

THE KING *v.* KINGHORN.

1908

Oct. 13.

Banker—Evidence—Order for Inspection of Books—Jurisdiction of Magistrate
—Bankers' Books Evidence Act, 1879 (42 & 43 Vict. c. 11), ss. 7, 10.

A magistrate before whom criminal proceedings are being taken has power to make an order under s. 7 of the Bankers' Books Evidence Act, 1879, for the prosecutor to inspect and take copies of entries in the books of a bank at which the defendant keeps an account.

RULE nisi to the deputy stipendiary magistrate of Liverpool to shew cause why he should not make an order under s. 7 of the Bankers' Books Evidence Act, 1879. (1)

In the course of a prosecution before the deputy stipendiary magistrate under the Betting Acts, application was made on behalf of the prosecution for an order under s. 7 to inspect and take copies of the defendant's account in the books of the North and South Wales Bank. The application was opposed by the bank. The magistrate declined to make the order asked for on the ground that he had no jurisdiction to do so.

Leslie Scott, for the bank, shewed cause against the rule. Prima facie the definitions of "Court" and "judge" in s. 10 would seem to be wide enough to include a magistrate before whom criminal proceedings are being taken, but it is to be observed that in s. 7 the words are not "the" but "a" Court or

(1) Bankers' Books Evidence Act, 1879 (42 & 43 Vict. c. 11), s. 7: "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."

Sect. 10: "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 of Justice . . .

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

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judge, which suggests that the application is to be made to a Court other than that in which the proceedings are being taken. The latter part of s. 10, which enables a county court judge to exercise the powers of a judge under the Act, also shews that the general language in the earlier part of s. 10 must be read with some limitation. In *Reg. v. Bradlaugh* (1) Lord Coleridge C.J. doubted whether an order for inspection under s. 7 was valid if not made by a judge of the High Court, and in the Annual Practice for 1909, at p. 528, it is stated that in criminal proceedings the order is made by the judge in chambers and drawn up at the Crown Office. [He also referred to Hart on the Law of Banking, p. 214.]

[LORD ALVERSTONE C.J. referred to *Arnott v. Hayes*. (2)]

Rigby Swift, in support of the rule. The magistrate had jurisdiction to make the order, for a prosecution before a magistrate is clearly a "legal proceeding" as defined by s. 10. The reference to a county court judge in that section is for the purpose of enabling a county court judge to make an order under s. 6 for the production of a banker's book, which order can only be made by a judge, whereas the order under s. 7 may be made by a Court or judge, and the word "Court" as defined in s. 10 must include a magistrate before whom a legal proceeding is being held. The point does not seem to have been argued in *Reg. v. Bradlaugh*. (1)

LORD ALVERSTONE C.J. In my opinion this rule must be made absolute. We have been told that it has been the practice in criminal proceedings for orders for the inspection of bankers' books under s. 7 of the Bankers' Books Evidence Act, 1879, to be made by the judge in chambers. I very much doubt whether that practice has been universally followed, for I think if inquiry were made it would be found that these orders have also been made in the criminal Courts. But however that may be, what we have to consider is the language of the Act itself. Before the passing of the Bankers' Books Evidence Act, 1879, bankers could be compelled to produce their books in Court under a subpoena duces tecum, and the object of the Act was to protect bankers

(1) (1883) 15 Cox, C. C. 217, at p. 222, n.

(2) (1887) 36 Ch. D. 731.

against that inconvenience. The protection afforded by the Act is twofold. First, by s. 6 a banker shall not be compellable to produce his books unless "by order of a judge," and by s. 10 a "judge" means a judge of the High Court of Justice. Then s. 7 provides an alternative method of proof, for under that section, on the application of any party to a legal proceeding, "a Court or judge" may order that such party shall be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings. Having regard to the definitions of "legal proceedings" and "Court" in s. 10; it seems to me impossible to say that a magistrate before whom criminal proceedings are being taken has no power to make an order under s. 7, particularly when one finds that arbitrators are empowered to do so. I fail to see how it can be suggested that the materiality and bona fides of an application under s. 7 cannot be perfectly well considered by the magistrate before whom the proceedings are being held. Some reliance has been placed on the last clause of s. 10, which enables a county court judge to exercise the powers of a judge under the Act, but in my opinion it is clear that the object of that enactment is to give a county court judge power to make an order under s. 6 in a case which is being tried in his Court. That part of s. 10 cannot be construed as putting any limitation upon the perfectly general language of the earlier part of the section. With regard to the observations which Lord Coleridge C.J. is reported to have made in *Reg. v. Bradlaugh* (1), I doubt whether he intended to give a judicial decision on the point.

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BIGHAM J. I agree with all that has fallen from my Lord. I base my judgment on the language of s. 7, which is quite plain. Here there has been an application for an order under that section by a party to a legal proceeding. It is said that, as the application was made to the magistrate before whom the legal proceeding was being taken, there was no power for him to make the order. I think that the section gives him power to do so in the plainest possible words, for the section says that "an order under this section may be made either with or without

(1) 15 Cox, C. C. at p. 222, n.

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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." The expression "the Court" is only to be found in s. 7; it occurs nowhere else in the Act; and it is "the Court" which is defined in s. 10 to mean "the Court, judge, arbitrator, persons or person before whom a legal proceeding is held or taken." It is therefore perfectly obvious to my mind that the person sitting in "the Court" must mean the magistrate sitting in the Court in which the application is made.

WALTON J. I agree.

Rule absolute.

Solicitors for the bank: *Hill, Dickinson & Co., Liverpool.*

Solicitors for the prosecution: *F. Venn & Co., for E. R. Pickmere, Liverpool.*

F. O. R.

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LAWSON, APPELLANT v. EDMINSON, RESPONDENT.

*Licensing Acts—Permitting Drunkenness—Guest after closing Hours —
 Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 13.*

Two men, who were found drunk on licensed premises after closing hours, were proved to be guests of the licensee and to have been supplied with drink at his expense after closing hours:—

Held, that the licensee was liable to be convicted under s. 13 of the Licensing Act, 1872, of permitting drunkenness upon the premises.

CASE stated by the justices for the county of Durham.

The appellant Lawson was an inspector of the Durham county constabulary, stationed at Southwick, in the county of Durham. The respondent Edminson was an alehouse keeper carrying on business at the Queen's Head Hotel, Adelaide Street, Southwick. On March 21, 1908, the respondent appeared before the justices sitting as a Court of summary jurisdiction at Sunderland for the Sunderland petty sessional division of Easington ward on a summons issued upon the information of the appellant charging him, the respondent, under s. 13 of the Licensing