

LEADING CASES IN THE LAW OF BANKING

CHORLEY & SMART

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of Bankers

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Lord Chorley

assisted by
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LEADING CASES IN THE LAW OF BANKING

Fourth Edition

By

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PREFACE TO FOURTH EDITION

THE Council of The Institute of Bankers, having decided with regret that it was no longer practicable to continue publication of their detailed *Legal Decisions affecting Bankers*, have associated themselves with the publication of this new edition of *Leading Cases in the Law of Banking*, which may now be regarded in part as successor to the Legal Decisions series, in digesting the cases that are of interest and concern to bankers. The eight volumes of the Legal Decisions series, covering cases up to 1966, will of course still be of use to bankers and others seeking full reports of cases that may not be otherwise easily accessible to them. The Table of Cases in this book includes the LDB reference for every case referred to which is to be found there.

In view of the transfer of the first author's *Law of Banking* from Pitmans to Sweet and Maxwell, it was obviously appropriate for the Case Book, which has from the first been based upon it, to follow. The text of this edition has again been kept in step with the *Law of Banking*.

In preparing this edition we have been able to consider more than 40 cases heard since the third edition was prepared in 1973. Perhaps the most important are *Lloyds Bank Ltd. v. Bundy*, which has extended the significance of the banker-customer relationship; *Metropolitan Police Commissioner v. Charles*, in which the Theft Act cases on the issuing of cheques reached their climax in the House of Lords; and *Aluminium Industrie BV v. Romalpa Aluminium Ltd.*, widely known as the *Romalpa* case, which has caused bankers and others to question whether the floating charge can usefully survive as banking security in its present form. The full implications of this decision have still to be worked out and the brief notes on it in this edition must be regarded as provisional.

But the banks now appear in the law reports more often in the area of international trade than in any other: the law covering basic domestic banking, explored by the courts in depth over many years, appears to be reasonably settled. A number of new cases since the previous edition reflect the increasing importance of the finance of foreign trade in the business of banking. Four of the most recent have had to be treated briefly in the Appendix; the *Cebora* decision and the later decision of the House of Lords in the *Nova (Jersey) Knit* case are considered in the section concerned with the nature of the bill of exchange; other cases in this area fall within the sections on Discount of Bills and Bankers' Commercial Credits. This latter section we have expanded to include also earlier cases of importance;

it forms the most substantial part of a new chapter on Financing by Bankers. It is perhaps of interest to remark on the fact that the law reports have so little on other aspects of the banks' lending function, which clearly do not give rise to much litigation.

In the preface to the previous edition we remarked on the number of recent changes in banking practice not yet reflected in the law reports. Since then the credit card has made a notable appearance there in the *Charles* case, but it remains significant that the credit transfer, or bank giro credit, the legal implications of which are discussed in *Law of Banking*, seems to be so much less litigated than the cheque has been through the years.

In the immediate past, however, the bankers' main concern has been, not with possible difficulties of the new developments in banking practice, but with the implications of the Consumer Credit Act 1974. No attempt has been made in this edition to discuss the many aspects of the Act that seem likely to affect banking development in the future: much of the Act still awaits implementation, and we have felt that speculation as to its possible effects would be premature in a book of this kind.

It may be hoped that the White Paper on *The Licensing and Supervision of Deposit Taking Institutions* will have fathered a statute before any further edition of this book is necessary. Then *United Dominions Trust Ltd. v. Kirkwood* will be of historic interest only; but we have for the present left the notes to the case unchanged, even though the Consumer Credit Act repeals the Moneylenders Acts referred to there, the repeals taking effect at dates to be appointed.

The Administration of Justice Act 1977, which received the royal assent as our text was passed for press, has *inter alia* repealed section 72(4) of the Bills of Exchange Act, as to which see *Barclay Bank (International) Ltd. v. Levin Bros. (Bradford) Ltd.* and in amending section 106 of the Land Registration Act 1925 has removed the proviso that caused difficulty in *Barclays Bank Ltd. v. Taylor*.

Again we thank reviewers of the previous edition for useful comment and criticism. And we are most grateful to Mr E. C. Woods, LL.M., Principal of the Solicitors and Legal Department of the Midland Bank, for the many valuable suggestions which have helped to improve this new edition.

CHORLEY
P. E. SMART

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PREFACE TO FIRST EDITION

THE absence of an elementary case book on the Law of Banking is a serious impediment to the successful study of the subject, especially where library facilities are not available, and this book is an attempt to fill the gap. Even professional law students working under expert supervision often encounter difficulties in the use of the different sets of law reports, and find it helpful to have recourse to the various volumes of leading cases which have appeared over the last thirty years or so. We think that this type of book is even more necessary for the young bank officer, struggling to understand a difficult branch of the law in which the decisions of the Courts are all-important, and working sometimes with little or no tutorial assistance.

The Institute of Bankers has, of course, long made available its own volumes of *Legal Decisions affecting Bankers*, admirable compilations produced under the most distinguished editorship, but more detailed and elaborate than is needed by any but the most gifted and industrious students, while their chronological arrangement does not lend itself to the study of any particular aspect of the subject.

We have had in mind in compiling this volume the needs of the ordinary candidate for the Diploma Examination of the Institute of Bankers. The method employed is that which has become usual in this type of book: a sufficient summary of the facts of a case to enable the student to grasp what it is about; the decision; and, where appropriate, an apposite quotation from one or more of the judgments of the Court. To this, the leading case, is appended a Note in which attention is drawn to other cases relevant to the decision, to passages in textbooks or articles which we think may help the student, and to any other material which appears likely to be useful. The general plan of the subject-matter follows the first author's *Law of Banking*, which embodies the results of a number of years of teaching in this subject.

We are most grateful to Mr. John Tonkyn, an Assistant General Manager of Barclays Bank Limited, who read the manuscript and made a large number of valuable suggestions. We are also grateful to the Incorporated Council of Law Reporting for England and Wales for permission to make use of their various series of law reports, to the proprietors of the All England Law Reports and *The Times Law Reports* for their like permission, to the Council of the Institute of Bankers for allowing quotation from their *Legal Decisions affecting Bankers*, and from the *Journal* of the Institute,

and to Messrs. Benn Bros. for permission to quote from *The Miller*.

The first author, while accepting full responsibility for the contents of this book, would like to make it clear that the main burden and heat of the day in connection with its preparation have fallen upon the second one, who shouldered the onerous task not only of digesting the leading cases, but of preparing the materials for the Notes.

The second author, in his turn, wishes to record his grateful appreciation of the encouragement given to him by the Trustees of the Houblon-Norman Fund in their award of a grant to further the studies of which this book is in part the product; and to express his thanks for the unfailing co-operation he has found at the Library of the Institute of Bankers. Without this co-operation his share of the work would have been impossible.

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P. E. SMART

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