

No. IV.

BANKERS' BOOKS
EVIDENCE.An Act to amend the Law of Evidence with
respect to Bankers' Books. [24th November,
1891.]

Preamble.

WHEREAS serious inconvenience has been occasioned to bankers, and also to the public, by reason of the ledgers and other account books having been removed from the Banks for the purpose of being produced in legal proceedings: And whereas it is expedient to facilitate the proof of the transactions recorded in such ledgers and account books: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Bankers' Books Evidence Act, 1891."

Interpretation clause.

2. In this Act,—

The expressions "bank" and "banker" shall mean any person, persons, partnership, 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 the Savings Bank of New South Wales and any Government or Post Office Savings Bank established under any law in force for the time being.

Expressions relating to "bankers' books" shall include ledgers, day books, cash books, and other account books used in the ordinary business of the bank.

The expression "legal proceeding" shall mean any civil or criminal proceeding or inquiry in which evidence is or may be given, and shall include an arbitration.

The expression "the Court" shall mean the Court, Judge, arbitrator, persons, or person before whom a legal proceeding is held or taken.

The expression "a Judge" shall mean a Judge of the Supreme Court of the Colony of New South Wales.

The Chairman of a Court of Quarter Sessions, or the Judge of a District Court may, with respect to any proceedings in a Court of Quarter Sessions or in any District Court, exercise the powers of a Judge under this Act.

Mode of proof of
entries in bankers'
books.

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.

Proof that book is a
bankers' book.

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 or control of the bank. Such proof may be given by a partner or officer of the bank, and may be given either orally or by an affidavit sworn before any Commissioner or person authorized to take affidavits.

Verification of copy.

5. 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

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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 authorized to take affidavits.

6. Any affidavit to be used under the provisions of this Act ^{Affidavits when} shall be admissible in evidence, if it purport to be sworn before a ^{admissible in} Commissioner or other person authorized to take affidavits. ^{evidence.}

7. 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.

8. On the application of any party to a legal proceeding a Court ^{Court or Judge may} or Judge may order that such party be at liberty to inspect and take ^{order inspection, &c.} copies of any entries in a banker's book relating to the matters in question in 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 two clear days before the same is to be obeyed unless the Court or Judge otherwise directs.

9. The costs of any application to a Court or Judge under or ^{Costs.} 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.