

Legislative Council.

42<sup>o</sup> VICTORIA, 1878.

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# A BILL

To amend the Law respecting Crossed Cheques and the  
reception in evidence of Bankers Books.

[SIR ALFRED STEPHEN ;—25 *September*, 1878.]

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**W**HEREAS it is expedient to amend the law respecting Crossed Preamble.  
Cheques and the reception in evidence of Bankers Books Be  
it enacted by the Queen's Most Excellent Majesty by and with the  
advice and consent of the Legislative Council and Legislative Assembly  
5 of New South Wales in Parliament assembled and by the authority of  
the same as follows :—

1. In the construction of this Act the word "banker" and Definition of cheque  
and banker.  
the word "bank" shall respectively include every person partnership  
corporation or joint stock company carrying on the business of banking  
10 and the word "cheque" shall include every draft or order on a banker  
for money payable on demand whether to order or to bearer.

2. Where a cheque has been crossed with the name of a banker Crossing to be a  
material part of a  
cheque and binding  
on the drawee.  
or with two transverse lines simply with or without the word "bank"  
or the words "and company" or any abbreviation thereof respectively  
15 every such crossing whether made when the cheque was issued or  
afterwards

afterwards by the holder shall be deemed a material part of the cheque And the banker upon whom such cheque is drawn shall not pay it to any other than the banker if any with whose name it is crossed or his agent for collection being a banker or if crossed without a banker's name to any other than a banker If any cheque be crossed specially to different bankers (except where crossed to an agent for collection) the banker on whom such cheque is drawn shall refuse to pay it. 5

Paying a cheque which does not appear crossed &c.

3. Where a banker in good faith and without negligence pays a cheque which does not when presented appear to have been crossed or on which the crossing does not appear to have been obliterated or altered he shall incur no liability by reason of such cheque having been in fact crossed or of the crossing having in fact been obliterated or altered and of his having paid the cheque to a person other than a banker or other than the banker with whose name it was so crossed. 10

The lawful holder of a cheque may cross the same.

4. Where a cheque has been crossed with transverse lines only or with the word "bank" or the words "and company" or any abbreviation thereof but without a banker's name any lawful holder of such cheque may cross the same with the name of a banker and where a cheque is uncrossed any such holder may cross the same with the word "bank" or the words "and company" or any abbreviation thereof with or without a banker's name and such crossings respectively shall be of the same effect as if on the cheque when issued And where a cheque has been crossed with the name of a banker such banker may again cross it specially to another banker his agent for collection. 20

Non-negotiable cheques.

5. Where a cheque has been crossed whether with or without a banker's name any lawful holder may add to such crossing the words "not negociable" and any person taking a crossed cheque bearing those words shall have and be capable of giving no better title to such cheque than the person from whom he took it had Provided that a banker who has in good faith and without negligence received payment for a customer of a cheque crossed specially to himself or crossed generally without a banker's name shall not by reason only of having received such payment incur any liability to the true owner if the title to the cheque proves defective. 30

Wrongfully paying a crossed cheque.

6. Any banker paying a crossed cheque to any person other than a banker or where crossed specially otherwise than to the banker with whose name it is crossed or his agent for collection being also a banker shall be liable to the true owner of such cheque for any loss which he may sustain by reason of the same having been so paid. 35

Cheques paid according to crossing.

7. Where the banker on whom a crossed cheque is drawn has in good faith and without negligence paid the same to a banker or if crossed specially to the banker with whose name it was crossed or his agent for collection being also a banker the banker so paying such cheque and (in case it has come to the hands of the payee) the drawer thereof shall respectively be entitled to the same rights and be placed in the same position in all respects as they would respectively have been entitled to and been placed in if such cheque had been paid to its true owner. 40

Fraudulently obliterating Crossings.

8. Where any cheque on a banker has been crossed as in this Act mentioned whosoever with intent to defraud shall erase obliterate add to or alter any such crossing or erase or obliterate the words "not negociable" thereon or either of them wholly or in part or offer utter dispose of or put off a cheque whereon any such erasure obliteration addition or alteration has been made knowing the same to have been so made shall be guilty of felony and be liable to imprisonment for any term not exceeding *three* years with or without hard labour. 50

Obliterating cheques crossed with special direction.

9. Where upon any cheque crossed with the name of a banker there shall be in addition to such crossing a direction to such banker to place the amount to the credit of a named firm or person whosoever with 55

with intent to defraud shall erase obliterate add to or alter such direction shall be guilty of felony punishable as aforesaid But nothing in this section shall extend the liability of the banker on whom such cheque is drawn or compel him to see to the application of the money  
5 in accordance with any such direction.

