

appellant's examination as to matters within his own knowledge and from entries in the books of the bank, all of this relating, as it directly did, to the estate and interest of Nicholson, the subject of the reference in the action.

The case *Pollock v. Garle* (1898), to which we have been referred since the argument, arises under the Bankers' Evidence Act, and has no bearing on the case before us.

My learned brother Rose would seem, from some expressions in his judgment, to have leant to the opinion that the objection on the ground of inconvenience to the bank was a tenable one, though he has given no substantial effect to it, except perhaps in disposing of the costs of the motion.

From what I have said it will be seen that I am unable to adopt this view. No doubt the respondents will, as they showed their willingness to do, meet the bank's convenience in any reasonable way, but the measure of their right is to have the witness attend and produce the books in Court in the usual manner, and the form of the order under appeal does not otherwise direct.

I think the appeal should be dismissed with costs, and the judgment affirmed, except as to the costs of the motion, which should be paid by the appellant.

MACLENNAN, J.A.—I am of opinion that this appeal fails.

With regard to the production of books and papers under subpœna, a bank is in the same position as any private person. There has been no legislation in this country such as the Acts of 1876 and 1878 in England; and a bank has no privilege against production which does not belong to a private person. Every person who is duly served with a subpœna to produce books and papers must obey, if what is required be in his possession or power. If they are not in his possession or power, he must attend, and if required show that such is the reason for his disobedience. To refuse without sufficient reason is a contempt of Court. In the present case the appellant was the manager of a branch of the bank, having the custody and possession for the bank of the books and papers which the subpœna called for, and, therefore, the proper person to produce them. He refused to obey the subpœna, and in doing so he was clearly wrong.

A different question arises when the books and papers are brought into Court. It is whether the witness is bound to disclose their contents. That question depends on their relevancy to the judicial inquiry, and on the right of the party seeking it to have the disclosure. If irrelevant, that in general is an answer to the demand. But the contents may be relevant, and yet the party may not have any right in law to their disclosure. An instance of that is the title deeds of the witness, or of his