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THE PRESENT STATUS AND THE DEVELOPMENT OF AVIATION LAW*

GEORGE B. LOGAN†

Aviation law is developing apparently in three directions, which is one more direction than the ordinary development of law in our country. Ordinarily law is developed by a growing body of judicial decisions which we call the common law of that subject; then, sometimes contemporaneously with, but usually following, we have the statutory law which either changes or makes more definite and certain the common law. In aviation we have these two developments but have also a third due to the peculiar nature of aviation, and that is the development of law by regulation. This development, of course, has its foundation in statutory enactment, but the statutory enactment is only the foundation and not the body of the law.

When aviation first loomed on the legal horizon as a substantial industry, and when it first became apparent that the industry would probably develop a body of law all its own, or cause some change or clarification in existing common law, several problems were suggested. Among these problems was the question of the ownership of air space, or the right of flight; the liability of the aviator for trespass voluntary and involuntary; jurisdiction over air space, first as an international problem and second as a state problem within the United States; the question of nuisance by flight; the possibility of tall buildings, smoke stacks, and power wires being regarded as nuisances *to* flying; the extent of the jurisdiction of the federal government over aviation as interstate commerce; the effect of aviation on existing personal insurance; the situs and status of marriages, contracts, wills and other contractual relations entered into in an indeterminate space in the air.

These and many other legal conundrums were offered by way of papers, pamphlets, and addresses, and, at the time of offering very few, if any, suggested positive solutions. To only a few of these can I give any time because on only a few has there been any development by way of common law.

*Address delivered at the American Bar Association Convention, at Atlantic City, September 18, 1931.

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Out of these there is first the question of sovereignty over air space. This is distinct and different from ownership. Prior to the World War there were three well established schools of thought. There were those who advocated that the air space was an ocean and that aviators of all nations should be privileged to use it over the soil of any other nation without let or hindrance as on the high seas. This was called the Freedom of Flight theory. There were those who insisted that the subjacent nations had the right to regulate the air space and restrict its use up to the height that it was possible to regulate it, similar to the three mile zone or the twelve mile zone on the high seas, and that above that the air space was free from regulation. The exact height of this regulated air below was a matter of controversy that ranged everywhere from 500 feet, the height of useful occupancy of man, to five miles, the range of anti-aircraft guns. This was called the Zone theory. The third school of thought urged that each nation had the right to restrict the use of all air space above it to the same extent that they had the right to restrict the occupancy of their own soil. This was called the Absolute Sovereignty theory.

This question has been settled, not by common law, or by development of international law acceptances but by the war itself, which closed the frontiers of all warring nations to the planes of its enemies. At the time of the Treaty of Versailles, there was also an air convention¹ the preamble of which was "The High Contracting Parties recognize that every Power has complete and exclusive sovereignty over the air space above its territory." The United States signed this treaty but it failed of ratification with the Versailles Treaty. The United States has since, however, entered into a similar treaty with the American countries in the Pan-American Convention but prior to that in the Air Commerce Act of 1926, Congress declared as follows: "The government of the United States has to the exclusion of all foreign nations complete sovereignty of the air space over the lands and waters of the United States, including the Canal Zone." This question then may be regarded as definitely settled.

In line with it, it would seem that each state would similarly have jurisdiction or sovereignty in all the air space above its own territory except in so far as an assertion of jurisdiction would conflict with the federal government in interstate commerce. Indeed, the Uniform State Law of Aeronautics prepared by the Aero-

1. Air Convention of 1919.

nautical Law Committee of this Association some years ago and which was adopted by thirteen states, carries the declaration that "Sovereignty in the space above the lands and waters of this State is declared to rest in the State." There seems to be no quarrel with this pronouncement and based upon its truth it must follow the states have with respect to air space the same powers they have with respect to the surface. It would also seem to follow that the venue of crimes committed in air space would seem to be in the state and county below but the difficulty of proving this venue is obvious.