10. On the commencement of this Act the Act passed in the  
twentieth year of Her Majesty to amend the law relating to drafts on  
bankers (twentieth Victoria number seven) shall be repealed. Repeal of 20 Vic. No. 7.

11. After the commencement of this Act the entries in the  
10 account books of any bank shall in all legal proceedings whether civil  
or criminal be *prima facie* evidence of the matters recorded therein  
on proof by the person having the custody of such books or some  
officer of such bank that such books are or have been the ordinary  
books of such bank and that such entries were made in the ordinary  
15 course of business thereof and copies of all such entries shall be  
admissible in evidence without production of the originals. Entries in bankers' books and copies admissible in evidence.

12. Provided that no such entry or copy shall be admissible  
under this Act unless eight days notice in writing containing a copy of  
the entry and of the intention to offer the same in evidence shall have  
20 been given to the party against whom it is proposed to adduce such  
entry or copy. Notice to be given. Proviso where bank is a party.

13. On the application of any party having received such notice  
a Judge of the Supreme Court or any District Court Judge if the legal  
proceeding be in his Court may order if he thinks fit that such  
25 party shall be at liberty to inspect the original account book containing  
or said to contain any such entry on such terms as the Judge shall think  
proper or he may direct that any such book shall be produced at the  
trial or other proceeding as the case may be And any such order may  
if necessary be made ex parte. A Judge may order inspection of books &c.

30 14. The service of the notice required by the twelfth section of  
this Act may in every case be proved by affidavit or solemn declaration  
before any Commissioner for Affidavits or Justice of the Peace and the  
signature thereto purporting to be that of a Commissioner or Justice  
shall be sufficient evidence of the making of such affidavit or declara-  
35 tion. Service of notice how proved.

15. It shall in no case be necessary to produce the books of a  
bank or any of them in order to prove that a person has not or that he  
never had an account at such bank. Non-production of books of banks.

40 16. This Act shall commence on the tenth day after the passing  
thereof and may be cited as the "Bankers' Books and Cheques Act." Commencement and title

Main body of the page containing several paragraphs of extremely faint, illegible text.

1878.

Legislative Council.

BANKERS' BOOKS AND CHEQUES BILL.

(Amendments to be proposed [on Re-committal] in Committee of the Whole by MR. HOLT.)

- Pages 1 and 2, clause 2, line 12. *After* "with" *omit* "the name of a  
"banker or with two transverse  
"lines simply with or without the  
"word 'bank' or the words 'and  
" 'company' or any abbreviation  
"thereof respectively every such  
"crossing whether made when the  
"cheque was issued or afterwards  
"by the holder" *insert* "the words  
" 'Bank only' they."
- Page 2, clause 2, line 2. *After* "it" *omit* "to any other than the  
"banker if any with whose name it is crossed  
"or his agent for collection being a banker  
"or if crossed without a banker's name."
- " " 2, line 5. *After* "banker" *omit* remainder of clause.
- " " 3, *omit* clause 3.
- " " 4, lines 15 to 22. *Omit* "Where a cheque has been  
"crossed with transverse lines only or with the word  
"bank or the words and company or any abbrevia-  
"tion thereof but without a banker's name any  
"lawful holder of such cheque may cross the same  
"with the name of a banker and where a cheque is  
"uncrossed any such holder may cross the same  
"with the word 'bank' or the words and company or  
"any abbreviation thereof with or without a banker's  
"name and such crossings respectively shall be of  
"the same effect as if on the cheque when issued  
"And"
- " " 5, *omit* clause 5.
- " " 6, line 35. *After* "cheque" *insert* "with the words  
" 'bank only.' "
- " " 6, lines 36 to 38. *Omit* "or where crossed specially  
"otherwise than to the banker with whose name it is  
"crossed or his agent for collection being also a  
"banker."
- Pages 2 and 3, clauses 7, 8, and 9. *Omit* clauses 7, 8, and 9.

BANKERS' BOOKS AND CHECKS BILL

(Amendment to be inserted in the bill)

Page 1 and 2 clause 2 line 12. "and the holder of a check or other negotiable instrument shall be deemed to have received the amount thereof when the same is cashed at a bank or other financial institution."

Page 2 clause 2 line 2. "and the holder of a check or other negotiable instrument shall be deemed to have received the amount thereof when the same is cashed at a bank or other financial institution."

