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DOCUMENTS

State Regulation

REPORT OF THE STANDING COMMITTEE ON AERONAUTICAL LAW OF THE AMERICAN BAR ASSOCIATION, SEPTEMBER, 1931*

The Aeronautical Law Committee which reported to the American Bar Association at the Memphis meeting in 1929, submitted for the approval of the Association a "Uniform State Air Licensing Act." The resolution calling for the Association's approval of this act was withdrawn, and the Association recommitted the task of drafting a Uniform State Air Licensing Act.

The Aeronautical Law Committee which reported at the 1930 meeting in Chicago had worked on a more comprehensive Uniform Aeronautical Code, which included, but went beyond, the scope of the Uniform State Air Licensing Act. This more comprehensive code, however, had not been completed, and had in fact not gone beyond the stage of a tentative draft at the time of the annual meeting in Chicago.

The Chairman of the committee reporting to the Association at Chicago, reported that work was proceeding on the drafting of this comprehensive State Aeronautical Code, and upon the presentation of a resolution to that effect, the Association approved the action of the committee in studying and working upon a comprehensive Aeronautical Code, and gave to the committee further time in which to proceed with the work.

At the same Chicago meeting, however, the National Conference of Commissioners on Uniform State Laws presented, as a part of their report, a "Uniform State Air Licensing Act." This act was in many respects similar to the one submitted with the report of the committee at Memphis, which was not approved, and was similar to the tentative draft prepared, but not approved, by the 1930 committee.

With the approval of the report of the Commissioners on Uniform State Laws, there was carried also the approval by the American Bar Association of this "Uniform State Air Licensing Act." As stated before, this act had not been approved by the Aeronautical Law Committee.

Nevertheless, the committee felt that it had a mandate from the Association to prepare, if possible, a comprehensive State Aeronautical Code. This code is herewith submitted as a result of the labors of this committee, in two separate acts, for convenience styled the "Uniform Aeronautical Code" and the "Uniform Airports Act." It is unfortunate that portions of this act, as prepared, conflict with the Uniform Air Licensing Act heretofore prepared by the Commissioners on Uniform State Laws and approved by this Association, and also unfortunate that it has been found necessary that portions of this new code conflict with the old Uniform Aeronautics Act, approved some six years ago by this Association and its committee.

Due to the necessary delay in committee reappointments following the death of Mr. Marvel, the committee did not hold its first session until December 18 and 19, in Washington.

At the first meeting, the individual members of the committee had assigned to them by the Chairman for earnest, systematic and careful study, certain specific problems involved in the drafting of an aeronautical code. These subjects allotted by the Chairman to individual members of the committee, included among others, the following: The declaration of lawfulness of flight; liability to persons and property on the ground; liability to

*This report has been furnished by the Chairman, George B. Logan, and is published with the consent of the American Bar Association.

passengers of carriers, both common and private; the problem of state or federal, or optional, licensing for aircraft and airmen; state enforcement of air regulations; zoning for and against airports; authority of municipalities to acquire, operate and lease airports; jurisdiction of crimes and torts; liability arising from collisions; compulsory insurance, etc.

It is a matter of pride to the committee that the members to whom these topics were specifically assigned, made carefully studied and well prepared reports to the second meeting of the committee, held February 27 and 28, 1931, in Washington. The deliberations of the committee at these meetings, as well as at the later meetings, received great assistance from Colonel Clarence M. Young, Assistant Secretary of Commerce, Aeronautics Branch, and Mr. E. McD. Kintz, head of the Legal Section of the same Branch. The text of the two acts herewith submitted was approved at the final meeting of the committee held May 8 and 9, 1931, at Washington. Your committee feels that a complete explanation of the code, its provisions, and particularly its omitted provisions, should be given to the Association.

Section 1 of the code, on the "Lawfulness of Flight," is respectively offered as a solution of the vexatious problem fathered by the ghost of the ancient maxim, "*cujus solum est*, etc." This section is as follows:

Lawfulness of Flight.—Flight in aircraft over the lands and waters of this state, within the "Navigable Air Space," as hereinafter defined, is lawful unless at such a low altitude as to interfere with the then existing use to which the land or water or space over the land or water is put by the owner, or unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water beneath.

