FALCONBRIDGE ON BANKING AND BILLS OF EXCHANGE (Seventh Edition). Edited by Arthur W. Rogers. Toronto: Canada Law Book Company Limited. 1969. Pp. lxxiv and 946. $40.00.

One might well question the need for reviewing a treatise that first appeared on the scene in 1907 and has now gone through a total of seven editions. Surely, it is inconceivable that any Canadian lawyer, no matter what his vintage, has remained totally ignorant of the existence of what is probably the best-known and most widely distributed work on any legal subject in Canada—Falconbridge's *Banking and Bills of Exchange*. At most, this review can only serve the purpose of informing the readers of the *Law Review* of the fact of publication of the seventh edition under the editorship of Arthur W. Rogers, Q.C., and note some of the principal changes that appear in this new edition. To do much more, would in the words of a reviewer of the fourth edition of the work, be "superfluous, if not impertinent."[1]

The learned editor—no stranger to the subjects dealt with in the treatise, having been at one time the Associate Counsel for the Canadian Bankers' Association—has chosen not to alter the familiar framework of the sixth edition to any appreciable extent. The new edition is divided into three parts. Part I forms the introductory material and, as with the former edition, deals with the development of the law merchant, the introduction of the common law into Canada, the development of the civil law in Quebec and Canadian constitutional law problems associated with banking and bills and notes.

Part II, entitled "Banking," is basically the same as Book I in the sixth edition as far as the subject matter dealt with is concerned, but it has been appropriately adapted to the new Bank Act and some material has been either added or deleted. Of particular note are the changes found in Chapters 12 and 13, which deal with the considerably revised section 75 of the Bank Act. The former paragraphs in Chapter 12 of "conditional sale contracts," "household property" and "housing and home improvements" have given way to the new paragraphs of "lending and security," "security for a prior debt," "security on real and immovable property" and "security on personal or movable property." This change, of course, reflects the broadened lending powers conferred upon the banks by the new section 75. Mr. Rogers has added two new paragraphs to Chapter 12, one on the new Ontario Personal Property Security Act[2] and one on safekeeping, night-depositories and safety deposit boxes. Realizing the space limitation within which the learned editor was required to work, that the Ontario Act will not become operative until 1972 at the earliest and that similar legislation may be a long time in coming to other provinces, it is, nevertheless, regrettable that he could not see his way clear to devoting more than two and one-quarter pages to the subject of personal property security devices and the changes in law contemplated by the Personal Property Security Act

1 Gutteridge (1930) 46 L.Q. Rev. 114. A sample of the accolades the previous editions have received may be found in the following reviews: (1929) 7 Can. Bar Rev. 213; (1936) 3 U. of Chicago L. Rev. 688; (1936) 14 Can. Bar Rev. 83; (1937) 2-3 U. of T. L.J. 435; (1936) 6 Camb. L.J. 131; (1956) 34 Can. Bar Rev. 864 and (1956) 3 McGill L.J. 113.

2 S.O. 1967, c. 73.

and Article 9 of the American Uniform Commercial Code, after which the Ontario legislation is modelled.

Chapter 13 contains additional paragraphs on certain limitations on bank lending powers imposed by section 75 and on the new limitations upon bank ownership of shares of other companies imposed by section 76.[3]

Chapters 21, 22 and 23 contain new paragraphs on disclosure of borrowing costs, short-term money market instruments, Mechanics' Lien Act trusts and garnishment and joint accounts. Chapter 24, entitled, "Insurance by Governments of Deposits" is entirely new. In it are discussed, in brief, the Canada Deposit Insurance Corporation Act,[4] the Ontario Deposit Insurance Corporation Act,[5] and the Quebec Deposit Insurance Act.[6] It also reproduces the principal operative provisions of the federal Act and the Canada Deposit Insurance Corporation General By-Law. Chapters 26 and 27 of the sixth edition, dealing with insolvency of a bank and the appointment and powers of a curator, have been consolidated into Chapter 27.

