

Bill No. 25 of 1952.

A BILL TO AMEND THE ALBERTA EVIDENCE ACT.

NOTE.

This Bill amends *The Alberta Evidence Act*, being chapter 106 of the Revised Statutes of Alberta, 1942.

Section 37 is amended by the addition of a new subsection (6). The section provides for the admission in evidence of photographic films, micro-films and photostatic negatives of certain documents which have been photographed in the ordinary course of business and then destroyed. *The Land Titles Act* is being amended to permit the use of photostatic negatives of certificates of title where the original certificates are worn or damaged as a result of excessive use. In such a case the original certificate of title is not destroyed. The purpose of the amendment is to make it clear that the photostatic negatives of the face and reverse of the certificate of title are admissible in evidence for all purposes for which the certificate of title would have been admissible, notwithstanding that the original certificate has not been destroyed.

Section 37*a* is struck out and a new section is substituted in its stead. The purpose of this amendment is simply to correct an error. In 1943 a new section 37*a* was added to the Act providing for the use of micro-photographic film and enlargements therefrom in evidence. A revised and improved version of this section was worked out and in 1947 an amendment was presented to the Legislature, the intention of which was to strike out the section as enacted in 1943 and replace it with the section considered by the Legislature in 1947. Through error, however, section 37 was struck out instead of section 37*a*. The effect of this amendment is to strike out section 37*a* which should have been repealed in 1947 and to restore as section 37*a* the former section 37 which should not have been repealed.

Section 45 is struck out and a new section substituted. The Conference of Commissioners on Uniformity of Legislation in Canada, in 1951 recommended the amending of *The Uniform Evidence Act* with respect to the taking of affidavits abroad for use in Canada. It was found that the terminology used was out-dated with respect to the recent developments in Canadian and Commonwealth affairs and particularly in regard to the present status of India and Ireland. The section was therefore redrafted to provide for modern circumstances. The effect of the amendment is to bring *The Alberta Evidence Act*, in this respect, into conformity with the provisions of the other provinces and the Dominion.

Section 46 is struck out and a new section substituted. The effect of this amendment is to make section 46 consistent and in conformity with *The Uniform Evidence Act* and section 45. The amendment does not effect any substantive change in the law.

This Bill comes into force upon assent.

J. W. RYAN,
Acting Legislative Counsel.

(This note does not form any part of the Bill but is offered in explanation of its provisions.)

BILL

No. 25 of 1952.

An Act to amend The Alberta Evidence Act.

(Assented to , 1952.)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. *The Alberta Evidence Act*, being chapter 106 of the Revised Statutes of Alberta, 1942, is hereby amended.

2. Section 37 is amended by adding immediately after subsection (5) the following new subsection: Section 37 amended

“(6) Where a certificate of title is removed from the register and replaced by two photostatic negatives pursuant to section 21a of *The Land Titles Act* the two negatives shall be admissible in evidence in all cases and for all purposes for which the certificate of title would have been admissible, notwithstanding that the certificate of title has not been destroyed.”.

3. Section 37a is struck out and the following is substituted: Section 37a amended

“**37a.** (1) In this section, unless the context otherwise requires,— Interpretation

“(a) ‘bank’ means a bank to which *The Bank Act* applies, and includes a branch, agency or office of any such bank; “bank”

“(b) ‘court’ means the court, judge, arbitrator under *The Arbitration Act* or person before whom a legal proceeding is held or taken for the purposes of which it is required to inspect or take copies of entries in the books or records of a bank; “court”

“(c) ‘legal proceedings’ means a civil proceeding or inquiry in which evidence is or may be given, and includes an arbitration. “legal proceedings”

“(2) Subject to the provisions of this section, a copy of an entry in a book or record kept in a bank shall in all legal proceedings be received as *prima facie* evidence of the entry and of the matters, transactions and accounts therein recorded. Bank books and records

“(3) A copy of an entry in such book or record shall not be received in evidence under this section unless it is first proven,— Copies of entries

“(a) that the book or record was, at the time of the making of the entry, one of the ordinary books or records of the bank; and

“(b) that the entry was made in the usual and ordinary course of business; and

“(c) that the book or record is in the custody or control of the bank; and

“(d) that the copy is a true copy thereof.

