

## REVIEWS AND NOTICES

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*Airports and the Courts.* By CHARLES S. RHYNE. Washington: National Institute of Municipal Law Officers. 1944. Pp. viii, 222. (\$5.00)

The title of the present small monograph holds forth a promise which the contents do not completely justify. The author has been content to collect within two covers practically all the cases dealing with various aspects relating to the acquisition and operation of airports, including the raising of municipal money for the purchasing of airports, liability for negligent operation, and consideration of the increasingly important topic of airport zoning.

Perhaps of more general interest is the largest chapter in the book dealing with air space rights of aviators and land owners. In this chapter the author has canvassed all the decided American cases dealing with the various theories of liability, ranging through trespass and nuisance, which the advent of the airplane has produced in the United States. The author has not suggested any novel solution of these problems but has been chiefly concerned with presenting and correlating the various theories as they have come before courts for decision. Indeed, the value of the book lies in its collection of available reported decisions, statutes, books, law review articles, etc., pertaining to the many problems to which the airplane has given rise.

Up to the present time in Canada it is a peculiar fact that our reports have been singularly silent on the question of interference with the enjoyment of land by airplanes and the extremely complicated issue of balancing the claims of land owners with the public interest in aerial navigation. One knows, of course, that the large air training programme which has characterized Canada's war effort has led to the practice of purchasing rights of navigation over properties adjoining airports, but the extent to which such rights may be truly termed easements, the problem of limiting the use of land by the erection of poles, trees, etc., adjacent to airports, are all questions to which the courts in this country have as yet given no answers.

The present book should furnish a valuable guide to persons faced with these problems in the future, since the American developments up to the 15th of August, 1944, are all collected by the author. As a practical lawyer the author knows the advantage of an extremely elaborate index and has furnished a most complete and exhaustive key to developments in this field.

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*Handbook of the Law of Evidence.* By JOHN JAY MCKELVEY. Fifth Edition. Hornbook Series, St. Paul: West Publishing Company. 1944. Pp. xxiv, 814. (\$5.00)

The present volume is unique in that it is the fifth edition of a book which first appeared in 1897, the last edition being prepared by the original author himself. Much water has gone over the evidential dam since the first edition

was written, but, in the main, the author has remained true to the faith which prompted him to produce the original edition. In many cases the present book might be styled as one in praise of Thayer. The author, we believe, would not deem this a criticism so much as a compliment. There can be no question that Thayer has exerted a profound influence on the law of evidence in the United States and as Mr. McKelvey on his own admission does not purport to write a critical book, it is only natural that he would accept, where lines diverge, the views of Thayer. This is particularly noticeable, perhaps, in his chapter [chapter V] on presumptions despite the heroic work of Morgan, both in his private writings and through the work of the American Law Institute, to show that presumptions can not be deemed the simple thing which the practitioner considers them to be, nor capable of such sweet reasonableness as Thayer expounds. The present writer, however, in this and other matters, eschews the work of the Restatement and clings to the old-time religion.

It would be as easy as it would be impertinent for a reviewer to find fault with arrangement and treatment of particular topics in this book. The fact that it portrays the practitioner's view of evidence and that it has gone through the five editions above mentioned, forbids any such attempt, although this reviewer cannot refrain from questioning the inclusion of such statements as are found on page 151 that "every one will be presumed to intend the natural and probable consequences of his acts." Such a statement is so palpably false, and so destructive of the entire basis of tortious liability and criminal responsibility that its repetition cannot be too strongly condemned.

As a short working-lawyer's view of the existing American law of evidence, McKelvey has made its place. The task of the future, as the author himself would be willing to admit, lies in such efforts as that of the American Restatement to break down artificial compartments and detailed rulings and to place the law of evidence on a rational basis in which the judge is not bound by rule so much as guided by discretion.