It remains then, on this question of air space, to discuss *ownership*. This is a subject which cannot be covered under four hours, and that would be one side of the argument only; but on this subject we hope to have some authoritative common law very soon. Already three theories have been evolved in the discussions which I have seen. One is the theory that the land owner owns absolutely all of the air space above his land to an unlimited height—the "cujus solum est" theory in its absolute form; the other that the land owner owns the air space to the height of useful occupancy depending on the development of engineering skill and science in the erection of edifices. The final one is that the land owner does not own the air space, but does have, as growing out of his land ownership, the exclusive sole and conveyable right to take possession of the air space to any height he sees fit. It would follow that the flight of an airplane through the air space above his land is not and never can be a trespass; but may under the circumstances, taking into consideration the height of buildings, the use to which the land is put, and the manner of the flight, become a nuisance and be enjoined as such. Each case under this latter theory necessarily depends upon its own facts, as does any other nuisance. To this latter theory your present committee is unanimously wedded.

There have been two cases having to do with this particular problem. In the case of *Smith v. New England Aircraft Company*,² decided by the Supreme Court of Massachusetts, it was held that flights at 500 feet and more did not constitute trespass; that flights at 100 feet and less did constitute trespass. In *Swetland v. Curtis*³ in the District Court of Ohio, sitting at Toledo, it was held that flights at 500 feet and more did not constitute trespass, and flights of less than 500 feet did. The necessary im-

2. 170 N. E. 385 (Mass., 1930).

3. 41 F. (2d) 929 (Ohio, 1930).

plication from these holdings as to trespass would indicate that the courts felt that the land owners did *own* the air space up to the height mentioned, although as a matter of fact the air space was not occupied to that height at that time. The 500 foot level mentioned in these decisions was the height specified for flight over uncongested areas by the Department of Commerce in defining the navigable air space and the courts held that such a regulation by the Secretary of Commerce under the authority of the Air Commerce Act of 1926 was a permissible interference with the rights of private ownership. It will be observed from these two statements that these courts evidently believe in the theory of air ownership, but from the reading of the opinions it is clearly seen that the courts were in both cases very doubtful as to the extent of air *ownership* if any, and as to its nature if it existed, both courts stating that air ownership was bound to be different from the ownership of land and chattels.

The Massachusetts decision was the decision of a court of last resort and no attempt has been made to carry it farther. The Ohio decision has been appealed by both parties and aviation interests have asked leave to file briefs, and a distinguished member of this committee, Mrs. Mabel Walker Willebrandt, as *amicus curiae* on behalf of the American Airways has prepared such a brief. I wish to take this occasion to recommend the reading of this brief as the clearest discussion of the history, import, scope and authority, of the maxim "*cujus solum est*" which has been written since aviation law discussion began.

The American Law Institute in its Restatement of the Law of Torts had before it the question of trespass on land, and had apparently followed in its first suggested text the inferences arising out of the two cases which I have mentioned, and in its first draft indicated that a flight through air space at less than 500 feet constituted a trespass. To this statement your committee took exception at the meeting of the American Law Institute in Washington, D. C., last year, and as a result have been invited to confer with the committee preparing this text prior to its submission.

It is not my desire to start a discussion on this floor, on this topic, but your committee believes that its theory, namely, that there is no ownership of unenclosed air space but there is the sole and exclusive right in the owner to enclose the air space and that nuisance may be committed by flight not only above the land but near to the occupier of the land, gives to the land owner all of

the right or title that he needs to fully use and improve whatever land is owned by him. At the same time it makes possible the development of aviation by denying to litigiously inclined persons a cause of action based on the mere technicality of a harmless flight through air space.

There have been so far only two cases which have even referred to the question of the scope of the power of the federal government to regulate flight in air space as between it and the several states. The Air Commerce Act of 1926 gave to the Secretary of Commerce the right to regulate interstate commercial flying, but also gave him the right to establish flying rules and regulations, called air traffic rules, relating to all flying interstate, intrastate and non-commercial. Some doubt has been thrown on the power of the federal government to promulgate these flying rules, first as to their entirety, and second as to the propriety of some of the individual rules thus promulgated.