“(4) The proof required by subsection (3) may be given by the manager or accountant of the bank and may be given orally or by affidavit sworn before a commissioner for taking affidavits or other competent authority of the like nature.

Production of bank book or record where bank not a party “(5) A bank or officer of a bank shall not in a legal proceeding to which the bank is not a party be compellable,—

“(a) to produce a book or record, the contents of which can be proved under this section; or

“(b) to appear as a witness to prove the matters, transactions and accounts therein recorded;

unless by order of the court made for special cause.

Inspection of bank records “(6) On the application of a party to a legal proceeding, the court may order that such party be at liberty to inspect and take copies of entries in the books or records of a bank for the purposes of such legal proceedings.

“(7) The person whose account is to be inspected shall be notified of the application at least two clear days before the hearing thereof.

“(8) If it is shown to the satisfaction of the court that the person whose account is to be inspected cannot be notified personally, the court may order the notice to be given by addressing the same to the bank.

Costs “(9) The costs of an application to a court under this section and the costs of anything done or to be done under an order of the court made under this section shall be in the discretion of the court, which may order the same or any part thereof to be paid to any party by the bank, where the same have been occasioned by default or delay on the part of the bank.

“(10) An order against a bank made under subsection (9) may be enforced as if the bank was a party to the proceeding.

Holidays “(11) Holidays shall be excluded from the computation of time under this section.”.

Section 45 amended 4. Section 45 is struck out and the following is substituted:

Oaths made outside the Province “45. Oaths, affidavits, affirmations or statutory declarations administered, sworn, affirmed or made in any other province or in any country other than Canada, before,—

“(a) a judge, a magistrate or an officer of a Court of Justice or a commissioner authorized to administer oaths in the Courts of Justice of such province or country;

- “(b) the mayor or chief magistrate of any city, borough, or town corporate certified under the seal of such city, borough or town corporate;
- “(c) officers of any of His Majesty’s diplomatic or consular services exercising their functions in any country other than Canada, including ambassadors, envoys, ministers, charges d’affaires, counsellors, secretaries, attaches, consuls-general, consuls, vice-consuls, pro-consuls, consular agents, acting consuls-general, acting consuls, acting vice-consuls and acting consular agents;
- “(d) officers of the Canadian diplomatic, consular and representative services exercising their functions in any country other than Canada, including, in addition to the diplomatic and consular officers mentioned in clause (c), high commissioners, permanent delegates, acting high commissioners, acting permanent delegates, counsellors and secretaries;
- “(e) Canadian Government Trade Commissioners and Assistant Canadian Government Trade Commissioners while exercising their functions in any country other than Canada;
- “(f) a notary public and certified under his hand and official seal; or
- “(g) a commissioner authorized by the laws of Alberta to take such affidavits;

shall be as valid and effectual to all intents and purposes as if the oath, affidavit, affirmation or statutory declaration had been duly administered, sworn, affirmed or made in Alberta before a commissioner for taking affidavits or other competent authority of the like nature.”.

5. Section 46 is struck out and the following is substituted: Section 46
amended

“**46.** Any document purporting to be signed by a person referred to in section 45, and,— Proof of
oath

- “(a) in the case of a person referred to in clause (b) or (f) of that section, purporting to have impressed thereon or attached thereto the seal required by the said clause (b) or (f);
- “(b) in the case of a person referred to in clause (c), (d) or (e) of that section, purporting to have impressed thereon or attached thereto his seal of office if any;

in testimony of the oath, affidavit, affirmation or statutory declaration having been administered, sworn, affirmed or made by or before him, shall be admitted in evidence without proof of the signature, or seal and signature, or of his official character.”.

6. This Act shall come into force on the day upon which it is assented to. Coming
into force

No. 25.

FIFTH SESSION
ELEVENTH LEGISLATURE

1 Elizabeth II

1952

BILL

An Act to amend The Alberta
Evidence Act.

Received and read the

First time

Second time.....

Third time.....

HON. MR. MAYNARD.
