

## REVIEWS AND NOTICES

*Aviation Accident Law.* By CHARLES S. RHYNE, of the District of Columbia Bar. Washington: Columbia Law Book Company. 1947. Pp x, 315. (\$7.50 U.S.)

The rapid expansion of air transport has made it a matter of practical interest to know some of the essentials of the legal aspects of aviation. The lawyer seeking information on the specialized field of aviation accident law has been forced hitherto to refer to a few scattered articles in general law reviews and to a very small number of air law journals. In the book under review the author, by now a well-known authority on his subject, supplies the answer to a long felt need by presenting a clear analysis of all the reported decisions of the courts involving aviation accidents.

To date no major text books have appeared on the specific field of aviation accident law, although the subject has been touched upon frequently in American and European law reviews, particularly with respect to the limitation of the operator's liability under certain conventions on international air transport. The book is therefore an important contribution to legal aviation literature; it marks the first attempt to portray on a broad scale the trends in decisions on the civil liability of the air operator.

For the Canadian lawyer there is much of a practical nature in this book. There are not many Canadian decisions concerned with aviation and the numerous American, British and other cases cited will be of use in filling the lacunae in Canadian jurisprudence. Unfortunately for the development of the case law on aviation accidents, a considerable number of conflicting decisions have been handed down by state jurisdictions in the United States. By charting a safe course through these conflicting judgments the author has performed a valuable service.

The book shows the state of the law as it is without theoretical forecasts as to future trends. For this restraint Mr. Rhyme is to be commended; writers on this new subject are too often tempted to enter into lengthy abstract discussions of little use to the lawyer in active practice.

The author gives ample treatment to all the following topics: aircraft operators as common or private carriers; types of aircraft accidents; liability of manufacturers, repairmen and vendors for aviation accidents caused by defective work or equipment; damage to baggage and express in aviation accidents; liabilities of bailees of airplanes — persons hiring, using or storing airplanes; violation of ordinance, regulation or statute as negligence in aviation accidents; inspection or lack of inspection as evidence on the issue of negligence; proof of the cause of aviation accidents — the doctrine of *res ipsa loquitur*; defences in airplane accident cases; workmen's compensation and aviation accidents; insurance and aviation accidents; and aviation accidents in international air transportation.

There is a full discussion of defences in aircraft accident cases. Typical of the careful analysis made by the author and also of the respect paid to cases from outside jurisdictions, in view of the small number of cases in this field, is his treatment of the question of liability limitation in tickets. He points out that American cases hold provisions in tickets limiting liability to be contrary to public policy, but that English and Canadian cases reach a

contrary decision, holding that such a limitation of liability is valid if properly contracted for.

Possibly the most useful chapter is the one on insurance and aviation accidents. The cases on both personal injury and property damage claims are included in this chapter. Extensive use is made of quotations from judgments as being the best way to indicate the reasoning of the courts. It is interesting to witness how the courts have gradually changed their construction of aviation exclusion clauses in insurance policies to conform to the development of air transportation. In the beginning the courts considered aviation as an experiment and any person who took a flight in an aircraft, even as a passenger, was considered as engaging or participating in aviation. When air transportation began to be accepted as an ordinary mode of travel, the courts reversed their earlier decisions. As one court said, "We think that the later cases reflect a changing attitude toward aviation, due no doubt to the marvellous progress made in the art of flying. In the early days each flight was a venture . . . today, flying is a business".

The final chapter on international aviation accidents covers the leading cases on accidents in international air transport and contains useful information on the Warsaw Convention for the unification of certain rules relating to international transport by air (1929), the Rome Convention on damage caused by aircraft to third parties on the surface (1933), the Brussels Protocol (1938) to the Rome Convention and the Brussels Convention on the salvage of aircraft at sea (1938). This chapter will be of great interest to Canadian lawyers because of the active role that Canada has been playing in the development of international air law during the past few years, both as a signatory to the Chicago Convention on International Civil Aviation (1944) and as an active participant in post-war air law conferences.

The book has a foreword by the Honourable Pat McCarran of the United States Senate, himself the drafter and sponsor of the bills which became the Civil Aeronautics Act of 1938 and the Federal Airport Act of 1946.

The book is well documented. It contains an ample index, an excellent table of law review and other articles, and a lengthy table of cases the number of which may surprise lawyers who have not previously explored the subject of aviation law. All the available sources of the cases are listed. The references should not be too difficult for the average Canadian lawyer who is familiar with American terminology. The frequent references to "1 Avi." are to "1 Aviation Reports" published by the CCH (Commerce Clearing House) Chicago. This volume, which is of recent origin, contains all reported aviation decisions up to the year 1945. Subsequent decisions are set out in a loose-leaf volume referred to as "2 Aviation Reports".

