

tent. Here is a book worthy of reading. Although the layman can peruse this book with profit, it is primarily adapted to lawyers. However well read one may be he cannot go through this book without adding something to his sum total of knowledge.

GEORGE ROSSMAN*

Aviation Accident Law. By Charles S. Rhyne. Washington: Columbia Law Book Co., 1947. Pp. x, 315. \$7.50.

According to the title page, this small volume covers all reported court decisions involving aircraft accidents. This comprehensive claim is justified. Such a short but still complete presentation was possible because aviation accident law, aside from the ancient balloon cases, covers a short period of time. The earliest airplane accident case cited by Mr. Rhyne arose out of the crash of a homemade biplane at Mineola in 1911.¹ The first decision on appeal was rendered on February 13, 1914. Our airplane accident law, therefore, covers a period of about thirty-four years. The great majority of the cases have been decided in the last twenty years.

The text deals with a narrow branch of law which is slowly changing and growing. The development of aviation accident law has been slow because airplanes are not numerous. The scheduled airlines of the United States in both domestic and international service operate less than a thousand planes, and the total number of all planes in the United States, other than military, is less than 100,000. Mr. Rhyne has adequately covered all reported aviation accident cases with only 239 pages of actual text. The automobile, with a history of only about fifty years, has produced an enormous number of decisions by federal and state courts. Blashfield's latest edition of the *Cyclopedia of Automobile Law and Practice* consists of nineteen large volumes with one volume of about a thousand pages devoted entirely to a table of cases. This disparity in the volume of law is not surprising in view of the operation of more than thirty million automobiles in the United States.

The lawyer in charge of an aviation accident case will find Mr. Rhyne's textbook very useful but he should not expect it to be complete. In the broad fields of the law of negligence and trespass there are well-established rules of law which have never been considered or applied in aviation accident cases merely because the issues have not come up under the facts of the limited number of cases which are reported. The author is fully aware of this, as is shown by his Introduction.

For a long time controversy has existed regarding the proper rule of liability to be applied to the owner or operator of aircraft for injury to persons or damage to property on the ground. The question was the subject of a good deal of debate when the American Law Institute was preparing its Restatement of the Law of Torts. It adopted the rule of liability irrespective of negligence.² The Uniform State Law for Aeronautics, adopted by some twenty states, contains a similar rule of liability.

Mr. Rhyne states: "Theories advanced by writers in the infant years of aviation that the owners and operators of airplanes should be absolutely liable for all injury to

* Chief Justice, Oregon Supreme Court.

¹ *Ridgley v. Aetna Life Insurance Company*, 160 App. Div. 719, 145 N.Y. Supp. 1075 (1914), *aff'd* 217 N.Y. 720, 112 N.E. 1073 (1916).

² Rest., Torts §§ 159 (g), 165 (1934).

persons or property on the ground were quickly discarded by the courts when actual cases came on for decision.³ The author cites two cases⁴ to support his conclusion but neither involved any claim whatever for injury to a person or damage to property on the ground. One was an action to recover for injuries to pilots and damages to planes arising out of a collision of planes in the air, and the other was an action to recover damages for the death of a passenger. These cases are relied upon by Mr. Rhyne because, in a charge to the jury in the first case and in an opinion in the second case, the trial judge said that an airplane is not an inherently dangerous instrumentality. These statements did not put to rest the dispute regarding the proper rule of liability to govern ground injury or damage. Lawyers on the other side of the question still argue with some plausibility that a person on his own land should not be hit with an airplane and then be denied a recovery on the grounds that an airplane is not dangerous and no one has been negligent. Courts have applied the rule of liability irrespective of negligence on the theory of trespass, without relying upon a claim that an airplane is a dangerous instrument.⁵ The issue is not settled except in the states where the law is clearly stated in statutes. Even impartial textwriters do not agree. Mr. Fixel says, "The rule seems to be perfectly clear that an aviator who descends upon land or structures on land, of another, whether negligent or not, must be held liable for any resulting damage which he thereby causes."⁶ Mr. Puffer views the question as an open one and is not certain as to which rule is applicable in a state where the question is not controlled by statute.⁷ Mr. Rhyne's conclusion at page 74 indicates that he disagrees with both of them.

Most legal textbooks are devoted to specific branches of the law rather than to specific things such as airplanes or automobiles. When an author undertakes to present all the law about an article in common use he finds that his book cuts across many different subjects of law and that it is difficult to know where to stop. Mr. Rhyne properly included in his book Chapters X and XI dealing with workmen's compensation and insurance applied to aviation accidents. On the same theory he might have covered the subjects of damages and conflict of laws as applied to aviation accidents. A chapter on the subject of damages would deal with such important questions as statutory limitations on amounts recoverable for death by wrongful act and the theories upon which damages are measured and distributed in death actions. A tabulation showing amounts recovered for death and injuries in particular cases would be useful. Some of the cases cited by Mr. Rhyne were brought in one state to recover damages for wrongful acts which occurred in another state, so that the courts had to determine the applicable law governing liability and damages. This useful text would be improved by chapters dealing with these subjects.

PAUL M. GODEHN*

³ P. 64.

⁴ *Herrick v. Curtiss Flying Service, Inc.*, 1932 U.S.Av. R. 110, 1 *Avi.* 369 (N.Y. Sup. Ct. Nassau Co., 1932); *Fosbroke-Hobbes v. Airworks Ltd.*, 1938 U.S. Av. R. 194, 1 *Avi.* 663 (K.B., 1936), cited by Mr. Rhyne at page 65.

⁵ *Rochester Gas & Electric Corporation v. Dunlop*, 148 N.Y. Misc. 849, 266 N.Y. Supp. 469 (1933), 1933 U.S.Av.R. 511, 1 *Avi.* 468.

⁶ Fixel, *The Law of Aviation* § 139 (1945).

⁷ Puffer, *Air Transportation* 60-64 (1941).

* Member of the Illinois Bar.