As used in this act, the term "Navigable Air Space" means air space above the minimum safe altitudes of flight prescribed by regulation by the State Aeronautical Commission (or State Administering Officer). Such navigable air space is subject to a public right of air navigation in conformity with the provisions of this act and with the regulations and air traffic rules issued by the State Aeronautical Commission (or State Administering Officer).

It will be noted that Section 3 of the old Uniform Aeronautics Act, formerly approved by this Association, has been purposely omitted. This section declared in part as follows:

SEC. 3. The ownership of the space above the lands and waters of this state, is declared to be vested in the several owners of the surface beneath, subject to the right of flight prescribed in Section 4. . . .

The committee unanimously believes, in view of exhaustive studies made, not only by this committee and its predecessors, but by other eminent students of aviation law, and particularly by able counsel in the two important litigated cases arising since the approval of the Uniform Aeronautics Act, that the statement as to ownership of airspace proclaims a legal untruth.

No decided case has ever held that "airspace" was "owned" by the landowner to unlimited heights. Indications of such a legal belief appear by way of dicta only. It is manifest that prior to the use of aircraft and prior to the use of upper airspaces, there could have been no authoritative pronouncement on this subject.

Since the arrival of aircraft and since the use of upper airspace, there has been one indefinite indication of such pronouncement by the Supreme Court of Massachusetts, and one by a Federal District Court, in a case presently on appeal.

It is the committee's belief, though, that enough has been said in these two cases apparently in opposition to the old pronouncement, to indicate that the broad statement as contained in the old Uniform Aeronautics Act, was, as it stood, incorrect.

The presence of this declaration in an Aeronautical Law Code would simply lend color to the assertion of non-existent and unnecessary rights by litigiously inclined persons, to the great nuisance and possible destruction of aviation.

The solution offered by the committee is offered in the light of the two cases above referred to, namely, the case of *Smith v. New England Aircraft* (Mass.), 170 N. E. 385, and *Swetland v. Curtiss Airports Corp.* (District Court of Ohio, 41 Fed. (2d) 929). In these cases both courts held it to be a trespass to fly at heights lower than 500 feet over private property in *landing upon and taking off from* established airports, but not to be trespass if these flights took place at 500 feet and above. These decisions were based largely upon the authority of the regulations issued by the Department of Commerce under the Air Commerce Act of 1926. These courts held that these regulations were constitutionally permissible interferences with the use of the subjacent land.

The language of the regulations then in force with respect to altitudes lower than 500 feet was unfortunate, in that permission to fly at these lower altitudes appeared to be given by way of an *exception* only. The regulations establishing the minimum safe altitudes of flight then in existence were as follows:

SECTION 74-G. Exclusive of taking off from or landing on an established landing field airport . . . aircraft shall not be flown:

1. Over the congested parts of cities, towns or settlements at a height not sufficient to permit of a reasonably safe emergency landing which in no case shall be less than 1000 feet;

2. Elsewhere at a height less than 500 feet, except where indispensable to an industrial flying operation.

This regulation has since been changed and now reads as follows:

SECTION 69. The minimum safe altitudes of flight in taking off or landing, and while flying over the property of another in taking off or landing, are those at which such flights by aircraft may be made without being in dangerous proximity to persons or property on the land or water beneath, or unsafe to the aircraft.

Minimum safe altitude of flight over congested parts of cities, towns or settlements are those sufficient to permit of a reasonably safe emergency landing, but in no case less than 1000 feet.

The minimum safe altitudes of flight in all other cases shall not be less than 500 feet.

The effect of the two decisions above referred to, and apparently based upon the then terminology of the regulations, was to admit of the legal existence of a navigable "upper" airspace, but to deny apparently the legal existence of ways of ingress and egress to it. It appears that if it was unlawful to fly lower, even in taking off and landing, the use of the navigable airspace was effectively closed, in the absence of condemnation or acquisition of an aerial "stair-case" to get up to and down from the legally navigable airspace.

