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Study Notes

Bankers' Books Evidence Act 1891

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Introduction

- Banks keep their accounting and its details in various ledgers, registers, etc.
- When any claim of the bank is required to be established or proved in the Courts of Law or any other such forums, these books are required to be produced in original. It is difficult to do so. Therefore, its extracts and statement of accounts are produced.
- To facilitate the production of such evidence in easy way and to have evidentiary value to the extracts and copies, 'The Bankers' Books Evidence Act, 1891 was enacted **to amend the Law of Evidence with respect to bankers' books.**



Important Definitions (Section 2)

- **Bank and Banker mean—**
 - ✓ any company or corporation carrying on the business of banking;
 - ✓ any partnership or individual to whose books the provisions of this Act shall have been extended as hereinafter provided;
 - ✓ any post office savings bank or money order office;
- **Bankers' books** include **ledgers, day-books, cash-books, account-books and all other books used in the ordinary business of a bank** whether these records are kept in written form or stored in a micro film, magnetic tape or in any other form of mechanical or electronic data retrieval mechanism, either onsite or at any offsite location including a back-up or disaster recovery site of both
- **Legal proceeding** means—
 - ✓ any proceeding or inquiry in which evidence is or may be given;
 - ✓ an arbitration; and
 - ✓ any investigation or inquiry under the Code of Criminal Procedure, 1973, or under any other law for the time being in force for the collection of evidence, conducted by a police officer or by any other person (not being a magistrate) authorised in this behalf by a magistrate or by any law for the time being in force;

- **Judge** means a Judge of a **High Court Division**
- **Certified copy** means when the books of a bank
 - (a) are maintained **in written form**, a copy of any entry in such books together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business and that such book is still in the custody of the bank, and
 - ✓ where the copy was obtained **by a mechanical or other process** which in itself ensured the accuracy of the copy, a further certificate to that effect,
 - ✓ but where the book from which such **copy was prepared has been destroyed in the usual course of the banks business** after the date on which the copy had been so prepared, a further certificate to that effect, each such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title; and
 - (b) **consist of printouts of data stored in a floppy, disc, tape or any other electro-magnetic data storage device**, a printout of such entry or a copy of such printout together with such statements certified in accordance with the provisions of section 2-A;
 - (c) **a printout of any entry in the books of a bank stored in a micro film, magnetic tape or in any other form of mechanical or electronic data retrieval mechanism** obtained by a mechanical or other process which in itself ensures the accuracy of such printout as a copy of such entry and such printout contains the certificate in accordance with the provisions of section 2-A.

Conditions in the printout (Section 2A)

- A printout of entry or a copy of printout referred to in definition of certified copy shall be accompanied by the following, namely:
 - ✓ a certificate by the principal accountant or the manager to the effect that it is a printout of such entry or a copy of such printout; and
 - ✓ a certificate by a person in charge of computer system containing a brief description of the computer system and the particulars of
 - **the safeguards adopted by the system** to ensure that data is entered or any other operation performed is only by authorised person;

- the safeguards adopted to prevent and detect unauthorised change of data;
 - the safeguards available to retrieve data that is lost due to systemic failure or any other reasons;
 - the manner in which data is transferred from the system to removable media like floppies, discs, tapes or other electro-magnetic data storage devices;
 - the mode of verification in order to ensure that data has been accurately transferred to such removable media;
 - the mode of identification of such data storage devices;
 - the arrangements for the storage and custody of such storage devices;
 - the safeguards to prevent and detect any tampering with the system; and
 - any other factor which will vouch for the integrity and accuracy of the system
- ✓ In addition to the above, a further certificate required is from the person in charge of the computer system to the effect that to the best of his knowledge and belief, such computer system is operated properly at the material time, he was provided with all the relevant data and the printout in question represents correctly and is appropriately derived from the relevant data.

Power to extend (Section 3)

- The State Government may, by notification in the Official Gazette, extend the provisions of this Act
 - ✓ to the books of any partnership or individual carrying on business of bankers within the territories under its administration,
 - ✓ and keeping a set of not less than three ordinary account-books, namely, a cash-book, a day-book or journal, and a ledger, and may in like manner rescind any such notification.

Mode of Proof of entries in Bankers' Books (Section 4)

- A certified copy of any entry in a bankers book shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded

Case in which officer of the Bank is not compellable to produce books (Section 5)

- In any proceeding where the bank is not a party, no officer of a bank shall be compellable to produce any bankers' book contents of which can be proved under this Act by production of certified copies.
- Similarly, no officer of the bank shall be called as witness to prove the matters,

transactions and accounts recorded in the certified copies. However, the Court may order otherwise for special cause.

Inspection of Books by the order of Court or Judge (Section 6)

- On application by any party to the legal proceeding, the Court or a 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 the proceeding; or
 - ✓ **the bank to prepare and produce**, within time specified in the order, **certified copies of all such entries**, accompanied by a further certificate that no other entries are to be found in the books of the bank relevant to the matters in issue in such proceeding. This further certificate also should be dated and signed as required for certified copy stated above.
- An order that bank officer should either produce the books of account or appear as witness can be made by the Court or Judge with or without summoning the bank. The order so passed shall be served on the bank **at least three clear working days** before the same is to be obeyed.
- The bank may at any time before the time limited for compliance of any such order either offer to produce their books at the trial or give notice of their intention to show cause against the order. If the bank chooses to give show cause against the order, then the order passed by the Court or Judge cannot be enforced without further order.