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Mr. Chairman, M. Roper, Ladies and Gentlemen: It is indeed gratifying to note the interest that has been taken in the subject of the development and the growth of air law, both in our own country and abroad.

I want now to pay a brief tribute to the speaker who preceded me. In him you have witnessed a true diplomat and an indefatigable worker, who is the personification of the International Commission for Air Navigation. He is the man who has worked days, nights and Sundays, at home and abroad, to bring about a real world-wide agreement for the promotion of air transportation, and it certainly is a privilege for all of us to have been here and listen to his presentation of the subject.

I am also going to ask your indulgence. In order that the Chairman and myself may keep an engagement which was forced upon us without much notice at about one o'clock this afternoon, when we were told we had to be back at a meeting of the Executive Committee of the American Bar Association at four o'clock, I am going to disregard the paper which I had prepared on the subject assigned to me, and present it in perhaps a little different way, much briefer, but which I think will serve the purpose just as well.

In the growth of the air law of the United States there are four fields that of course are interrelated, but still are quite separate. First of all is the decisions of the courts, the interpretations of the common law and the statutory law by the judiciary in litigated cases. Then there is the statutory law itself, and distinguished from that is the field of administrative regulations, regulations of course which must find their authorization in legislative enactment, because no administrative officer has the power to make or promulgate regulations except it is given to him either by constitutional authority or by statute. And there is still a fourth basis for our air law, namely, that of the treaties.

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Going back to the first of these, we find that it made its appearance in the field of air law before either legislative enactment, administrative regulation or treaties.

It may be surprising to some of you who have not followed this closely to know that the first decision in the United States dealing with the subject of air navigation is over a century old. Of course, it involved the flight of a free balloon. In the particular case, which is known as *Guille* v. *Swan* (19 Johnson 381), the balloonist had made a landing on a garden patch belonging to the plaintiff. The suit was brought for damages, not only those caused by the balloon and the aeronaut himself in extricating himself from the landing, but also claiming damages for the acts done by curiosity seekers or those who constituted themselves as a committee of rescue to come to his aid.

The defendant admitted the liability for any damage that he himself caused, or the balloon had caused, but contended he was not responsible for the acts of third parties who had come to his assistance.

The decision in the case, however, held that by reason of the fact that a free balloon was subject to the will of the winds, that the control, if any, at that time, which the aeronaut had over it, was so negligible that the law would presume that he could have foreseen the difficulties which actually did arise, and therefore he would be held to respond in damages.

Air transportation has undergone a great many changes in this century. During the greater part of it there was very little aeronautical activity, practically none outside of the balloon stage.

Since the development of the airplane, however, we now have an instrumentality of air transportation which is subject to the control of the pilot. Even in the case of motor failure or forced landings due to weather the pilot still has a large measure of control over the aircraft, so the reasoning of that decision is not applicable to air transportation, save as it applies possibly still to the free balloon, and even the free balloon of today is much more controllable than was the free balloon of over a century ago.

The next appearance in the recorded cases dealing with the subject of air law was one that arose in the federal courts, brought by certain parties who undertook unsuccessfully to apply the rules of admiralty and enforce a maritime lien for repairs to a seaplane that had been wrecked along the shores of Pugent Sound. It is known as the case of *Crawford Brothers No. 2* (215 Fed. 269).

In the academic discussions which had been going on since the advent of aviation it had frequently been suggested that air navigation was analogous to marine navigation. Some had gone so far as to suggest that the admiralty provisions of the Federal Constitution and the Federal maritime statutes were really applicable to air transportation. However, in the *Crawford Brothers No. 2*, the Court held that the admiralty law did not in and of itself apply, and that if it were to apply, it would require further Federal legislation.

Following that along just a little further, we come to the case *In re Reinhardt*, 232 N. Y. 115, which was an action under the New York Employers' Compensation Act, in which the applicant had been injured while repairing a seaplane that was floating upon the water. In that case the Court denied the right to secure compensation under the State Compensation Act, upon the ground that the applicant was working upon a vessel, and therefore that the Federal law applied and not the State Compensation Act, as the injury occurred upon navigable waters.

