

SCRUTTON ON CHARTERPARTIES AND BILLS OF LADING, 17th Ed. By Sir William Lennox McNair, Sir Alan Abraham Mocatta and Michael J. Mustill. [London: Sweet and Maxwell. 1964. xcvi + 599 pp. (incl. index). £4. 10s. 0d.]

CARVER'S CARRIAGE BY SEA, 11th Ed. By Raoul P. Colinvaux. [London: Stevens, British Shipping Laws, vols. 2, 3. 1963. cxi + 1335 + [70] (index) pp. 14 gns. (£12. 7s. 6d. to purchasers of complete series)]

LOWNDES & RUDOLF: THE LAW OF GENERAL AVERAGE, 9th Ed. By J. F. Donaldson, C.T. Ellis and C.S. Staughton. [London: Stevens, British Shipping Laws, vol. 7. 1964. xxix + 501 pp. (incl. index). 5 gns. (4 gns. to purchasers of complete series)]

*Carver's Carriage by Sea* and *Scrutton On Charterparties and Bills of Lading* cover almost the same ground. Yet, while *Scrutton* is concerned only with carriage of goods by sea, *Carver* includes a discussion of carriage of passengers (Chap. 24) and is, generally, a more detailed book.

Thus, *Carver* includes many quotations from leading cases as well as important sections of Acts. The learned editors of *Scrutton*, on the other hand, have aimed at and certainly succeeded in presenting a concise, well balanced and accurate discussion of the subject. In fact, *Scrutton* includes almost as much useful information as *Carver*, and this despite the fact that it runs only to 599 pages as compared with *Carver's* 1335.

It is difficult to say which of these two books is the more useful one. It is, of course, convenient to find in *Carver* detailed discussions of the facts of important

cases followed by quotations. But the succinct summaries of the cases in *Scrutton* might, from the point of view of a practitioner who has a good library, do just as well. Moreover, the arrangement in *Scrutton* contributes towards clarity. The book is divided into articles, each of which is followed by summaries of the leading cases. This way the reader is capable of divining first the principle of law and then to look up the authorities which support the view expressed in the book. The discussion in *Carver*, on the other hand, is that followed in most text books, *i.e.* a straightforward analysis of the law and all the relevant cases figure according to their importance.

It is thus apparent that the two books serve a slightly different purpose. While *Carver* is, essentially, a treatise, *Scrutton* may perhaps be described as being closer to a digest of the type of Dicey's *Conflicts*. Ordinarily, therefore, the publication of two such books (even though by virtually the same publishers) should be regarded as commendable. The only reflection on this point follows from the incorporation of *Carver* in the *British Shipping Laws* series. This series is advertised as "an encyclopedic series which, when completed, will for all practical purposes cover the whole British law of shipping, in all its branches — from average to insurance and from carriage to salvage." One cannot help wondering whether, as part of such an outstanding plan, it would not have been better if the *British Shipping Laws* were to incorporate all Sweets' and Stevens' books on the subject (including *Scrutton*) and, indeed, merge books on similar topics. But, presumably, in view of the special standing of the two books, both of which have seen many editions, the publishers and editors must have thought it preferable to allow the two works to continue to co-exist.

In most aspects both books give a fully adequate discussion of the law of carriage. One thing is, however, noticeable — it can still be felt that both books were originally written before the passing of the Carriage of Goods by Sea Act, 1924. Both discuss the provisions of that act not in conjunction with the common law principles but in separate chapters, (Chap. XIII in *Scrutton* and Chap. 4 (10) in *Carver*). Both books include, of course, cross-references to the discussion of relevant sections of the Act, when similar problems arise at common law, but a closer connection between the principles of the common law and the Act would have been desirable. This can be particularly felt in the discussion of "deviation". In *Carver* deviation at common law is discussed in paras. 712-715 (*Scrutton* at p. 259, which however includes a cross reference) and it is stated that the master cannot deviate merely for the purpose of saving property belonging to third parties. Both books discuss subsequently the meaning of the word "property" in Art. IV rule 4 of the Schedule of the Act (which rule justifies "[a]ny deviation in saving or attempting to save life or property at sea..."). Neither of the books attempts to define or interpret the meaning of the word "property" in that rule. (Footnote (u) in *Scrutton* at p. 259 implies a wide interpretation). It might indeed be of interest to consider whether this word should be given its ordinary meaning, thus including any property. If that were so a master could deviate from his route in order to undertake any salvage operations, even of a property of limited value, to the disadvantage of shippers.

Another aspect of deviation which might have received a more detailed analysis is whether the delay resulting from the towing of another ship is in itself deviation. Apart from the authorities discussed in *Carver* (para. 711) and *Scrutton* (at p. 260), there is a more recent American authority, *i.e.* "*The Herman*" 57 F. 2d 20 at pp. 24-26 (1932), which stresses the delay element. (See also *Globe & Putgers Fire Ins. Co. v. United States* 105 F. 2d 160 at p. 167 (1939)). In particular it might have been considered whether towing is now permitted by Art. IV rule 4 of the Schedule, either as being for the salvage of "property" or as being reasonable deviation.

Some other observations must be made. Both books discuss the Hague Rules (incorporated in the Carriage of Goods by Sea Act, 1924) in the light of the English authorities. Since the rules have, however, been adopted in many countries, it might have been useful to refer to the views of foreign courts and lawyers as well. It might indeed frequently be useful to learn how these rules are interpreted in different jurisdictions. This could be particularly true in the case of Art. III rule 8 of the Schedule, which has not been adequately discussed by the English courts.

As regards the nature of the bill of lading, both books discuss whether it constitutes a contract of carriage or is only evidence of it, (*Scrutton* at p. 9 *et. seq.*, *Carver* paras. 58-63). In both books it is indicated that the bill of lading is treated as evidence of a contract. It might however have been stressed that this is true only as between shipper and shipowner; since in the relationship of shipowner and indorsee of the bill of lading, it constitutes the contract (*Leduc v. Ward* (1888) 20 Q.B.D. 475 at p. 479).

These observations should not however be understood as reflecting on the value of the two works. Both include all the information about carriage of goods by sea, and both should be found in the library of any commercial lawyer.

As regards *Carver* there is, however, one further observation, which concerns *British Shipping Laws* as a whole. The series is advertised as an encyclopedia, and one might therefore have presumed that the works included in it are complementary. But this is not the case. Despite the inclusion of a special work on *Salvage* (vol. 12, in preparation) in the series, Chap. 13 of *Carver* is entitled *Salvage*. Similarly, Chap. 14 is on *General Average* and App. 1 includes The York-Anwerp Rules, 1950. In view of vol. 7 of the series — Lowndes & Rudolf's *General Average*, it is felt that these parts might have been excluded. The discussion in the specific work on the subject is far more detailed and in view of its excellence, the respective parts in *Carver* are not of major interest. Their exclusion and likewise the exclusion of Chap. 13 would have enabled the publishers to reduce the price of the book.

As regards *Lowndes & Rudolf*, it is indeed a most readable book. The only observation which can be raised is that the discussion of the York Antwerp Rules, 1950 is almost exclusively based on English authorities. It is felt that for the understanding of such a widely accepted set of rules, it might be of importance to discuss their interpretation in other systems as well.

It should, however, be stressed that this book, as well as *Scrutton* and *Carver* is an authoritative work, which practitioners as well as students will find of great assistance.