The author of "Civil Aeronautics Act Annotated" (1939) and "Airports and the Courts" (1944) may be assured that he has once more made a practical contribution to aviation law. One can but hope that revised editions or supplements will keep the work up-to-date in what promises to be in the next few years one of the most rapidly developing branches of the law.

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*The Future of Australian Federalism: A Commentary on the Working of the Constitution.* By GORDON GREENWOOD, M.A., Ph. D., Senior Lecturer in History, University of Sydney. Melbourne: Melbourne University Press. 1946. Pp. ix, 323. (17s. 6d.)

This book is haunted. No Canadian lawyer can read it without imagining the ghost of the B.N.A. Act lurking behind every reference to Federal stresses in the Dominion "down under". Certainly members of the Canadian Bar Association will read this tendentious work with one compartment of their minds abstracted to consider constantly the questions: How far do these Australian situations match our own? To what extent is Dr. Greenwood's remedy good for Canada?

The book begins and ends with a thesis — that in Australia federalism must go. To the author, a Laski man, the cardinal reason for that thesis is simple. The Australian economy has become unified, therefore the political capacity to control the whole economy should also be consolidated. (This is not the place to do more than mention the anti-collectivist controversy touched off by that word "therefore".) A stranger to the country might wish that the author had not set down the idea of the unified economy as an axiom calling for no demonstration or illustration. However, the politically literate reader (no other will apply!) will follow with critical respect the development of the evidence, historical and legal, indicative that the present distribution of legislative powers is functionally defective and that a solution is not to be found within any federal framework. Federalism was a necessary and useful contrivance to bring the several States from colonial to national stature. The only hopeful future for Australia, according to the argument, involves a planned economy and for that future federalism is an outmoded mechanism, incapable of satisfactory performance either by more co-operation between the associated governments or by conveying more powers from the States to the Commonwealth. By November 1942, it seems from opinion polls that 60% of the Australian people would have abolished State Governments, but by August 1944 a majority, both of people and of States, voted on a referendum against a five-year grant of postwar reconstruction powers to the Federal Government, partly because of the intervening taste of a war-planned economy. Mournfully an examination is made of the mistaken strategy by which the stark issue of instituting a unified state was not put to the people by the Labour Government early in the war. To conclude this section of the review — lest it be thought too cool toward the book — the following quotation is given from page 15 of it:

"Marketing is but one illustration of how constitutionally rigid divisions of power may operate to prevent any party to the division from exercising effective authority. The result is that Federalism leads to the creation of a sphere in which control over economic matters is abdicated. The States are hampered by regional, competitive and constitutional limitations while the constitution forbids attempts at unified national control. In these circumstances, 'a zone of anarchy' is created 'where exploitation of national resources and of labour can proceed free from the Government's interference.' There seems little reasonable doubt that in all federal countries the stress which is being laid upon local rights is due in part to those who desire to maintain a zone

in which they may operate free from all governmental regulation. In particular, the great industrial interests have realised that the nature of the division of powers under a federal system hampers the exercise of control over the problems associated with labour and commerce. They are, therefore, emphatic about constitutional rights and attempt to utilise the dead wood of an outworn system to prevent reform."

As a constitutional work, Dr. Greenwood's commentary is solid fare, that is to say, it contains enough law to reward the barristers and enough history, economics, administration, finance, statistics and politics to satisfy all other students. Documentation is full, the language scholarly.

What intrigues a Canadian is that our model of federal union found little favour with the Australians because it was "thought to be too unified". Whereas the stream of judicial interpretation has, very broadly, tended to run against amplified powers at Ottawa and in the direction of such powers at Canberra, financial strength has moved centrally alike in both federations. But what Canadians would not think their federal authorities powerfully supported if at Ottawa there were counterparts of the Australian Loan Council and the Grants Commission? It is surely, in part, due to the high degree of homogeneity in the Australian population and to the single-mindedness of the dominant Labour drive in all departments of their public life, rather than to the more manageable size of their community, that such a solution as unification — so advanced beyond anything being discussed in Canada — could be soberly proposed in this work. Dr. Greenwood is quick to note that centralized administration is no necessary consequence of legislative union.

CAMPBELL CALDER

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*A Bibliography of Law on Journalism.* By WILLIAM F. SWINDLER.  
New York: Columbia University Press. 1947. Pp. x, 191.  
(\$3.25)

In this small but very useful volume the author, who is Director of the School of Journalism of the University of Nebraska, has made the first attempt at a comprehensive annotated bibliography of all books, monographs, periodical articles and other publications in the English language on the law affecting journalism. He has selected considerably over one thousand such books and articles, and the subjects cover libel in all its phases together with such other matters of interest in the field of newspaper law as the right of privacy, contempt of court, copyright and property rights in news and advertising, and freedom of the press. In addition, many references are included to the law affecting radio communications. Incidentally there are not infrequent references to articles in the Canadian Bar Review.