In *Neiswonger v. Goodyear*,⁴ in passing on a demurrer, the federal court suggested that it was a little difficult to see how the 500 feet minimum altitude rule was necessary to protect interstate commerce. In other words, if interstate commerce had to be kept above 500 feet, and intrastate commerce went below it, the interference was doubtful. This intimation indicated that the court felt that the government did have the right to enact and enforce all air traffic rules which were *necessary* for the protection of interstate commerce but might not have the right to enact or enforce rules which were unnecessary for this purpose. If this is the correct interpretation of the court's intimation then it would follow that whether or not a given air traffic rule is valid would be a question for judicial determination.

This matter was again referred to in *People v. Katz*⁵ a criminal prosecution arising out of the violation of state air traffic rules. The point was made that the state government had no right to issue air traffic rules, this field of intrastate commerce having been appropriated by Congress under the necessity of preventing a burden upon interstate commerce. The trial court in New York rejected this plea. One may only surmise as to the grounds. It may have been because the court thought that the federal government had not appropriated the field; or that, having appropriated the field, state laws not inconsistent were still valid; or that the

4. 35 F. (2d) 761 (1929).

5. 140 Misc. 46, 249 N. Y. S. 719 (1931).

federal government regulations could not lawfully apply to intra-state commerce.

Your committee, of course, feels that different air traffic rules in the different states would be as great a calamity to aviation as were the conflicting state regulations to the railroads. There is at present no indication that the states will promulgate air traffic rules which differ in any material way from those of the federal government, but commercial aviation being wholly unconscious, as it must be, of state lines, ought to have one set of its flying rules only.

One matter on which there has been some development by way of common law is the matter of the effect of aviation on life and accident insurance. Some years ago in preparing a short text on this subject, I examined some hundred odd life insurance policies. In none of them was there any provision avoiding the payment of loss for deaths resulting from aviation. A good many of these policies, however, had provisions providing for double indemnity in the event of an accidental death, and this double indemnity provision was limited by proviso against deaths resulting from aviation. In general these provisos used two different verbs "engaging" in aviation, "participating" in aviation. It will readily be seen that the question would immediately arise as to what was meant by "engaging" and "participating." It should be added also that some policies use the word "aviation" and some policies the word "aeronautics."

Allied with the use of these verbs and nouns, and for the same purpose were the usual accident policies, but the accident policies added another complication in providing for double indemnities in the case of accidental death while a passenger on a common carrier, but excluding deaths resulting from participating or engaging in aviation or aeronautics.

Unfortunately the holdings on these cases have not been as consistent as one would desire in attempting to explain what is the law. In *Gits v. Life Insurance Company*,⁶ a passenger in a sight-seeing plane was held to be not "engaged" in aeronautical operations. The word operations in that policy evidently was of persuasive force. In *Masonic Accident Company v. Jackson*,⁷ a passenger was held to be not "engaged" in aviation. In *Benefit Association v. Hayden*,⁸ the Supreme Court of Arkansas held that a passenger was not "engaged" in aeronautics.

6. 32 F. (2d) 7 (1929).

7. 164 N. E. 628 (1929).

8. 299 S. W. 995 (1927).

In *Peters v. Prudential Insurance Company*,⁹ the court held that a passenger in an airplane was not "engaged in aviation or submarine operations." The court gave a good deal of attention to the punctuation and indicated that if there had been a comma after "aviation," the court might have held that the passenger was engaged in "aviation," though not in "aviation operations." Three of these cases were decided in 1929 and one in 1927. Prior to that, in 1921, the Supreme Court of Florida had held in *Travellers Insurance Company v. Peake*¹⁰ that a passenger was "participating in aeronautics"; the Supreme Court of New Jersey in *Bew v. Travellers*,¹¹ had held that a passenger was "participating in aeronautics." It will be seen that the later cases favored a more liberal construction and the reason would seem to be that aviation is coming to be regarded not as a sport and an adventure but as an industry and passenger carrying as a matter of common occurrence. This is particularly illustrated by a later decision of the Supreme Court of Florida in *Price v. Prudential*,¹² where the Court had before it the same clause as involved in the *Peters* case and held that a passenger was not "engaged" in aviation operations. The Court distinguished in this case between its earlier holding in the *Peake* case by reason of the fact that the *Peake* case used the word "participating" and the *Price* case the word "engaged."