Page 2 clause 2 line 3. "and the holder of a check or other negotiable instrument shall be deemed to have received the amount thereof when the same is cashed at a bank or other financial institution."

Page 2 clause 2 line 4. "and the holder of a check or other negotiable instrument shall be deemed to have received the amount thereof when the same is cashed at a bank or other financial institution."

Page 2 clause 2 line 5. "and the holder of a check or other negotiable instrument shall be deemed to have received the amount thereof when the same is cashed at a bank or other financial institution."

Page 2 clause 2 line 6. "and the holder of a check or other negotiable instrument shall be deemed to have received the amount thereof when the same is cashed at a bank or other financial institution."

Page 2 clause 2 line 7. "and the holder of a check or other negotiable instrument shall be deemed to have received the amount thereof when the same is cashed at a bank or other financial institution."

Page 2 clause 2 line 8. "and the holder of a check or other negotiable instrument shall be deemed to have received the amount thereof when the same is cashed at a bank or other financial institution."

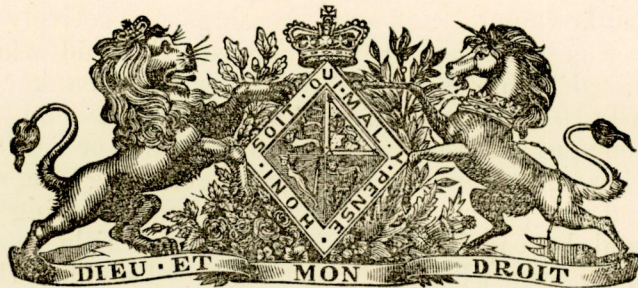
Page 2 and 3 clause 2 line 9. "and the holder of a check or other negotiable instrument shall be deemed to have received the amount thereof when the same is cashed at a bank or other financial institution."

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

Legislative Council Chamber,  
Sydney, 7th November, 1878. }

JOHN J. CALVERT,  
Clerk of the Parliaments.

## New South Wales.



ANNO QUADRAGESIMO SECUNDO

# VICTORIÆ REGINÆ.

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No. .

An Act to amend the Law respecting Crossed Cheques and the reception in evidence of Bankers Books.

**W**HEREAS it is expedient to amend the law respecting Crossed Preamble.  
Cheques and the reception in evidence of Bankers Books Be  
it enacted by the Queen's Most Excellent Majesty by and with the  
advice and consent of the Legislative Council and Legislative Assembly  
5 of New South Wales in Parliament assembled and by the authority of  
the same as follows:—

1. In the construction of this Act the word "banker" and Definition of cheque and banker.  
the word "bank" shall respectively include every person partnership  
corporation or joint stock company carrying on the business of banking  
10 and the word "cheque" shall include every draft or order on a banker  
for money payable on demand whether to order or to bearer.

2. Where a cheque has been crossed with the name of a banker Crossing to be a material part of a cheque and binding on the drawee.  
or with two transverse lines simply with or without the word "bank"  
or the words "and company" or any abbreviation thereof respectively  
15 every such crossing whether made when the cheque was issued or  
afterwards

*Bankers' Books and Cheques.*

afterwards by the holder shall be deemed a material part of the cheque  
 And the banker upon whom such cheque is drawn shall not pay it to  
 any other than the banker if any with whose name it is crossed or his  
 agent for collection being a banker or if crossed without a banker's  
 5 name to any other than a banker If any cheque be crossed specially  
 to different bankers (except where crossed to an agent for collection)  
 the banker on whom such cheque is drawn shall refuse to pay it.

3. Where a banker in good faith and without negligence pays  
 a cheque which does not when presented appear to have been crossed  
 10 or on which the crossing does not appear to have been obliterated or  
 altered he shall incur no liability by reason of such cheque having been  
 in fact crossed or of the crossing having in fact been obliterated or altered  
 and of his having paid the cheque to a person other than a banker or  
 other than the banker with whose name it was so crossed.

Paying a cheque  
 which does not  
 appear crossed &c.

4. Where a cheque has been crossed with transverse lines only  
 or with the word "bank" or the words "and company" or any abbrevi-  
 15 ation thereof but without a banker's name any lawful holder of such  
 cheque may cross the same with the name of a banker and where a  
 cheque is uncrossed any such holder may cross the same with the word  
 20 "bank" or the words "and company" or any abbreviation thereof  
 with or without a banker's name and such crossings respectively shall  
 be of the same effect as if on the cheque when issued And where a  
 cheque has been crossed with the name of a banker such banker may  
 again cross it specially to another banker his agent for collection.

