



WESTERN AUSTRALIA.

ANNO QUADRAGESIMO TERTIO

VICTORIÆ REGINÆ.

No. XII.

AN ACT to amend the Law with reference to Bankers' Books Evidence, and to limit the liability of Banks on Drafts or Orders payable to order.

[Assented to, 2nd September, 1879.]

WHEREAS it is expedient to facilitate the proof of transactions recorded in the ledgers and other account books of or belonging to Banks: Be it therefore enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

1 THIS Act may be cited for all purposes as "*The Bankers' Books Evidence Act, 1879.*"

Short title.
39 & 40 Vict., c. 48, s. 1.

2 THE word "bank" in this Act shall mean and include any person or persons partnership or company engaged in the ordinary business of banking by receiving deposits and issuing bills or notes

Interpretation clause.

43^o VICTORIÆ, No. 12.

The Bankers' Books Evidence Act, 1879.

payable to the bearer at sight or on demand, and also mean and include any savings bank established under "*The Post Office Savings Bank Ordinance*."

39 & 40 Vict., c. 48, s. 2.

The words "legal proceedings" in this Act shall include all proceedings whether preliminary or final in courts of justice, both criminal and civil, legal and equitable, and shall include all proceedings whether preliminary or final by way of arbitration, examination of witnesses, assessment of damages, compensation, or otherwise, in which there is power to administer an oath.

The words "the court" in this Act 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.

The words "a judge" shall mean a judge of the Supreme Court of the Colony of Western Australia.

Entries in books by affidavit
admissible in evidence.
Ib. s. 3.

3 FROM and after the commencement of this Act the entries in ledgers, day books, cash books, and other account books of any bank shall be admissible in all legal proceedings as *prima facie* evidence of the matters, transactions, and accounts recorded therein, on proof being given by the affidavit in writing of one of the 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 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

43° VICTORIÆ, No. 12.

The Bankers' Books Evidence Act, 1879.

other evidence as aforesaid, shall be *prima 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.

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 means of the affidavit 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.

Originals need not be produced.
39 and 40 Vict., c. 48, s. 4.

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 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 any bank shall be a party to any legal 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.

Proviso as to notice to parties in a suit.
Ib. s. 5.

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 copies are required.

Power under order of judge to inspect books and take copies.
Ib. s. 6.

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.

Judge may order that copies are not admissible.
Ib. s. 7.

43° VICTORIÆ, No. 12.

The Bankers' Books Evidence Act, 1879.

Bank not compellable to produce books except in certain cases.
Ib. s. 8.

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 should be produced at such legal proceedings.

Powers of a judge extended to Local Courts and Magistrates.

9 THE Magistrate of any Local Court or any Resident or Police Magistrate, or the Chairman of a Court of Quarter or Petty Sessions, may, as to any "legal proceedings" pending or to be pending in any such Court respectively, or in any Police Court, exercise any or all of the powers of "a Judge" under sections six, seven, and eight of this Act.

Drafts on Banks payable to order on demand sufficient authority for payment without proof of endorsement.
16 17 Vic., cap. 59, s. 19.

10 AND whereas it is expedient to relieve banks of the responsibility of ascertaining that drafts payable to order on demand are duly and properly endorsed: Be it enacted that any draft or order drawn upon a bank for a sum of money payable to order on demand, which shall, when presented for payment, purport to be endorsed by the person to whom the same shall be drawn payable, shall be a sufficient authority to such bank to pay the amount of such draft or order to the bearer thereof; and it shall not be incumbent on such bank to prove that such endorsement, or any subsequent endorsement, was made by or under the direction or authority of the person to whom the said draft or order was or is made payable either by the drawer or any endorser thereof.

In the name and on behalf of the Queen I hereby assent to this Act.

H. St. GEORGE ORD, Governor.