

CASES
 DETERMINED BY THE
 QUEEN'S BENCH DIVISION
 OF THE
 HIGH COURT OF JUSTICE
 AND BY THE
 COURT OF APPEAL
 ON APPEAL THEREFROM
 AND BY THE
 COURT FOR CROWN CASES RESERVED
 LII. VICTORIÆ.

HOWARD *v.* BEALL.

1889

Practice—Evidence—Inspection of Bankers' Books—Bankers' Books Evidence Act, 1879 (42 & 43 Vict. c. 11) s. 7.

May 21.

The Bankers' Books Evidence Act, 1879, gives power to order inspection of entries in bankers' books relating to banking accounts kept in the names of other persons besides the parties to the action.

APPEAL by the defendant from an order made at chambers by Stephen, J., under the Bankers' Books Evidence Act, 1879. (1)

The action was brought for misrepresentation alleged to be contained in the prospectus of a company, and the plaintiff claimed rescission of his contract, and damages.

The order granted inspection of entries in bankers' books relating to banking accounts kept in the names of persons other than the defendant, on the ground that the accounts were kept on the defendant's behalf.

(1) 42 & 43 Vict. c. 11, s. 7, by which "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 pro-

ceedings. 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."

1889

HOWARD
v.
BEALL.

Herbert Reed, for the defendant. So far as the order gives inspection of entries relating to accounts kept in the names of persons other than the defendant, it is made without jurisdiction. The Act was passed for the relief of bankers, and was not intended to be used for the purpose of obtaining inspection. It is true that s. 7 contains the words "any entries," but Order xxxvii., r. 7, of the Rules of the Supreme Court, 1883, is equally comprehensive in its terms, and under that rule an order cannot be made for inspection of the books of persons who are not parties to the action: *Central News Co. v. Eastern Telegraph Co.* (1); *Straker v. Reynolds.* (2)

T. L. Wilkinson, for the plaintiff, was not called on.

MATHEW, J. I can see no reason to doubt that this order was properly made. On applications of this nature it is the duty of the judge to satisfy himself that the entries of which inspection is sought will be admissible in evidence at the trial of the action. Mr. Reed does not dispute that the banking accounts kept by either of the parties to the action may be inspected. In the present case the learned Judge before whom the application came at chambers thought that although the other accounts were not kept in the name of the litigant, they were in substance and in fact kept on his behalf. The appeal therefore will be dismissed with costs.

GRANTHAM, J. I am of the same opinion. It is admitted that these entries in the bankers' books would be admissible in evidence at the trial, so that, if there was power to make the order, it ought to be upheld, and I am of opinion that there was such power.

Appeal dismissed.

Solicitors for plaintiff: *Greenop & Sons.*

Solicitors for defendant: *Beall & Co.*

(1) 53 L. J. (Q. B. D.) 236.

(2) 22 Q. B. D. 262.

P. B. H.