It is interesting to note that the literature on the law of libel in England commenced as early as 1648; and a writer on the same subject in 1662 says that he is publishing "a methodical collection of thousands of cases of what words are actionable and what not . . .". Chief stress is of course laid on the more recent and useful publications. The book will be a handy tool

for press associations, schools of journalism, newspapers and members of the legal profession who are interested in any aspects of the law on journalism.

ALEXANDER STARK

Toronto

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*The Successful Practice of Law.* By JOHN EVARTS TRACY. New York: Prentice-Hall, Inc. 1947. Pp. ix, 470. (\$3.45)

From time immemorial lawyers have been criticized for the time taken in the conduct of their clients' business. "The law's delay", and all the expression implies, was doubtless an oburgation hurled at the legal profession long before Shakespeare put it in Hamlet's mouth, as certainly it has been ever since. In *Jarndyce v. Jarndyce* innumerable children were born into the litigation and innumerable old people died out of it.

Here is a book designed to guide the legal practitioner along the path of celerity without any diminution of a suitable professional efficiency. The author brings to his task a special combination of talents; Professor of Law at the University of Michigan, he has lectured on the successful practice of law to succeeding classes of students, and he has a background of twenty-six years spent in an active and varied practice.

While the book is designed primarily for the novice, it can be studied with profit by any practitioner, whenever he may have graduated. Suggestions are given on the problems of where to locate upon graduation, how to acquire a clientele and, what is perhaps even more important, how to hold a client. There are hints on the handling of a conference, the fixing of fees and the ramifications of office practice — accounting, filing, record-keeping, the building of a library — even to the selection of furniture.

One chapter is entitled "How to Prepare a Case for Trial", while another, running to 137 pages, deals with the preparation and conduct of a jury case. An appendix contains a transcript of the evidence in a reported case, with the author's comments on the various items of evidence as they were introduced. The purpose is to acquaint an inexperienced lawyer with the manner in which cases are actually tried, with some instances of the clever work, and others of the unfortunate mistakes of trial counsel.

Throughout the book Professor Tracy is alert to proper conduct as well as professional mien; sedulously he prescribes scrupulous adherence to legal ethics. In a free and easy, lucid style, and in a pervading atmosphere of friendliness, he guides and instructs those desiring to practise law in a decent and orderly manner.

J. RAGNAR JOHNSON

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*Criminal Procedure from Arrest to Appeal.* By LESTER BERNHARDT ORFIELD. New York: New York University Press. London: Oxford University Press. 1947. Pp. xxxi, 614. (\$5.50)

Under the auspices of the National Conference of Judicial Councils, a number of volumes have been published tracing the history of various phases

of law, sketching the law as it now is and, then, laying down sound standards for practical reform. This is the latest in the series. The writing of the book, covering more than six hundred pages, fully indexed, was commenced in February 1944 and completed on September 2nd, 1946. A grant from the Carnegie Corporation of New York made possible the study upon which it was based.

Professor Orfield's volume deals with all phases of criminal procedure, from arrest to appeal, in nine chapters as follows: arrest, preliminary examination or inquiry, bail, the grand jury, indictment and information, arraignment and preparation for trial, the trial, motions after verdict and sentence, judgment. Each of these subjects is treated attractively, with clarity and concision, and in a scholarly yet practical manner.

The historical background of each step in criminal procedure is given, a feature that alone makes the book a priceless aid in understanding the real purport of modern procedural rules. The changes that have taken place in the development of English law to its present form are indicated and a comparison is made between the law as it exists today in England and the United States.

All the author's statements are supported by numerous and adequate references to recognized authorities in England and the United States.

The reforms recommended are put forward with a deep knowledge of the main principles governing English procedure in criminal matters and in the light of the findings of various Federal and State Commissions, Judicial Councils and other public or private organizations, especially those that have carried out surveys on crime.

American, English and to some extent Continental procedures have been compared as a preliminary to remodelling the law to meet modern conditions and to improving methods of practice. It is refreshing to find that in no reform he proposes has the author taken up either one of the two extreme positions too often adopted by those called upon to suggest improvements in criminal procedure. Not only has he endeavoured to present, but he has succeeded in presenting, the positions both of those who, "generally thinking about professional criminals, emphasize the importance of speeding up prosecution and making it somewhat rougher than it formerly was on the defendants" and of those who, "concerned mostly with casual criminals or innocent persons, are earnest in seeking to preserve and strengthen traditional civil liberties".

As stated by Dean Arthur D. Vanderbilt of the School of Law of New York University, this volume "furnishes a safe guide for the work of improving the administration of justice in the realm of the Criminal Law". It is a book for the professor as well as the student, for judges as well as lawyers, and a book that the legislator would be prudent to study before attempting any reform in criminal procedure. We have not had an over-abundance of legal works which combine such interesting and practical features, and it is to be hoped that other aspects of criminal law not covered in this volume or in the previous study by the same author, "Criminal Appeals in America", will some day be the object of the same sound research.