REVIEWS

THE LAW RELATING TO MARINE INSURANCE. 1966. By B. C. Mitra. Allahabad : The Indian Press (Pubs.) Private Ltd. pp. xxvii+365. Rs. 30.

While introducing the Bill in the Parliament, the objects and reasons of the Indian Marine Insurance Bill were stated to be :

> The Indian Navy and the Indian shipping have undergone considerable expansion since Independence. But as there is no Indian Legislation governing marine insurance, the Indian Marine Insurance continues to be governed by the British Marine Insurance Act of 1906. The insurance policy form used in India is the English form. The wordings of a marine insurance policy are to a great extent based on mercantile customs and business conventions. They may at times appear to be in conflict with the provisions of the Indian contract Act, 1872. The result is that the courts have to put their own interpretations. This is obviously an unsatisfactory position, and for the smooth development of Indian Marine Insurance, it is essential to have legislation consistent with the Indian conditions.

The book under review, "The Law relating to Marine Insurance" by Shri B. C. Mitra is obviously a text book on the Marine Insurance Act of 1963 though the author prefers not to call it as such. The book contains 365 pages. The main text is contained in the first 113 pages and the rest of it are appendices numbering from A to W containing various acts and rules connected with the marine insurance. The appendices are useful addenda in themselves and go in a big way to increase the bulk of the book and are indispensable to practising lawyers and merchants, they however, do not, in my humble opinion, add to the merit of the book. The whole work (first 113 pages) has been divided into XV chapters. The author has made extensive use of the language of the bare Act to explain the law. This is an addition to the full text of the Act[1] given in a separate appendix[2] at the end. Such an overdose of the provisions of the bare Act in the main body of the text reduces author's own contribution to barely 50 and odd pages in a book of 365 pages. Judging from this angle the book is rather a work of compilation than an exhaustive commentary on the law relating to marine insurance. This has also been pointed out in the Foreward to the book written by the then Chief Justice of India, Justice

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1. The Marine Insurance Act, 1963.
2. See appendix D to B.C. Mitra, *The Law Relating* to Marine Insurance (1966). The book hereinafter cited as *Mitra* only.

A. K. Sarkar, when he says[3] :

> Mr. Mitra quite obviously, had not on the present occasion set out to write a comprehensive treatise. His attempt has really been to produce a work of modest compass, to put the law in India as it now stands in its statutory form and to state the basic principles of that law.

The author has defined a marine insurance contract as per section 3 of the Act.[4] He has, however, not made reference to the Insurance Act, 1938, which defines Marine Insurance business (meaning effecting of contracts) more exhaustively.[5]

On page 12,[6] the author makes a statement, 'A policy without interest is not necessarily a wager policy.' While section 6(1) of the Marine Insurance Act lays down that 'Every contract of marine insurance by way of wager is void' sub-section (2) of the said section further lays down what is deemed to be a wagering contract. The author goes on to say 'The assured cannot recover on the policy, but he may be entitled to a return of the premium.' This, in my opinion, may not be wholly correct as the assured is entitled to return of the premium or any part of it only under sections 83 and 84 but may not be entitled to the return of the premium on a wager policy. On page 16[7] the learned author points out 'A policy of reinsurance need not specify that it is a reinsurance.' Such a statement has not been shown warranted either by the Act or any decided case.

Dealing with disclosure and Representations in section 20, 21 and 22, the author points out on page 23,[8] 'The real question is whether the circumstances or information concealed, whether by design or mistake, were such as would have influenced the mind of a prudent under writer' and in the supporting footnote the author has made reference to *Halsbury's Laws of England*,[9] 3rd ed, vol. 22 and 113. However, the crux of the problem was explained long ago by Lord Mansfield in 1766 in *Crater* v. *Boehm*[10] when he said :

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3. *Id.* at p IX.

4. § 3 of The Marine Insurance Act, 1963, defines a contract of marine insurance as an agreement whereby the insurer undertakes to indemnify the assured in the manner and to the extent thereby agreed, against the marine losses, that is to say, the losses incidental to marine adventure.

5. § 2 (13-A) of the Insurance Act, 1938, defines marine insurance business as the business of effecting contracts of insurance upon vessels of any description, including cargoes, freights and other interest, goods, wares, merchandise and properly of whatever description insured for any transit by land or water or both, and whether or not including warehouse risks or similar risks in addition or incidental to such transit, and includes any other risk customarily included among the risk insured against in marine insurance policies.

6. *Mitra.*

7. *Ibid.*

8. *Ibid.*

9. 22 *Halsbury's Laws af England* 113 (3d. edn.)

10. (1766)3 Burr 1905 at 1909.

> The insurance is a contract upon speculation. The special facts upon which the contingent chance is to be computed be most commonly in the knowledge of the assured only; the underwriter trusts to his representation and proceeds upon confidence that he does not keep any circumstance in his knowledge, be mislead the underwriter into a belief that the circumstance does not exist, and to induce him to estimate the risk as it did not exist.

Apart from quoting verbation section 51 dealing with deviation, the author makes the statement[11] that 'This section ought not to be construed as exhaustive.' One should have expected that the learned author would throw more light by explaining the provisions of the Act dealing with such an important topic as deviation and also substantiate his claim that the section ought not to be construed as exhaustive; one finds nothing of that kind and the chapter is concluded abruptly by saying,[12] 'It seems doubtful whether the above section was intended to enumerate all the causes which will excuse deviation or delay.'

On page 58,[13] the author refers to the well-known clause known as 'Inchmaree Clause' but has not been able to explain the true import of the clause apart from making a terge statement that 'the clause covers a diversity of cases of damage or loss not arising from perils of the seas.'[14]

Dealing with the distinction between actual total loss and constructive total loss, the author is content with the statement that the distinction 'corresponds with the distinction which has been drawn between physical impossibility and commercial impossibility,[15] without explaining either of the terms.

The author deals with the doctrine of Subrogation in chapter XII of the book, but such an important topic is disposed of in just 2½ pages, half of it contains provisions from the bare Act. The treatment of the subject is rather sketchy. The author has failed to discuss the true nature of the right of subrogation.[16]

However, this seems to be a pioneering work on the Marine Insurance Act, 1963, and when the author says in the preface that he has tried to make the book within its limited compass up to date and useful to busy

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11. *Mitra* at 33.
12. *Mitra* at 54.
13. *Ibid.*
14. *Ibid.*
15. *Id.* at 67.
16. See Preston and Colinvauz, *Law of Insurance* 128 (2d edn.) where right of subrogation is defined in the following terms:

> The right of subrogation rests upon the ground that the insurer's contract is in the nature of a contract of indemnity and that he is, therefore, entitled, upon paying a sum for which others are primarily liable to the assured, to be proportionately subrogated to the right of action of the assured against them.

persons including judges, lawyers, commercial people and executive who are badly pressed for time, his stand is fully vindicated.

*K.B. Rohatgi**

* Professor, Faculty of Law, Delhi University, Delhi.