

HARDING *v.* WILLIAMS.

[1878 H. 427.]

FRY, J.

1880

April 6.

Evidence—Admissibility—Copies of Entries in Bankers' Books—Bankers' Books Evidence Act, 1879 (42 & 43 Vict. c. 11), ss. 3, 10.

The effect of sect. 3 of the *Bankers' Books Evidence Act, 1879*, is to make copies of entries in the books of a banker admissible evidence against any one:—

Therefore, copies of entries in the books of the bankers of a defendant are evidence against the plaintiff.

THE Plaintiff claimed the delivery up by the Defendant of a promissory note for £500, and the reassignment of a policy of insurance, on the ground that he had repaid to the Defendant, with interest, the sum of £500, as security for which the promissory note had been given and the policy assigned to the Defendant.

The Defendant alleged that the £500, with interest, still remained due to him.

Cookson, Q.C., and Rigby, for the Plaintiff.

North, Q.C., and Marcy, for the Defendant, tendered as evidence in support of his case an affidavit made by the manager of the *Worcester* branch of the *National Provincial Bank of England*, with which the Defendant kept a banking account. This affidavit set forth some copies of entries in the books of the bank, verified by an affidavit of the manager of the bank, as required by the *Bankers' Books Evidence Act, 1879 (1)*.

(1) The *Bankers' Books Evidence Act, 1876 (39 & 40 Vict. c. 48)*, contained this recital in the 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."

Sect. 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 partners, managers, or officers of such bank, or by other evidence, that such ledgers, day books, cash books, or other account

FRY, J
1880
HARDING
v.
WILLIAMS.
—

Cookson, Q.C., objected that the copies were not admissible evidence against the Plaintiff. The originals were not evidence against him, and it could not have been intended to make copies evidence when the originals would not have been admissible. Sect. 3 of the *Bankers' Books Evidence Act*, 1876, made the original entries in bankers' books admissible evidence; but that

books are or have been the ordinary books of such bank, and that the said entries have been made in the usual and ordinary course of business, and that such books are in, or come immediately from, the custody or control of such bank. Nothing in this clause contained shall apply to any legal proceeding to which any bank whose ledgers, day books, cash books, and other account books may be required to be produced in evidence shall be a party."

Sect. 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."

This Act was repealed by the *Bankers' Books Evidence Act*, 1879 (42 & 43 Vict. c. 11), which contained (*inter alia*) the following provisions:—

Sect. 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 *primâ facie* evidence of such entry, and of the matters, transactions, and accounts therein recorded."

Sect. 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 orally or by an affidavit sworn before any commissioner or person authorized to take affidavits."

Sect. 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 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."

Sect. 6. "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."

Sect. 10 provides that "the expression 'legal proceeding' means any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration."

Act was repealed by the Act of 1879, the provisions of which were substituted for it.

North, Q.C., and *Marcy*, for the Defendant, were not heard.

FRY, J.

1880

HARDING
v.
WILLIAMS.
— —

FRY, J.:—

The objection is, in my opinion, entirely untenable. Mr. *Cookson* says that sect. 3 applies only to legal proceedings in which the originals would be admissible as evidence. But the language of the section is plain, and I have no right to alter the plain meaning of it. Sect. 10 gives a definition of the expression “legal proceedings,” and by sects. 4 and 5 certain conditions are required to be performed before the evidence can be admitted. Moreover, the Act repeals the previous Act of 1876, the preamble of which shewed that it had two objects in view: to render the entries in bankers’ books admissible in evidence, and to enable copies of the entries to be used instead of producing the originals. The reasons mentioned in the preamble of that Act are of equal force now, and the words of sect. 3 of the Act of 1879 are wide enough to make the copies evidence against any one.

I am of opinion, therefore, that the objection cannot be sustained, and I admit the evidence.

Solicitors for Plaintiff: *Hare & Fell*, agents for *Charles Heywood & Son, Manchester*.

Solicitors for Defendant: *Tucker & Lake*, agents for *R. H. Whitcombe, Bewdley*.