The re-definition, however, of navigable airspace apparently clears up the misunderstanding which seemed to be the basis of the two decisions above referred to, and leaves the lower altitudes, *below* 500 feet, in taking off and landing, as part of the navigable airspace.

Under the code as prepared by this committee, the definition of the minimum safe altitude of flight (and consequently of navigable airspace) if this act be adopted, must be the same as the definition prescribed by the Secretary of Commerce.

The Air Commerce Act of 1926 did not, nor does the code prepared by the committee, attempt to change legal titles either to real estate, or to airspace, if such a thing exists. These laws do not in any wise impair the existing right which an owner of real estate now has, as an incident to his ownership, to take possession (absent zoning ordinances or other police regulation) of the superincumbent airspace to any height to which his fancy may aspire and his "pocket-book" permit. This right arising out of land ownership is conveyable and transferable, but it is not "air ownership." This code as suggested does not in any wise permit the creation of nuisances by noise, danger, fear or other unusual element of flying.

Section 2 of the act, designates the State Aeronautical Commission as the body to enforce the provisions of the code and as the body to promulgate regulations and rules which must coincide, as far as possible, with

those of the federal government. As to such regulations and rules, the necessity, in order to obtain uniformity, of coinciding with those of the federal government is obvious.

Again no state law is self-enforcing. It was necessary that the duty be placed upon someone. The question as to whether this someone should be an existing state officer, a new state officer, or a committee or commission, is, of course, largely a matter of internal state policy. As to this particular matter the committee feels that a recommendation is without its scope.

It will be noted that the State Aeronautical Commission is given a broad injunction to "foster" aviation. It was the thought of the committee that the "state enforcing agency" should not confine itself to enforcing, but could render great service to the state and its inhabitants by fostering aviation, to the end that it becomes both safe and valuable to the state and its inhabitants.

We conceive it to be within the power of the state government to foster an industry so promising of convenience and prosperity to its population, just as a state may encourage agriculture, stock raising, egg production, or game and fish propagation.

This indeed is the basis of the Air Commerce Act of 1926. The primary purpose of the Aeronautics Branch of the Department of Commerce is to foster aviation.

In fostering aviation, the commission is directed to consult and co-operate with its own governor, its own executive department, its highway commission, and other state officers, and with the Aeronautics Branch of the Department of Commerce.

Sections 3 and 4 provide for the licensing of aircraft and airmen. Your committee has finally adopted the so-called "single standard." There has been unlimited debate as to whether or not states should require state licenses, federal licenses, or optional—either a federal or a state license.

The point, has been seriously made that the requirement of a federal license by state law for intrastate commercial flying, or for pleasure flying, was an unconstitutional state enactment. It is at this point that this code, as proposed, differs from the Uniform State Air Licensing Act.

Your committee has been unable to see any sound reason why a state in the exercise of its police power may not require, as a condition precedent to the operation of an aircraft within its boundaries, a specified badge of air worthiness or air competency, namely, a federal license.

At the beginning of the calendar year 1931, there were 20 states which had adopted the "single standard" of federal licenses for both airmen and aircraft for all types of flying;* seven states which had adopted the single standard of federal license for commercial flying;† six states which had adopted the dual standard of either federal or state licenses;‡ and six states which had adopted the standard of state licenses only.§

During the calendar year of 1931, six states have by law required federal licenses for all types of flying;|| two states now require state licenses which formerly required federal licenses.¶

Thus it is seen that out of the 47 states which have legislated on the question of licenses—26 require the federal licenses for all types of flying. Six require the federal licenses for commercial flying. The trend is evidently toward the single standard of federal licenses, and certainly the hope of uniformity seems to lie in this direction.

Section 5 is but a provision for the display of these licenses, and it is left to the regulations to be issued as to the manner in which, and the persons and officers to whom, these licenses shall be exhibited.

