s. 14, p. 877, *post*. See also the note "Bank; banker", to s. 9, *post*.

8. Costs

The costs of any application to a court or judge under or for the purposes of this Act, and the costs of anything done or to be done under an order of a court or judge made under or for the purposes of this Act shall be in the discretion of the court or judge, who may order the same or any part thereof to be paid to any party by the bank where the same have been occasioned by any default or delay on the part of the bank. Any such order against a bank may be enforced as if the bank was a party to the proceeding.

NOTE

Definitions. For “bank”, see s. 9, *post*, and for “court” and “judge”, see s. 10, *post*. See also the note “Bank; banker” to s. 9, *post*.

9. Interpretation of “bank,” “banker,” and “bankers’ books”

In this Act the expressions “bank” and “banker” mean any person, persons, partnership, or company carrying on the business of bankers and having duly made a return to the Commissioners of Inland Revenue, and also any savings bank certified under the Acts relating to savings banks, and also any post office savings bank.

The fact of any such bank having duly made a return to the Commissioners of Inland Revenue may be proved in any legal proceeding by production of a copy of its return verified by the affidavit of a partner or officer of the bank, or by the production of a copy of a newspaper purporting to contain a copy of such return published by the Commissioners of Inland Revenue; the fact that any such savings bank is certified under the Acts relating to savings banks may be proved by an office or examined copy of its certificate; the fact that any such bank is a post office savings bank may be proved by a certificate purporting to be under the hand of Her Majesty's Postmaster-General or one of the secretaries of the Post Office.

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.

NOTES

Bank; banker. By the Companies Act 1948, s. 432, Vol. 5, p. 418, companies carrying on the business of bankers who have forwarded to the registrar of companies an annual return under s. 124 of that Act, Vol. 5, p. 209, and have added a statement of the names of the places where they carry on business, need not make a return to the Commissioners of Inland Revenue and are deemed to be “banks” or “bankers” within the meaning of this Act. The fact of the annual return under s. 124 may be proved in legal proceedings by the certificate of the registrar (see s. 432(2) of that Act).

The definition of “banker” is, in effect, extended by the Local Authorities (Stock) Regulations 1934, S.R. & O. 1934 No. 619, reg. 16(2); the Airways Corporations Stock Regulations 1947, S.R. & O. 1947 No. 99, reg. 36; the British Transport Stock Regulations 1947, S.R. & O. 1947 No. 2686, reg. 32(3); the Airways Corporations Stock Regulations 1948, S.I. 1948 No. 2858, reg. 24(3); the Gas (Stock) Regulations 1949, S.I. 1949 No. 751, reg. 28(3); the Electricity (Stock) Regulations 1957, S.I. 1957 No. 2228, reg. 32(1); the Government Stock Regulations 1965, S.I. 1965 No. 1420, reg. 1(5); and the Iron and Steel Industry (Compensation Stock) (Transitional Provisions) Regulations 1967, S.I. 1967 No. 914, reg. 11.

Duly made a return to the Commissioners of Inland Revenue. See the Bank Charter Act 1844, s. 21, Vol. 2, p. 741, in conjunction with the Inland Revenue Act 1890, s. 37(2), Vol. 33, title Taxation.

Acts relating to savings banks; post office savings bank. For the relevant Acts, see Vol. 30, title Savings Banks.

Bankers’ books. It is submitted that loose sheets, whether produced by a computer or not, may be within this definition. See also the Government Stock Regulations 1965, S.I. 1965 No. 1420, reg. 1(5).

10. Interpretation of “legal proceeding”, “court”, “judge”

In this Act-

The expression “legal proceeding” means any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration;

The expression “the court” means the court, judge, arbitrator, persons or person before whom a legal proceeding is held or taken;

The expression “a judge” means with respect to England a judge of the High Court . . . and with respect to Scotland a lord ordinary of the Outer House of the Court of Session, and with respect to Ireland a judge of the High Court . . . in Ireland;

The judge of a county court may with respect to any action in such court exercise the powers of a judge under this Act.

NOTES

The words omitted were repealed by the S.L.R. Act 1898.

Legal proceeding. A proceeding before a disciplinary committee of the Law Society is a legal proceeding within the meaning of this Act; see the Solicitors Act 1936, s. 14, p. 877, *post*.

Judge of High Court in Ireland. See the Supreme Court of Judicature (Northern Ireland) Order 1921, S.R. & O. 1921 No. 1802, art. 2, and the General Adaptation of Enactments (Northern Ireland) Order 1921, S.R. & O. 1921 No. 1804, art. 5.

Court. A stipendiary magistrate may make an order under this Act with reference to a prosecution pending before him (*R. v. Kinghorn*, [1908] 2 K.B. 949).

11. Computation of time

Sunday, Christmas Day, Good Friday, and any bank holiday shall be excluded from the computation of time under this Act.