Some of the noteworthy deletions are the histories of sections 86, 87, 88 and 90 of the Bank Act, discussion of the Factors Act in chapter 17[7] and a number of cases on interest rates.[8]

Part III, which takes up approximately five hundred of the nine hundred pages of text, is concerned with the law of negotiable instruments and is changed very little from Book II of the sixth edition. The late Dr. Falconbridge was a strong advocate of law reform and this fact displayed itself in the earlier works by his readiness to criticize where the law as it stood was unsatisfactory and to suggest changes. Mr. Rogers has, to some extent, maintained a critical approach to the law as is evidenced by the occasional reference to Article 3 of the Uniform Commercial Code, which has been adopted in every American state with the exception of Louisiana.[9] However, in this reviewer's opinion, the references to and discussion of Article 3 are all too infrequent having regard to the number of changes in or clarifications of the law brought about by its provisions. Two examples might be cited. The book[10] contains an excellent discussion of such cases as *Baxendale* v. *Bennett*[11] and *Smith* v. *Prosser*[12] which conclude that a holder in due course is subject to the defence of nondelivery of an incomplete instrument. It does not mention the fact that pursuant to section 3-305 of the Code such a defence is cut off as against a holder in due course.[13] Similarly,

3 Paragraph 14 "Control of other Companies", is not listed in the Table of Contents although reference is made to the topic dealt with therein in the Index.
4 S.C. 1966-67, c. 70.
5 S.O. 1967, c. 61.
6 S.Q. 1967, c. 73.
7 In the sixth edition Dr. Falconbridge devoted some 13 pages to a discussion of the Factors Act, all of which has been omitted from the seventh edition. In his preface and at page 224 the editor suggests "the sixth edition therefore should be retained in libraries for possible reference to these parts of the text".
8 The elimination of the discussion of cases dealing with interest rates is justified on the basis that there is now no limitation on rates of interest or discount charged to borrowers by banks.
9 For some unexplained reason the Code is referred to throughout the text as "U.S.C. Art. 3 . . ." rather than the usual "U.C.C. Art. 3 . . .".
10 At 532-539.
11 (1878) 3 Q.B.D. 525.
12 [1907] 2 K.B. 735.
13 Section 3-305 provides that a holder in due course takes the instrument free from "all defences of any party to the instrument with whom the holder has not dealt" except some enumerated defences which do not include non-delivery of an incomplete instrument. The official Comment to 3-305 states that the term "all defences" includes non-delivery, conditional delivery or delivery for a special purpose. The

the seventh edition has several pages of discussion on the question of whether or not a payee can be a holder in due course.[14] Again there is an absence of mention that by virtue of section 3-302(2) of the Code the English and Canadian rule is reversed.[15]

The learned editor has included a new paragraph in the chapter on the holder in due course entitled "Finance Companies as Holders in Due Course"[16] in which he discusses *Federal Discount Corporation Ltd.* v. *St. Pierre and St. Pierre*[17] and footnotes a number of other recent decisions in which the question is raised of whether or not a finance company's close association with the payee precludes it from being a holder in due course. He might have discussed some of the policy problems underlying the *Federal Discount* case and also recent development in the United States whereby finance companies and other buyers of commercial paper arising out of consumer transactions are being painted with the same brush as the payee-vendor.

Until recently the law relating to negotiable instruments has not had occasion to alter to any appreciable extent in this country. This has made the work of Canadian commercial lawyers, relatively easy. However, the computerization process which our banks are presently engaged in will probably have some far-reaching implications as is illustrated by the English case of *Burnett* v. *Westminster Bank, Ltd.*[18] What effect will the use of personalized magnetic-numbered cheques, which are fed in a bank's computer for posting, have on the customer's right to stop payment? What happens if such a cheque book is lost by a customer and one of the cheques finds its way into the hands of a person who would otherwise be a holder in due course? What is the legal significance of bank credit cards, of "bancardchecks", or instant cash dispensers? These and other related problems should merit, but did not receive, consideration in the seventh edition.

