

BOOK REVIEWS

LAW OF BANKING. 6th Edition. By LORD CHORLEY. [London: Sweet and Maxwell. 1974. xxxiii + 425 pp].

A new edition of Lord Chorley's book on the law of Banking is most welcome. The last edition appeared ten years ago, and since then a lot has happened in the world of banking. It is indeed pleasant to read again the refreshing concise style of Lord Chorley. The new edition is however doubly welcome not only for its own style, but also for its contents, and no doubt it has benefited considerably from the able assistance which Dr. Milnes Holden has given Lord Chorley.

As Lord Chorley points out in his Preface to this edition, no less than twenty-five Acts have been passed by the British Parliament which are of sufficient importance to be noted by bankers. It is to the credit of this edition that most of these Acts have been noted: and though they may perhaps be of especial interest to bankers, nonetheless many provisions are of general importance. Few would, for example, think that the Race Relations Act of 1968 would have anything to do with banking. Thus, one might be surprised to note that section 2 of that Act expressly makes it unlawful to discriminate on ground of colour, race or ethnic or national origins in the provisions of facilities by way of (*inter alia*) banking.

At the same time, there are Acts directly relevant to banking, such as the Banking and Financial Dealings Act, 1970. Lord Chorley comments on the potential importance of this Act and expresses mild regret that the banking community has not realised this fact. For example, s.2(1) (a) of this Act gives the British Treasury the power of directing in the national interest any banker not to carry out any transaction of a specified kind of transaction on a particular day. While it is in keeping with the times to give the executive wide powers in "the national interest" (an admittedly vague and elastic term), it is noteworthy that this is the first occasion in the English Banking world that such an extreme type of power of control over bankers has ever been given. As Lord Chorley points out (p. 17) it could be used to prevent a banker from paying a cheque if the Government decided that it was in the national interest that he should not do so. However, it is comforting to note Lord Chorley's further remark that it is unlikely to be used except in extreme cases of national urgency.

It is also interesting to note that legislative changes in the administrative and economic structure of the United Kingdom cannot be ignored in the banking world. A good example of the former type of legislation is the Local Government Act of 1972. This Act has completely reorganised the structure of local government in Britain and has established what has been called the "two tier" system of authorities. The first tier units consists of the metropolitan counties and non-metropolitan counties, with second tier, that of the districts, constituted from 1974. Rural parishes remain, under the name of parishes. Thus English bankers have new types of local authorities as customers, and perhaps will also be dealing with some newly created classes of officials. However, in a comprehensive footnote (p. 207) Lord Chorley points out that as between a banker and a local authority customer, the new statute does not appear to affect the legal position, as it previously existed.

An example of the type of legislation affecting the economic structure of the United Kingdom is the controversial European Communities Act, 1972, which legalised Britain's entry into the Common Market. At the time Lord Chorley sent his new edition to the press, apparently no decision had been made to subject that Act to the "un-English" method of direct democracy, i.e. a referendum. Though the fate of the Act is now unpredictable, it has necessarily contained some provisions having a profound impact on banking throughout Western Europe. Lord Chorley confesses

that he has not made any radical alterations in the text of the new edition with regard to the implications of this Act, due to the very short time at his disposal. He has, however, been good enough to point out in the Preface the object and effect of section 9 of the Act, where he explains that section 9 has apparently been enacted to push the *ultra vires* doctrine more into line with the compromise adopted in the European Economic Community. The section appears to say that the validity of the acts of directors will no longer be limited by the memorandum and articles. If so, the *Rule in Turquand's case* can now be considered as thrown over-board, and bankers can feel much happier in dealing with the financial transactions of companies. Lord Chorley however lodges a *caveat* with regard to the phrase "good faith" appearing in section 9, and points out that a person knowingly disregarding the limitations contained in the memorandum or articles may not be regarded as "dealing in good faith". If Lord Chorley's doubts prove to be correct, then bankers should be cautious as to the effect of section 9, for every banker usually asks for and is given a copy of the memorandum and articles of the company regarding which he is about to open an account.