As a result of these decisions we find that the insurance companies are changing the language of their exclusions clauses both in accident policies and in the double indemnity provision of life policies. We also find, purely as a matter of interest, that the life insurance companies do not wholly forbid flying in issuing their ordinary policies, but have prepared clauses which recite that the face of the policy will be paid even though the death of the passenger was the result of riding as a fare-paying passenger in a licensed airplane, operated by a licensed pilot, by an incorporated passenger carrier operated between definitely established airports. While life insurance companies are still very reluctant to accept the airplane pilot or the individual who pilots his own plane, a passenger on established air lines is now accepted practically without discrimination.

Referring back to the matter of double indemnity in accident policies in the case of death while on a common carrier but ex-

9. 233 N. Y. S. 500 (1929).

10. 89 S. 418 (1921).

11. 112 A. 859 (1921).

12. 124 S. 817 (1929).

cluding all claims resulting from death while participating in aeronautics, those courts which hold that the *passenger* participates are going to find themselves impaled on the horns of a dilemma if they should also hold that an air passenger plane is a "common carrier." The question as to whether or not an air passenger carrier is a common carrier has not been directly litigated with respect to any of our established air lines. But in the case of *Brown v. Pacific Mutual*,¹³ and *North American Accident Co. v. Pitts*,¹⁴ this matter of the inconsistencies between the clause giving double indemnity in case of a death on a common carrier and the clause excluding indemnity for death while participating in aeronautics, was directly raised. The air carrier in these two cases however was simply a sightseeing operator who took short trips whenever sufficient passengers were available and whenever the weather suited and both courts held that such an air carrier was not a common carrier. No court has yet been called upon to pass upon the air carrier which advertised to the public at large, accepts all passengers offering themselves, and maintains fixed schedules between established termini.

Another field in which we may look for interesting litigation is in the matter of general aviation insurance. Insurance is now being written to protect the operators of aircraft against personal liability and property damage to third persons; also to passenger. On the planes themselves insurance is carried against fire, theft, and "crack-up." The fire insurance policies are written to cover the craft while on the ground and the motor not running; also while the motor is running; also while the ship is in the air; and also for fire following a "crack-up." Naturally these rates vary considerably. Compensation policies are being extended to cover pilots, co-pilots, mechanics, and couriers. All of this is a new field. There are few policy wordings exactly alike, and no decisions so far interpreting these new policy clauses.

Just one more matter probably of interest, and I am done with this phase. The lawyers have had a great deal of sport speculating as to whether or not a hydroplane is an airplane or a boat and the answer as received from the courts is that it is neither fish, flesh, nor good red herring.

In *Crawford Brothers, No. 2*,¹⁵ it was held that the law of marine salvage did not apply to aircraft, but this was a disabled

13. 8 F. (2d) 996 (1925).

14. 213 Ala. 102 (1925).

15. 215 F. 269 (1914).

aircraft in the water. In the case of *in re Reinhardt*,¹⁶ it was held that an employee engaged in repairing a hydroplane on the water was not entitled to invoke the jurisdiction of the Workmen's Compensation Act in the state but must bring his action in the federal court. In a criminal proceeding in the case of *People v. Smith*,¹⁷ it was held that a hydroplane was a motor boat within the meaning of the criminal statute regulating the use of mufflers; while the Treasury Department has held in its rulings that hydroplanes and sea planes must be registered as vessels. In the case of *Wendorff v. Missouri State Life Insurance Company*,¹⁸ a case arising under an accident policy the point was made that the death of the policy holder riding in a hydroplane was not caused by the fall of the hydroplane; in other words not by reason of participation in aeronautics, but because of the sinking of the plane an hour or so after it landed. The point was further made that a hydroplane after landing was a *vessel* and not an aeronautical device. The court overruled the contention holding that the hydroplane was never a vessel.