There may be some difficulty in reconciling the opinion of the Federal District Court in the *Crawford Brothers No. 2* case and the decision in the *Reinhardt* case of the New York Court of Appeals.

There is another type of decision which we find coming into the reported cases quite rapidly, and that has to do with the right of flight over the property of another. I think the first two cases, one in Pennsylvania (2 Dist. and Co. Rpts., Pa., 241), one in Minnesota (1928 U. S. Av. Rpts. 42), arose prior to the time that there was any legislative enactment in control in the particular jurisdictions, but a Nebraska case (unreported), I believe, in point of time followed after the enactment of the Air Commerce Act. In all of these first three decisions the Court took the view that the mere flying over the property of another at a reasonable height did not constitute a trespass. Since then we have had a good many legislative enactments, and in the last year, two very important court decisions dealing with this particular subject, one by the Supreme Judicial Court of Massachusetts, and another by a Federal District Court in Ohio.

However, each of these latter cases relied in a very large measure upon statutory regulation, and before going into any general discussion of those, I think it might be well to take up the growth of the law as contained in the various statutes.

It was as far back as 1911 that Governor Baldwin of Con-

necticut first advocated the enactment of Federal legislation dealing with the subject of air navigation. He presented to the American Bar Association a proposed law on this subject, but did not at that time arouse any interest on the part of the various committees. Governor Baldwin thereupon directed his attention to the legislature of his own state, where he was more successful, and the first aeronautical legislation passed by any one of the states was passed in the State of Connecticut, and was shortly followed by an enactment in the adjoining state of Massachusetts. Those were practically the only two states that took any action prior to the war.

Immediately following the armistice in 1918 there was considerable conjecture as to the legal phases of aviation. Legislation of various types was introduced in Congress, but none of it was even reported out of committee.

It was in 1920 that the Conference of Commissions on Uniform State Laws and the American Bar Association first directed their attention in earnest to the question of legislative enactment pertaining to air transportation. As a result of the joint efforts of these two committees, the uniform state air law was approved by the conference, and also a definite policy with reference to Federal legislation was approved by those two bodies.

The policy in general was that the substantive law, the question of liability for damage, the question of ownership in air space, interference or police regulations with reference to interference with the property on the ground, would be handled by the states, but so far as the regulation of air transportation itself was concerned, the test of the competency of the personnel, the airworthiness of the material, the enforcement of the regulations, would be left to the Federal government.

While this conclusion was reached in 1922, it was not until 1926 that the Air Commerce Act was passed by the Federal government, and when that act was passed, as is so often the case, there was a compromise on the declaration that had been made by the two committees studying the subject. Instead of requiring a Federal license for all aircraft and airmen, the Air Commerce Act requires the Federal license only of those engaged in interstate or foreign air commerce as defined by the act. Others may secure such a license. However, the Air Traffic Rules, which the Secretary of Commerce was authorized to promulgate, are applicable to all flying, commercial, non-commercial, intrastate and interstate. This

is upon the theory that in order to protect adequately interstate commerce by air, uniformity of air traffic regulations is essential to safety.

While there was a time that such uniformity was not necessary, and perhaps there still are those who would advocate that it is not necessary, I think the minority is becoming smaller and smaller, and as the volume of air traffic increases, it certainly becomes more and more apparent that one set of air traffic rules is all that we have room for if we are going to have safe air transportation.

I think also that it is becoming more and more clear that one standard of competency of personnel and one standard of airworthiness for aircraft is all that we will have room for. That is one of the theories that are back of the International Air Navigation Convention of 1919, and certainly, if it is true when it comes to international air navigation, it is true when it comes to national air navigation.

The states, many of them, have recognized the importance of this, and therefore in the field which Congress left open to them they have merely adopted a statutory enactment requiring a Federal license in order to fly within those particular states. Some of the states base the license requirement upon the question whether or not the aircraft or airman is engaged in commerce, other states requiring a Federal license for all aircraft and airmen flying within their borders.

It is particularly gratifying to note that both the Federal legislation and the state legislation contain broad regulatory powers. An administrative official is given the authority to promulgate the regulations necessary to carry out the principles declared in the legislation. That is particularly important in connection with an art that is changing and developing as rapidly as is air transportation. It would be utterly impossible to keep abreast of the development of the science and the engineering skill in aviation by amending statutes to conform thereto, and so we find both the Federal government and the state governments, for the most part, have given to an administrative officer the broadest kind of powers to promulgate regulations.

