

duce the books. Unless exempted by legislation, a banker is not excused from producing his books, or testifying as to his customer's balance, when relevant to the issue. Discussion of the English Bankers' Books Evidence Act, 1879.

Prima facie the custody and control of the books of the branch of which he was manager fell within the scope of the witness' duty, and it was incumbent upon him to make it clear that he was expressly forbidden to produce them.

If a subpoena duces tecum is served upon an officer who has the absolute control and the ability to produce, he must do so. *In re Dwight and Macklem*, 15 O.R. 148, approved and followed.

Evidence as to a customer's account is not privileged at common law, and s. 46 of the Bank Act is no more than a prohibition against a bank voluntarily permitting any examination of customers' accounts, save by a director. Even if the prohibition of the directors would justify nonproduction, it would not protect the witness from speaking the facts within his knowledge. Where a motion to commit is made, it is not, in this Province, necessary to serve with the notice of motion copies of the affidavits on which it is based. *Hannum v. McRae*, 33 C.L.J. 722, 17 P.R. 567, affirmed.

Travers Lewis, for appellant. *Watson*, Q.C., and *Latchford*, for respondent.

HIGH COURT OF JUSTICE.

Ferguson, J. }
Trial of actions. }

[Sept. 6.

SUTHERLAND MINES CO. v. TOWNSHIP OF ROMNEY.

Drainage by-laws—Municipal Act—Registration—Motion to quash—R.S.O. 1897, c. 223, s. 396 (1).

Held, that the provisions of 55 Vict., c. 42, s. 351, (O.), as amended by 60 Vict., c. 45, s. 7, sub-s. 1, and s. 47 (R.S.O. 1897, c. 223, s. 396 (1)), with reference to registration of by-laws creating debts, apply to drainage by-laws.

Semble, also, that a by-law so registered and not attacked, and the certificate registered within the term prescribed is valid and binding, even though one which the municipality had not proper power to pass.

Atkinson, Q.C., and *G. Douglas*, for plaintiff. *Aylesworth*, Q.C., and *Rankin*, for defendants.

Ferguson, J., Robertson, J., Meredith, J.]

[Sept. 8.

RE LEAK AND TORONTO.

Municipal corporation—"Injurious affecting" lands—Arbitration with landowner—Award—Compensation—Interest on.

Interest may be allowed by an arbitrator on the amount of compensation awarded to a landowner against a municipality for injuriously affecting his lands in the exercise of its powers.

Per ROBERTSON, J.: The act causing the injury is not tortious or illegal, and compensation is not to be treated as damages.