With reference to the statutory development of law I wish to refer first to some of the statutory work of this association and this I do with the greatest trepidation. The Air Law Committee of this association worked out some years ago a law known as "Uniform State Law of Aeronautics." This law is now in effect in thirteen states. Two matters of common law, there being none on the subject, were attempted to be settled by legislative pronouncement in this law. The first was the old question of air space rights. It was declared that the ownership of the space above the lands and waters was vested in the several owners beneath, subject to the right of flight as described in the following section. The following section declared that flight in aircraft is lawful unless at such a low altitude as to interfere with the then existing use of the land or water. If it were possible to settle this matter in this manner we would have no quarrel, but we have always felt that even though the right of flight, that is to say, of reasonable flight, was attempted to be created by this declaration, the very attempt itself was frustrated by the prior declaration that ownership of air space was vested in the owners of the surface. It has always seemed that if the air space was "owned," legislative permission to fly through it is at least doubtful.

16. 232 N. Y. 115 (1921).

17. 196 N. Y. S. 241 (1922).

18. 1 S. W. (2d) 99 (1927).

This code also provided for absolute liability to be imposed upon the *owner* of aircraft for all damage done to persons or property by reason of the descent of the aircraft whether voluntary or involuntary.

No distinction was made for those cases in which the owner was not the operator or in which the owner has leased his plane, loaned his plane, or in which it had been stolen. The question of responsible agency was eliminated and the owner made absolutely liable. The question of negligence was also eliminated as to the *owner*; he was held liable for "Acts of God" and for pure accidents, whereas an aeronaut who was not the owner and was the operator was made liable only for his negligence. With all due deference it is suggested that the present Air Law Committee is not in sympathy with these pronouncements of statutory law and we believe that the owner should not be liable unless there is first, a responsible agency in the operation of the plane, and second, unless there is negligence in the operation or maintenance of the plane. We have suggested in the code which we have prepared that proof of injury should be prima facie evidence of negligence, thus relieving the man on the ground from the unfair burden of establishing the efficient and negligent cause of an airplane's descent. Mr. John C. Cooper, Jr. of Jacksonville, Florida, one of the members of our committee, has prepared a very able monograph on this subject of liability¹⁹ and the reasoning and the authority presented by him seemed to be conclusive and to fully warrant the position taken by this committee.

In addition to the Uniform State Law of Aeronautics in thirteen states, there is legislation in practically every other state in one form or another concerning aviation, but in most part these statutes have been passed with a view of providing for the safety of aircraft operators and passengers, and persons and property on the ground. To this end a great many of the states have provided that aircraft shall not be flown unless the plane is registered and the pilot licensed, and the qualifications for registration and licenses in most of the cases are those qualifications which are required by the Department of Commerce.

In some states these qualifications are required by statute; in some a state official or commission is designated to issue licenses under such rules and regulations as they may promulgate and these promulgations follow the requirements of the Department of Com-

19. *John C. Cooper*, Aircraft Liability to Persons and Property on the Ground, 17 Am. Bar Assn. Jour. 435 (1931).

merce. In many cases the following of the Department of Commerce rules and regulations is made mandatory under the statute.

Air traffic rules similar to the federal air traffic rules have in some states been enacted into statute law and in some states promulgated as regulations under statutory authority.

The desirability of uniformity among the several states is nowhere more acute than it is in the matter of the regulation of pilots, planes and air traffic rules. It is obvious though that this desire for uniformity should not necessarily carry us to the extent of asking that the federal government assume the whole burden, or to the extent of asking that the states submit to federal jurisdiction as to all types of flying. There is splendid opportunity for cooperation. The personnel of the Department of Commerce is not sufficient in number, although very high in quality, to police all of the flying in the United States, and to enforce all of the regulations with respect thereto.