The necessity for this has been well demonstrated in the amendment to the regulations under the Air Commerce Act. There has not been a single year since the regulations were first promulgated that there have not been some amendments to them, and usually the Secretary of Commerce has found it necessary to amend the

regulations more than once a year. Frequently it is necessary to promulgate special regulations for special occasions. Of course, it would be impossible if all this had to be handled by legislation, for instance, to convene special sessions of the national and state legislatures to provide for a situation such as will be presented here the latter part of this week and all of next week, when the air races are on. In this particular instance the situation is handled by a special regulation promulgated by the Secretary of Commerce dealing with air transportation in the vicinity of the Curtiss-Reynolds Airport.

Turn for a moment to the matter of treaties. At the present time the international relations of this government, so far as they pertain to air navigation, are the subject of special and temporary air agreements with the various countries where our air lines exist. The first was made with Canada, our neighbor to the north. While Canada is a party to the International Air Navigation Convention, she signed with a reservation which gave her the right to conclude special arrangements with the United States.

We also have temporary arrangements with England herself, pertaining to the British Colonies, and special arrangements with France pertaining to the French Colonies in this hemisphere.

The arrangements with the South American countries are temporary, but are not the subject of any particular treaties; more by common consent, the air lines operating in South and Central America are accorded the freedom of air navigation.

You will recall when Captain Roper spoke of the meeting of the extraordinary session of the CINA in Paris last year, that the United States was one of the countries that came out strongest for the freedom of air navigation, so in our own policy in the Western Hemisphere we have attempted to follow that rule, and we have found our neighbors to the south of us have been glad to meet us more than half way.

However, in studying this question of the treaties which are suggested we must remember that the ratification of a treaty by the Senate, or the adherence to a treaty by the President by and with the advice and consent of the Senate, makes it superior to prior statutory enactments, and so this matter of entering into international treaties affecting air navigation is not a subject that we can afford to pass over lightly. It is one that must receive serious consideration. While I heartily agree with the claim, objectives, desires, and prophesies of my colleague from France, I want to

make sure that those prophesies are very close to realization before our government takes any action. Otherwise we may find that by so doing the development of air transportation has been impeded rather than fostered. There is no doubt but that the growth of air law is destined to have a very profound effect upon the practical application of air transportation to commerce.

We must not build up any walls. We must not build up any impediments by reason of local self-interest, local pride, or any such motive as that. We must look at it in a broad, national and international way, realizing that commerce, international good-will, security and peace, if you please, are, in a large measure, dependent upon the use that we make of this newest and speediest means of transportation, and therefore upon the character of the decisions, statutes, the regulations, and the treaties which go to constitute the air law of the United States.

There have been times in the past, there will be times in the future, when many have adhered to strict legal maxims that have grown up without rhyme or reason, and which, as Dean Pound, who used to lecture in this University, was wont to refer to as substitutes for thought.

We have no time or room for substitutes for thought in applying the law to air transportation. We must think the thing out, apply the rule of reason, and see to it that no action is taken either by the courts, the legislatures or administrative authority, that will in any way seriously impede the development of air transportation. (Applause.)

Major Landis resumed the Chair.

CHAIRMAN LANDIS: I want to thank you gentlemen very much. I am certain your papers have given us all a very keen insight into the problems, both national and international, and we are more than indebted to you for coming. I know you have an appointment, and it is with a great deal of regret that we excuse you, but we will excuse you.

Does anybody desire to say anything about the papers that have been presented today? We are hoping to gain a great deal of information and advice from those in attendance. We have a reporter taking down the remarks, and those remarks will be available and disseminated to everyone afterward, so we trust you will enter into a very free and hearty debate.

This is the first time I ever saw a group connected with aviation that did not want to argue about something.

If there is no debate, I want to make a few announcements.

Chairman Landis made several announcements.

CHAIRMAN LANDIS: This meeting is adjourned until nine-thirty tomorrow morning, in this hall.

The meeting adjourned at three-fifty o'clock.