* Arizona, California, Delaware, Idaho, Illinois, Indiana, Kentucky, Michigan, Mississippi, Montana, New Mexico, North Dakota, Rhode Island, South Dakota, Texas, Vermont, Washington, Wisconsin, Wyoming.

† Colorado, Missouri, Nevada, New Jersey, North Carolina, Ohio.

‡ Maine, Maryland, Minnesota, New Hampshire, Oregon, Virginia.

§ Arkansas, Connecticut, Florida, Kansas, Massachusetts, Pennsylvania.

|| Alabama, Kansas, New York, Ohio, Oregon, Utah.

¶ Vermont and West Virginia.

Section 6 covers the very difficult question of liability to persons and property on the ground. Section 5 of the old Uniform Aeronautics Act, as approved by this committee, and by the Commissioners on Uniform State Laws, and by the Association, some years ago, contains a declaration of absolute liability upon the owner of aircraft for injuries to persons and property on the land, irrespective of the owner's negligence—unless the injury is caused in whole or in part by the negligence of the person injured.

This is approximately the law of England as established by the British Air Navigation Act of 1920.

It is the law of nearly all foreign countries and is incorporated in the Code Internationale Navigation Aérienne of 1919.

Your committee feels that this declaration of liability is, however, erroneous. The owner actually negligent in the operation of an aircraft is placed upon the same footing as the owner of an aircraft forced to descend by storm or other act of God; on the same footing as the owner whose aircraft is forced to earth by collision resulting solely from the gross negligence of another aircraft; on the same footing as the owner whose aircraft has been loaned or leased to a person using it solely for his own pursuits; on the same footing as the owner whose aircraft has been stolen from its hangar and used without his knowledge or consent. Such incongruous and anomalous results bring their own condemnation of the statute.

It has also been suggested by some members of the committee that the provision for absolute liability, leaving the operator of an aircraft no defense other than contributory negligence, is likely to be unconstitutional in the light of the decision of Mr. Justice Butler in the *Western and Atlantic Railroad Company* cases decided in 1929 (279 U. S. 649, 73 L. Ed. 884).

Your committee chooses, however, to place its objections to this old section upon the other grounds outlined. It recognizes that the airplane is still a new, and by many regarded as a dangerous instrumentality, but your committee is unwilling to consider that it is an untried instrument of commerce, and is unwilling to admit that its future does not hold the possibility, at least, of universality of use. The committee is not willing to join the ranks of those passed on, but not forgotten, solons who required a man with a red lantern to precede a railroad train; or required a published notice of intention to drive an automobile on a public road; or fixed a maximum of eight miles per hour for self-propelled vehicles.

The committee recognizes, however, and deems it essential that the inequality of the landsman and the aviator, with respect to the availability of evidence as to what has taken place in the air, and as to what causes an aircraft to descend out of control, be adjusted. This makes it necessary that some rule be adopted which relieves the landsman of the unequal load of carrying the burden of proof as to negligence. This, we believe, the committee has solved in the rule announced in these sections.

This section omits the use of the all inclusive term of "owner." It simply provides a presumption of evidence which relieves the landsman of the burden of proving negligence by the preponderance of the evidence.

It leaves open to the aviator, or owner, or operator, to establish the common law defenses now pertinent to such actions, namely, the defense of contributory negligence on the part of the plaintiff; the defense of an act of God; the defense of the exercise of all possible care; and as to the owner, the defense of a lack of agency or employment relationship between himself and the actual operator.

In sections 7 and 8 the committee has restated the old rule as to passengers, and as to collisions, with some language to clear it, as previously stated by the Uniform Aeronautics Act. The committee is not yet ready to announce a new or all inclusive rule covering the complicated relations between passenger and carrier, and involving, first, the question of common carriers, and second, the question of private carriers for hire, and lastly, the question of guest passengers. Until these matters are more fully

worked out, the committee believes they should not be the subject of state enactment, but should be left to the present policies within each state.

Section 9 is simply the same clause lifted bodily from the old Uniform Aeronautics Act relating to contracts and other legal relations.