You will be interested to know that so far, the cooperation between Federal and State aviation officials has been of the most cordial nature. Cooperation between the states themselves is also developing very satisfactorily. Perhaps the newest organization in this country is the National Association of State Aviation Officials, formed at Cleveland, Ohio, on September 2nd, and the chairman of your Aeronautical Law Committee feels himself honored to be the non-retained general counsel of this association.

The largest amount of law by regulation in aviation is, of course, that body of regulation promulgated by the Secretary of Commerce under the provisions of the Air Commerce Act of 1926. These regulations, as probably all of you know, require registration of all planes engaged in interstate commerce, in fact, incidentally the requirement is much broader because all pilots engaged in interstate commerce must have licenses and no pilot licensed by the federal authority may fly an unregistered plane. This requirement has practically made it mandatory upon manufacturers to see that all planes are registered. The requirements for registration are lengthy and of great detail and the Department has set up elaborate machinery not only for the original design but also for the approval of the materials to be used and finally for the inspection and flight tests of the completed planes. Provisions for pilots' licenses include detailed physical tests and mental tests, as well as flying ability and hours of experience in the air.

Flying schools are in fact regulated by the federal government, but in a peculiar way. The Department of Commerce has an-

nounced that flying schools will be rated by them if they voluntarily apply for such rating. There could be no requirement by law that they do so. The competition among flying schools, however, particularly in their advertising, makes it practically impossible for the non-rated school to secure pupils. Hence by practical competitive conditions we find that the federal government is in fact supervising flying schools. Before rating is given, the equipment, teaching personnel, as well as the character of the flying field used must be approved by the Department of Commerce.

I have already referred to the matter of air traffic rules. These are regulations issued by the Department of Commerce governing the method of flying and these rules apply to all flying of all planes. The constitutionality of such regulations as applied to non-commercial flying and to intrastate commerce has never been tested and may never be, as the uniformity of flying rules is so eminently desirable that it is unlikely that pilots or manufacturers will ever seriously contest the validity of these rules.

There is now developing an interesting body of law which does not come by way of regulation nor by way of direct legislation, but is the incidental result of the gasoline tax which exists one hundred per cent—this is to say, in every state and in the District of Columbia. In practically every case this tax is imposed “upon gasoline used upon the highways of this state” and in nearly every case the funds collected go to the highway fund. A great many of the states specifically exempt gasoline used in farm tractors, in stationary engines, manufacturing plants, et cetera, and to this list of exemption many states add gasoline used in aircraft. Where such exemption is not provided for there seems to be two vulnerable points for attack as to the constitutionality of such a tax. In the first place, aviation gasoline is not used upon the highways and from the language of the taxing statute it would seem to be clearly exempt. And on the other hand, if made to include gasoline used in aircraft it would seem to be without the purpose of the statute, discriminatory, and hence void. There is as yet no case, however, involving this particular point. There have been several cases that involved the second point of attack which is that a tax upon gasoline used in interstate commerce is a burden upon one of the instrumentalities of interstate commerce and hence unconstitutional.

This was the holding in the case of *Helson v. Kentucky*,²⁰ in which the Supreme Court of the United States held that gasoline

20. 279 U. S. 245 (1928).

used in a motor to propel a ferry boat between Indiana and Kentucky and was an instrumentality of commerce and could not be taxed by the state of Kentucky. There was the same holding in *Transcontinental and Western Air v. Asplund*,²¹ decided by a federal district court of New Mexico. The same court went farther in the case of *Mid-continental Air v. Lujan*,²² and held that where the gasoline used in interstate commerce was commingled with and could not be separated from that used in intrastate commerce, the tax could not be applied to the air carrier in question. To the same effect is the holding in *United States Airways v. Shaw*.²³

There is one exception, however, to the rule that a tax levied by a state may not impose a burden upon interstate commerce. This exception is where the tax is imposed in exchange for the use of a state-provided instrumentality. The gasoline tax has been upheld as applied to buses engaged in interstate commerce because of the fact that the buses use the state highways. This was the holding in *Interstate Transit Company v. Kykendall*,²⁴ in *Liberty Highway Company v. Michigan*,²⁵ as applied to gasoline taxes, and was also the holding in *Hendrick v. Maryland*,²⁶ as applied to the automobile license tax.