The lawful holder of  
 a cheque may cross  
 the same.

5. Where a cheque has been crossed whether with or without a  
 25 banker's name any lawful holder may add to such crossing the words  
 "not negociable" and any person taking a crossed cheque bearing those  
 words shall have and be capable of giving no better title to such  
 cheque than the person from whom he took it had Provided that a  
 30 banker who has in good faith and without negligence received payment  
 for a customer of a cheque crossed specially to himself or crossed  
 generally without a banker's name shall not by reason only of having  
 received such payment incur any liability to the true owner if the title  
 to the cheque proves defective.

Non-negotiable  
 cheques.

6. Any banker paying a crossed cheque to any person other  
 35 than a banker or where crossed specially otherwise than to the  
 banker with whose name it is crossed or his agent for collection being  
 also a banker shall be liable to the true owner of such cheque for any  
 loss which he may sustain by reason of the same having been so paid.

Wrongfully paying a  
 crossed cheque.

7. Where the banker on whom a crossed cheque is drawn has  
 40 in good faith and without negligence paid the same to a banker or if  
 crossed specially to the banker with whose name it was crossed or his  
 agent for collection being also a banker the banker so paying such  
 cheque and (in case it has come to the hands of the payee) the drawer  
 45 thereof shall respectively be entitled to the same rights and be placed  
 in the same position in all respects as they would respectively have  
 been entitled to and been placed in if such cheque had been paid to its  
 true owner.

Cheques paid accord-  
 ing to crossing.

8. Where any cheque on a banker has been crossed as in this  
 50 Act mentioned whosoever with intent to defraud shall erase obliterate  
 add to or alter any such crossing or erase or obliterate the words "not  
 negociable" thereon or either of them wholly or in part or offer utter  
 dispose of or put off a cheque whereon any such erasure obliteration  
 addition or alteration has been made knowing the same to have been so  
 55 made shall be guilty of felony and be liable to imprisonment for any  
 term not exceeding three years with or without hard labour.

Fraudulently  
 obliterating  
 Crossings.

9. Where upon any cheque crossed with the name of a banker  
 there shall be in addition to such crossing a direction to such banker  
 to place the amount to the credit of a named firm or person whosoever  
 with

Obliterating cheques  
 crossed with special  
 direction.



*Bankers' Books and Cheques.*

with intent to defraud shall erase obliterate add to or alter such direction shall be guilty of felony punishable as aforesaid But nothing in this section shall extend the liability of the banker on whom such cheque is drawn or compel him to see to the application of the money  
5 in accordance with any such direction.

10. On the commencement of this Act the Act passed in the twentieth year of Her Majesty to amend the law relating to drafts on bankers (twentieth Victoria number seven) shall be repealed.

Repeal of 20 Vic.  
No. 7.

11. After the commencement of this Act the entries in the  
10 account books of any bank shall in all legal proceedings whether civil or criminal unless the bank be a party thereto be *primâ facie* evidence of the matters recorded therein on proof by the person having the custody of such books or some officer of such bank that such books are or have been the ordinary books of such bank and that such entries  
15 were made in the ordinary course of business thereof and copies of all such entries shall be admissible in evidence without production of the originals.

Entries in bankers' books and copies admissible in evidence.

12. Provided that no such entry or copy shall be admissible under this Act except by consent unless eight days notice in writing  
20 containing a copy of the entry and of the intention to offer the same in evidence shall have been given to the party against whom it is proposed to adduce such entry or copy.

Notice to be given. Proviso where bank is a party.

13. On the application of any party having received such notice a Judge of the Supreme Court or any District Court Judge if the legal  
25 proceeding be in his Court may order if he thinks fit that such party shall be at liberty to inspect the original account book containing or said to contain any such entry on such terms as the Judge shall think proper or he may direct that any such book shall be produced at the trial or other proceeding as the case may be And any such order may  
30 if necessary be made ex parte.

A Judge may order inspection of books &c.

14. The service of the notice required by the twelfth section of this Act may in every case be proved by affidavit or solemn declaration before any Commissioner for Affidavits or Justice of the Peace and the signature thereto purporting to be that of a Commissioner or Justice  
35 shall be sufficient evidence of the making of such affidavit or declaration.

Service of notice how proved.

15. It shall in no case be necessary to produce the books of a bank or any of them in order to prove that a person has not or that he never had an account at such bank.

Non-production of books of banks.

40 16. This Act shall commence on the tenth day after the passing thereof and may be cited as the "Bankers' Books and Cheques Act."

Commencement and title