Section 10 is likewise lifted from the old Uniform Aeronautics Act and is a declarative statement of the jurisdiction of air crimes.

Section 11 provides the penalties for violation of the provisions of the act, the extent, amount and nature of the penalties being left, naturally, as a matter of state policy.

Section 12 is a statement of the intention of harmony with the federal law, stated in simple and clear words that the Uniform Aeronautical Code is intended to coincide with "the policies, principles and practices established by the United States Air Commerce Act of 1926, and all amendments thereto."

There is a distinct reason for this. It is exceedingly necessary that a state aeronautical code be not only uniform with that of other states, but particularly that it be uniform with the federal law. As necessary as state regulation now appears to be to certain aspects of aviation, your committee is quite convinced that the federal law, which is now the dominant controlling factor in aviation, will continue to be, and increasingly so, such a dominant factor. State laws incompatible, even where not unconstitutional, would be unthinkable from the standpoint of uniformity.

This declaration of coinciding with the federal law relieved the committee of the onerous task of definitions. An examination of many state acts, intended to be uniform and for most purposes actually uniform, shows predilection on the part of legislators to try their own hand at definitions. Playing with definitions is a dangerous sport, if uniformity is to be achieved. Invitation to participation in this sport is omitted by omitting definitions entirely. Sufficient guidance as to the meaning of terms, where needed, will be found in the federal law and the regulations promulgated thereunder.

The Uniform Airports Act submitted herewith contains grants of legislative authority for the acquisition, improvement and operation of airports by municipalities, counties and other political subdivisions of the state.

Your committee is quite aware of the fact that decisions of the courts of last resort in perhaps a dozen states have held that municipalities do possess this power. Bond issues for such purposes have been validated; condemnations have been authorized; and expenditures of public funds held legal. There are many states, however, in which these questions have not been put to the acid test of a judicial decision, and the purpose of these sections is to give that influence which the supreme courts have frequently said is the deciding factor in determining close points in the shadowy grounds between "public" and "private" purposes. A declaration by the state legislature that the acquisition, improvement and operation of airports is a public, governmental and municipal purpose is at least helpful, if not necessary.

The committee has included in these sections a provision authorizing cities, counties, etc., to police airports owned and operated by them, even though outside of their city limits. This, the committee believes, is a proper extension of the police powers of the municipalities of the state government and is exceedingly necessary, in view of the lack of a sufficient number of police officials under the ordinary county scheme of government and the unwillingness of the city police to make arrests, etc., outside of the city limits.

In the preparation of these sections, your committee has been greatly aided by the studies of the legal section of the Aeronautics Branch of the Department of Commerce and by the studies of the Zoning Committee, which was appointed by Assistant Secretary Young more than a year ago and issued its report in January of 1931.

Other subjects pertaining to aviation law which have been urged upon the attention of your committee as possibly proper for inclusion in an aeronautical code, and which have not been included, are the following:

- (1) Compulsory insurance for operators of aircrafts.
- (2) Provision for service of non-resident aircraft owners and operators in tort actions arising within the state.
- (3) Zoning territory surrounding airports for reasons of air navigation alone.
- (4) Granting the right of eminent domain to privately owned airports.
- (5) Limitations as to liability, either by state statute or by ticket liability contracts, both as to amount and as to degree of care for injuries and death to air passengers.
- (6) Some practical provision assisting in overcoming the difficulty of proving venue in case of crimes committed in or by the use of aircraft.

Your committee feels that some of these suggestions might well in some form be included in an aeronautical code, but that these matters have not yet been given sufficient study in some cases, and in other cases there is not yet sufficient practical data to enable the committee to draft sections pertaining thereto which they are willing to recommend to this Association.

In conclusion, the committee desires to call the attention of the Association to the importance of harmonizing the work of the Aeronautical Law Committee of the American Bar Association and the Air Law Committee on Uniform Aeronautics Acts of the National Conference of Commissioners on Uniform State Laws with the work now being done by the American Law Institute in the restatement of the law.

Many portions of the law upon which the work of restatement is progressing necessarily cut cross sections into the body of aeronautical law.

