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Book Review (reviewing Henry G. Hotchkiss, A Treatise on Aviation Law (1928))

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peace as contrasted with the cynical or indifferent scepticism of 1919 are equivalent marvels. More overwhelming proof of the necessity and value of the League idea it would be impossible to imagine . . .

"Prophecy is no part of my task; but one prediction is safe. American membership in the League is merely a question of the existence of the League; the one involves the other. If the League goes on, we join. The time is uncertain, but with no less certainty of the fact; and a future generation of Americans will look back at the utterances of alleged 'saviours' of the country with the same amused and contemptuous incredulity as ours when we read of those other 'statesmen' of the time of Grant who said that the Red Cross was surely contrary to the Monroe Doctrine . . .

"No one could suggest, and certainly I would be the last to do so, that the Covenant is even approximately a finality. On the contrary, I would say that one of the chief merits of the Covenant is that it does not attempt finality. Written for the world that is, and not seeking eternal wisdom, it has in its words and in its spirit the promise of betterment hereafter."

The second volume which is decidedly the larger of the two, containing 830 pages of text, is entirely devoted to documents bearing upon the drafting of the Covenant. Here we have brought together very important source material for the student and the historian. The value of this material is, however, greatly enhanced by the wealth of Mr. Miller's notes and comments which fill his first volume.
Cornell Law School *Charles K. Burdick.*

Aviation Law. By HENRY G. HOTCHKISS. New York: Baker, Voorhis & Company. 1928. pp. xvii, 492.

Mr. Hotchkiss is one of the editors of the recently founded United States Aviation Reports and also a member of a firm which has been adviser to an important corporation engaged in the development of civil aeronautics. He therefore brings to the task of preparing a text on the law of the air both wide knowledge of the literature and adequate appreciation of the practical business problems involved.

The book has two parts—the first quarter of its bulk being given over to a condensed discussion of pertinent questions of law and the remaining three-quarters consisting of an appendix containing the international convention of 1919, the Havana convention of 1928, the federal statutes and regulations, and the state laws. This latter section is in large degree found also in volume one of United States Aviation Reports. It forms a very convenient collection of American legislation on aeronautics. Neither English, Canadian, or continental statutes or treaties are inserted.

In the earlier portion of the book the main topics of aviation law are treated; as, for example, international law questions, space ownership, tort liability, aircraft standards and rules of the road, insurance, workmen's compensation, common carrier law, constitutional questions, and admiralty, patent and criminal law problems.

The author refers to and briefly discusses many of the articles on air law, but has not attempted to make his list complete. For

example, none of the nine notes and articles mentioned in the *Index to Legal Periodicals for 1926* as having been published in that year, are found in Mr. Hotchkiss's list of authorities cited. In this group of omitted papers is the valuable article by Mr. F. P. Lee, legislative counsel for the United States Senate, in which he analyzes the Federal Air Commerce Act of 1926. Major Jefferson Davis's numerous monographs on the topic are also missing.

The author's presentation of facts and arguments about the substantive law of flight is in the main clear and accurate but extremely brief. If any criticism could be made one might urge that, in his eagerness to see the law develop in such a way as to encourage the growing civil aeronautics industry, Mr. Hotchkiss tends to neglect the rights, powers, privileges, and immunities of the groundsmen. Indeed, he expressly states¹ that "the spread of aviation will more and more establish rights of flight that encroach upon the rights of others judged by preaviation standards." The social interest in the development of aerial navigation is great, but there would seem to be no doubt that the safety, comfort, and convenience of the citizens who live and do business on the ground always will be many times more important. In the early flush of enthusiasm over a spectacular and useful new means of travel we should not neglect the groundsmen's property rights in the space over his soil or the rights of the general public to protection against the annoyances and dangers which aeronautics occasionally produce for those below. Both in his treatment of space ownership and the right of flight and in his discussion of the liability of the aviator for damage to persons and property on the surface, Mr. Hotchkiss seems slightly too favorable to the aviator and the aircraft. He argues against the rule of the English Act and of the Uniform Act which places upon the owner of the aircraft absolute liability for damage to persons or property on the ground occasioned by the descent of the aircraft. He would require proof of intentional injury or negligence. To the writer the helplessness of the groundsmen to prevent damage from the sky and the usual impossibility of making proof of the cause of the crash are adequate reasons for the rule of absolute liability. This principle has no corresponding application to damage to passengers or freight in aircraft, because there the doctrine of assumption of risk may be said to apply.

In referring to the Uniform State Law for Aeronautics it would seem that Mr. Hotchkiss should at some point have given a slight account of the origin of the act, by way of brief reference to the Conference which prepared it, the method of its drafting, and the approval of it by the American Bar Association. The Uniform State Air Licensing Act, a draft of which was published before this book, might also have been mentioned in connection with the statement² of the desirability of state regulation of aviation in harmony with federal legislation. The object of this last named uniform act is in substance to put the federal rules into effect in the states as state rules.

¹P. 30. ²P. 51.

The general accuracy of the work is marred by a few minor mistakes, as where Mr. William Velpeau Rooker of Indianapolis is referred to as "Mr. Rooker,"³ and in the error in quoting section 4 of the Uniform State Law for Aeronautics.⁴

The defects mentioned are relatively unimportant. The treatise will be very useful to practitioners, business men, and teachers. It will doubtless have an appreciable influence on the growth of the law in this new field. This book, the United States Aviation Reports, and the government bulletin on legal problems connected with civil aeronautics now constitute together a rather complete library of source material on this new branch of American law.

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Fundamentals of the Law of Proof in Judicial Proceedings. By OTIS H. FISK. Cincinnati: The W. H. Anderson Company. 1928. pp. 217.

"There is no sense at all in the legal profession's continuing to flounder in the morass of confusion in the law of proof. Instead of finding our way out, we have been getting in deeper and deeper. With characteristic Anglo-Saxon aversion or indifference to analysis (or are we racially incapable of such analysis?), *prone to the practicability of things*,¹ dislike for theorizing, and worship of precedent, we continue to pile up irreconcilable decisions and notions about the institutes of the law of proof. . . . The first step in getting back to the fundamentals of the law of proof is, to search the primary institutes of that law. When they are found, the second step is, to name and define them clearly. The third step is, to determine their proper correlations—in other words to systematize the fundamentals. . . . My analysis starts with the separation of the Substantive Law and the Remedial Law. The nature and place of Assumptions are also determined. Then comes the analysis of the law of proof, the main theme. That analysis begins with a dissection of the institute called the Burden of Proof, which results in the discovery of the other primary institutes of the Law of Proof, called Judicial Admissions, Judicial Notice, Evidence, and Presumptions. Then these institutes are taken up and their fundamental functions are described in detail. A chapter is devoted to each of them except Evidence, which does not require such treatment for the purpose in hand. An appendix gives a sketch of Presumptions in the Roman System of Law. . . ."

Thus the author in his preface describes the little book which he has dedicated to "Clarity in the Law." Any attempt to rationalize the law of Evidence is bound to receive instant attention, but can hardly expect instant approval. Many will at once object to the suggestion that in this field we should place less emphasis upon "the

³P. 67. ⁴P. 31.

¹Italics are the reviewer's.