Louisiana Law Review

Volume 23 | Number 4
June 1963

Admiralty Law of the Supreme Court, by Herbert R. Baer. The Michie Co., Charlottesville, Va., 1963. Pp. xii, 361. $15.00.

Eberhard P. Deutsch

BOOK REVIEWS

Admiralty Law of the Supreme Court, by Herbert R. Baer. The Michie Co., Charlottesville, Va., 1963. Pp. xii, 361. $15.00.

The title of Professor Baer's small volume is unique, tempting, and disappointing. It is unique because it purports to present a study of admiralty law based on the decisions of the court of last resort in the United States; tempting because it promises a synthesis of the Supreme Court's admiralty views; and disappointing because it goes beyond its purport, and fails to reach the entirety of its promise.

From the title, the reader would expect to find discussions of the court's early extension of its maritime jurisdiction, and collations in the field of collision, marine contracts, limitation of liability and cargo, with the evolution of the early decisions into modern concepts determined by recent opinions.

The preface warns of the disappointment, in the author's frank statement that he discusses "significant decisions . . . in recent years"; but the disappointment caused by the book's lack of breadth as indicated by its title, is eased by the author's generally excellent treatment of those decisions which he does discuss.

Part I fulfills the title's promise in its full discussion of (1) rights of ill and injured seamen, (2) rights of seamen's guests, (3) seamen's releases and (4) rights of foreign seamen.

The reader is also gently led through the ambiguities of judicial legerdemain of the amphibious worker, including the maritime-but-local, and the twilight-zone, doctrines. In all, more than half of the book is devoted to seamen's claims, and the treatment of that subject is entirely adequate.

The author's conclusion that the court has sailed too far off course, when it rules contrary to congressional mandates and re-defines the function of court and jury, is amply supported.

But the chapters in Part II of the book, devoted to marine insurance, statute of frauds, partitioning vessels, equitable or quasi-contract relief in admiralty, and *forum non conveniens,* merely skim over the subjects which their titles suggest.

Recent Supreme Court decisions, too, have only touched on these subjects, but except in a few cases, the author disappoints his reader by restricting his discussion to these recent developments without at least indicating the judicial background out of which they have evolved.

While Chapter 2 of Part II will not be helpful—perhaps not even intelligible—to the uninitiated, it will unquestionably be most interesting, and even instructive, to those who have a basic knowledge of, or who have been exposed extensively to, the admiralty doctrine of Limitation of Liability.

In a chapter entitled "Towage and Pilotage Contracts," the author's introductory paragraph goes from state pilots to compulsory pilots to liability of a tug towing an unmanned barge — an apparent *non sequitur* which could have been omitted.

In discussing the "pilotage clause" used principally in New York Harbor, the author apparently does not understand that no "towing contract" is involved. The tugboat companies operating in that harbor agree in their published tariffs, or by special contract, to furnish to steamships moving under their own power and manned with their own crews, such tug assistance as they may require in docking and undocking their vessels.

A vessel's owner may, but is not required to, employ a transport and docking pilot to navigate, dock and undock the ship in areas where the state pilots do not function. The docking pilot may, and often is, but need not, be the master of one of the assisting tugs.

The pilotage clause exonerates the tug-owner from the negligence of this pilot, not the negligence of the "tug's captain who had come on board the tow," as stated by the author. This is a radically different situation from that involved in "towage clauses" as in the *Bisso*-type case, in which the tug and its personnel have absolute control over the unmanned tow which has no power of its own.

Professor Baer has also included four appendices covering some thirty pages, which include copies of the limitation petitions in the *Andrea Doria-Stockholm,* the Brussels Collision Convention of 1910, the Brussels Limitation Convention of 1957, and the Admiralty Rules of the Supreme Court.

The latter three items are available in numerous reference works, and would seem to have no relevant purpose in this book.

The limitation petitions set out in extenso in Appendices *A* and *B*, though interesting and unquestionably meeting the author's description of being drafted by able and competent counsel, clearly have no logical place whatever in a volume entitled "Admiralty Law of the Supreme Court."

Nevertheless, Professor Baer's writing is clear, and his synthesis of the law is ably presented as far at it goes. The book should be on the required reading list for any lawyer intending to enter maritime practice, provided that his reading covers sufficient ground to hold this volume in the proper perspective of a wide context.

*Eberhard P. Deutsch**

Comparative Federalism and State Rights and National Power, by Edward McWhinney. Toronto, University of Toronto Press. 1962. 103 pp. $5.

Professor McWhinney's latest book contains a number of very short chapters on various aspects of contemporary federalism in the United States, Canada, and Western Germany. He has deliberately omitted consideration of non-Western federal countries like India, where the societies, measured by European and North American standards, are at less mature stages of economic growth and development. He also makes no reference to his native federal heath, Australia, where many of the problems he raises are real and relevant enough. For the very short space that the author allows himself, three federations are doubtless enough. He explains his choices in this way. The North American federations not only have a rich experience of federal government, but they also exhibit social divisions and conflicts which the federal structures strive to contain. The West German federation, which Professor McWhinney also knows at first hand, is an area in which the federal idea is being worked out anew with a special new court, against a different historical and social background.

Twenty-five years ago, Harold Laski wrote with character-

*Member, New Orleans Bar.