As indicated previously, the physical format of the book has not changed appreciably, although the print is heavier and, thus, more readable. Statutory passages are set in a bolder type than before and are readily distinguished from the narrative. The helpful references at the top of each page to the section or section numbers of the Bank Act or Bills or Exchange Act dealt with in that particular page have been eliminated which will make it more difficult for a reader to find quickly a passage in the book dealing with a particular section. Similarly, the list of paragraphs and topics dealt with in each chapter no longer appears at the beginning of each chapter. In the interest of conservation of space this is probably justified. The index has been improved from an ocular point of view by the use of capital letter type

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Comment concludes that "the effect of this section [3-305], together with the sections dealing with incomplete instruments (section 3-115) and alteration (section 3-407) is to cut off the defence of non-delivery of an incomplete instrument against a holder in due course, and to change the rule of the original section 15". The reference is to section 15 of the Negotiable Instrument Law which expressly provided for the conclusions arrived at in England and in Canada by the decided cases.

14 At 624-626.

15 The rule generally followed in this country is that expressed in *R. E. Jones Ltd.* v. *Waring and Gillow Ltd.* [1926] A.C. 670 to the effect that a holder in due course must be a person to whom a bill has been "negotiated" and that, since a negotiable instrument is "issued" but not "negotiated" to a payee, the latter can never be a holder in due course. Section 3-302 provides that "a payee may be a holder in due course".

16 at 632-633.

17 (1962) 32 D.L.R. (2d) 86, [1962] 1 O.R. 310 (C.A.).

18 [1965] 3 All E.R. 82 (Q.B.D.).

for the subject headings rather than the previous small letter italic print. On the other hand, cross-references within the index have been eliminated, although their value might be questionable.

The price of the work raises the question whether or not the publishers should have considered issuing it in two separate volumes. Although the topics of banking and bills of exchange are most certainly related, are they related to such a degree that they are not severable? The book is probably designed somewhat more for the practitioner than the student, nevertheless, it is a valuable teaching tool. Hence, since most law school curriculums require a course in bills and notes and not in banking, it is conceivable that a wider distribution resulting in lower costs for everyone concerned could be a consequence of issuing two separate volumes, one on banking and one on bills of exchange.

The minor criticisms that are expressed above should in no way detract from our appreciation of the excellent quality that Mr. Rogers has maintained and built upon in this edition. We should, indeed, be grateful to him for the efforts that he has expended in keeping available to us the fruits of labour of one of the great legal minds this nation has ever produced.

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DOUBLE JEOPARDY. By Martin L. Friedland. Oxford: Clarendor Press. 1969. Pp. xxviiii and 439. 90s.

This work is a comprehensive study of the concept of double jeopardy in the common law world, and a magnificent testimonial to the scholarship of Professor Friedland. It is lucidly written and organized, and exhaustively researched. There is no doubt that the work will become a standard reference for many years. Certainly, judges and counsel in criminal matters will in the future proceed at their peril if unfamiliar with its subject material.

The work is in great detail and a review must confine itself to a brief indication of what the reader may expect to find within the five parts into which the work is divided. Part One contains a discussion of the rationale of the rule against double jeopardy, and its history in English and Continental Civil Law. In this introductory part Professor Friedland emphasizes that the history of the rule is the history of our criminal procedure. He also clearly states the rationale of the rule to be the prevention of harassment of an accused by the State.

Part Two explores the difficulties in determining when and under what circumstances jeopardy attaches, and hence the discussion here forms the central part of the work. The following headings found in this Part will indicate the scope of the discussion: Terminating the Proceedings Before Verdicts; Is a Verdict, Without More, a Bar? (the answer here is generally yes); Reconsidering the Verdict; Limited Correction of Erroneous Conviction; and Varying the Sentence During the Same Term. The Part also explores the important question of when