Now some of the states use the gasoline license tax collected from airplanes directly for the benefit of the aviation industry. In Wyoming the tax collected at municipal airports is paid to the State Treasurer and by him immediately turned back to the municipalities to be used in maintaining the airports. In view of this fact the United States District Court for Wyoming in the case of *Boeing Air Transport v. Edelman*, decided June 27, 1931, held that the tax was valid as being a tax supported by a consideration for the use of the facilities of the airports at Cheyenne and Rock Springs.

There is a growing tendency on the part of states to devote not only money collected from the aviation gasoline tax but also additional public funds for the creation of state facilities for aviation. This is now being done in Arkansas, Idaho, Michigan, Tennessee, Maine, Oregon, Pennsylvania, and Wyoming, and of these states most of them appropriate more than is received from the gasoline tax. There was in the beginning, some three years ago, a legal and constitutional question raised that the expenditure

21. Reported in U. S. Daily, December 31, 1930, p. 8.

22. 47 F. (2d) 266 (1931).

23. 43 F. (2d) 148 (1930).

24. 284 F. 635 (1922).

25. 294 F. 703 (1923).

26. 235 U. S. 610 (1914)

of public public funds for airports and aviation facilities was not a public purpose and hence unauthorized and unconstitutional. This question has been put at rest by such decisions as *Dysart v. St. Louis* and *Ennis v. Kansas City*,²⁷ *McClintock v. Roseburg*,²⁸ *Hile v. Cleveland*,²⁹ *Hesse v. Rath*,³⁰ *Lincoln v. Johnson*,³¹ *Doughty v. Baltimore*,³² *Wichita v. Clapp*,³³ and *Ruth v. Oklahoma*.³⁴ The Aeronautical Law Committee has prepared as has been explained a uniform Airports Act which we hope will serve to put at rest in those states which have not had the matter before their courts this question of the right of states and municipalities to use public funds for the development of aviation facilities.

In conclusion may I say that there seems to be no good reason why the federal government and the states should not appropriate funds for aid of aviation. The railroads owe their early existence to federal and state land and money grants. That some of this was unwise is not disputed, but that some of it was necessary for the development of this country is likewise not disputed. The federal government appropriates funds for the aid of navigation both on the high seas and on our navigable rivers. The federal government and the states appropriate large sums annually for the building of highways, which, while not always pleasantly received by the railroads, have been of tremendous importance in the development of the hinterland off of the railroads.

It is probably out of place for the chairman of your Air Law Committee to express an opinion as to public policy, but I want to say now that all of the members of your committee are interested in the success of aviation and would not be interested in the subject of aviation law otherwise. We believe in the future of aviation and we believe in the wise national policy of supporting aviation by mail contracts, by the aviation facilities provided through the Department of Commerce by the support of aviation manufacturers through the Army and Navy procurement programs and look forward hopefully to increasing support of aviation by the several states, in cooperating not only in the enforcing of aviation regulations, but in the creation and maintenance by public funds of aviation facilities.

27. 11 S. W. (2d) 1045 (both cases reported) (1928).

28. 273 P. 331 (1929).

29. 160 N. E. 24 (1927).

30. 224 App. Div. (N. Y.) 344 (1928).

31. 220 N. W. 273 (1928).

32. 141 App. (Md.) 499 (1928).

33. 125 Kan. 100 (1928).

34. 287 P. 406 (1930).