Coming now to the new decisions on banking law which have been delivered since the last edition, one is also happy to note that a good deal of them have been noted or discussed in the present edition. To mention a few that have been ably noted and discussed, they are (p. 34) *United Dominions Trust Ltd. v. Kirkwood* [1966] 2 Q.B. 431; (p. 125) *Marfani and Co. v. Midland Bank* [1968] 1 W.L.R. 956; (129) *Australia and New Zealand Bank v. Ateliers etc. De Charleroi* [1967] A.C. 86; (p. 136) *Lumsden and Co. v. London Trustee Savings Bank* [1971] 1 Lloyd's Rep. 114; (p. 141). *Schioler v. Westminster Bank Ltd.* [1970] 2 Q.B. 719; (p. 219) *National Westminster Bank Ltd. v. Halesowen Presswork and Assemblies Ltd.* [1972] A.C. 785; and (p. 355) *Re Kever* (a Bankrupt) [1967] Ch. 182.

However, the most important contribution of Lord Chorley to banking law in this edition is the revision and modifications which he has made to the text. In the first place there is a new Foreword which is meant for new students, to enlighten them on how the law of banking fits into the general body of English law, particularly English mercantile law. It is interesting to note that in the Foreword Lord Chorley reminds the new student that even the law of torts must be of concern to him — particularly that relating to the torts of negligence and conversion. He also points out the interaction of property law with banking law, and the importance of the Sale of Goods Act to bankers. The student is also apprised of the rising importance of bankers' commercial and documentary credits as a branch of banking activity, and that in such an area the laws relating to sea carriage and marine insurance are also relevant.

It is also pleasant to note that Lord Chorley has re-written the first part of the chapter on the Account (Ch. 8) to bring it in line with modern developments. In the chapter on Special Accounts (Ch. 9) he has completely re-written the section on local government, although, as already explained, the Local Government Act of 1972 could not be incorporated in the text, but was discussed in a footnote. He has also expanded the section on the accounts of registered companies. As many new law students may become solicitors, Lord Chorley has thought it fit to elevate the question of Solicitors' Accounts from a mere footnote, and a new section on Solicitors' Accounts — the Solicitors' Client Account — appears.

Lord Chorley however concedes that he is conscious that there is still room for improvement. It is suggested that as banking law is closely connected the law of negotiable instruments, it may well be worthwhile to expand Chapter 7 of the present edition, headed "Other Instruments used in Banking". In view of the admitted growing importance of the law relating to bankers' documentary and commercial credits, and the involvement of bills of exchange in such transactions, it is hoped that bills of exchange may receive a little more expanded treatment in the next edition, instead of the mere five pages attributed to them in this edition. This observation is made in view of the fact that the subject of Credit Transfer and Bank Giro is given five times that treatment. This, however, does not imply that the enthusiasm exhibited by Lord Chorley on this topic (which he calls "the outstanding innovation of the century") is not justified. Similarly, the promissory note, which is the other negotiable instrument mentioned in the Bills of Exchange Act, is dealt with in a short paragraph of nine lines, while in the same chapter money orders and postal orders are treated several times more expansively.

Furthermore, certain concepts related to negotiable instruments, but at the same time most relevant to banking law, seem to merit more than the somewhat meagre treatment given to them. Thus, the concept of "holder for value" and "holder in due course" could easily be treated more comprehensively, in view of recent rulings such as that in *Re Keever* (1967) and *Astley Industrial Trust* (1970). Perhaps the justification is that these matters have been more extensively treated in the "Notes" to *Leading Cases on Banking Law*, by Lord Chorley and Mr. Smart, and that Lord Chorley regards the casebook as a companion volume to the present edition. Nonetheless, there would seem to be no harm in incorporating some of the ideas contained in the latter book, as the new student may not have ready access to *Leading Cases*. The subject of "dishonour" and the various aspects of it could perhaps also be expanded. It is significant that the present edition makes no mention of the controversial case of *Eaglehill* (1972), where the House of Lords reversed the decision of the Court of Appeal and is the latest case on the subject of dishonour.

All in all, one can only reiterate that the new edition of Lord Chorley's book is most welcome to both law students and law teachers alike, and that for what the author describes as an "introductory book", the contents and quality contained therein more than justify the modest description.

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