Already in the course of this work, the American Law Institute, in restating the law of torts, in its recently submitted Section 7 has suggested a holding with reference to trespass in airspace which is fundamentally different in concept with the opinion relative thereto held not only by this committee of the American Bar Association, but by most of its predecessor members. It seems to be the position at present of the collaborators of the American Law Institute on this section, that any "unprivileged" entry into airspace, at whatever height, is trespass. On the other hand your committee believes that entry into airspace is not trespass, but might well be, under circumstances of present use, height, necessity and the like, a nuisance. Perhaps an entry which is not a nuisance, would constitute a "privileged" entry under the theory of the framers of the restatement of the law of torts, but the two concepts are vastly different. Your committee, when apprised of this intended restatement of the law, appeared at the annual meeting of the American Law Institute and expressed itself as to the desirability of close cooperation on this and other similar topics.

The officers of the American Law Institute expressed themselves as welcoming the cooperation of this committee, and your committee, therefore, asks approval by this Association of its intended cooperation as fully as may be found possible with the American Law Institute, insofar as air law matters are concerned.

Mr. Randolph Barton, Jr., a member of this committee, does not sign this report. It is Mr. Barton's wish that his non-participation shall not be taken as necessarily indicating dissent. Mr. Barton is also Chairman of the Committee on Uniform Aeronautics Acts of the National Conference of Commissioners on Uniform State Laws. This report includes some differences between the viewpoint of this committee and of the committee of which Mr. Barton is Chairman—at least, with respect to some of its past views and holdings.

Through Mr. Barton, copies of this committee's report have been sent to the members of the committee of the National Conference of Commissioners on Uniform State Laws, and Mr. Barton's assent to this report is withheld until action by that committee.

In view of the fact that there are several matters as above indicated, which might be included and covered after sufficient study, in these codes;

in view of the fact that the Committee on Uniform Aeronautics Acts of the National Conference of Commissioners on Uniform State Laws will not have time to meet and consider these codes so as to add its recommendation; and in view of the fact that very few legislative assemblies are in session during 1932, your committee does not ask approval by the Association of this report and the accompanying codes at this time.

It is the intention of the committee to have distributed to various federal and state officials and to persons in the aviation industry, preliminary copies of this report, as contained in the advance program, so that the views of these persons may also be received.

The committee does respectfully request earnest study of the codes submitted; the suggestions of all persons interested; the approval by the Association of the effort of the committee to create workable uniform air codes; and additional time to complete such codes for final submission and approval at the 1932 meeting.

GEO. B. LOGAN, *Chairman*,
MABEL WALKER WILLEBRANDT,
JOHN C. COOPER, JR.,
HOWARD H. WIKOFF.

UNIFORM AERONAUTICAL CODE¹

AN ACT

PROVIDING FOR LAWFULNESS OF FLIGHT; PROVIDING FOR UNIFORMITY WITH FEDERAL LAWS REGULATING AVIATION; REGULATING AVIATION WITHIN THIS STATE; REGULATING CIVIL CAUSES OF ACTION ARISING OUT OF OPERATION OF AIRCRAFT; FIXING THE STATUS OF CRIMES AND TORTS COMMITTED IN, BY, OR BY MEANS OF OPERATION OF AIRCRAFT; CREATING THE STATE AERONAUTICAL COMMISSION;* PROVIDING FOR THE ISSUANCE OF REGULATIONS AND AIRCRAFT RULES BY SUCH COMMISSION; PROVIDING FOR THE FOSTERING OF AVIATION WITHIN THIS STATE; PROVIDING FOR THE LICENSING OF PILOTS AND AIRCRAFTS.

Be it enacted by the General Assembly of the State of
as follows:

SECTION 1. *Lawfulness of Flight.*—Flight in aircraft over the lands and waters of this state, within the "Navigable Air Space," as herein-after defined, is lawful unless at such a low altitude as to interfere with the then existing use to which the land or water or space over the land or water is put by the owner, or unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water beneath.

As used in this act, the term "Navigable Air Space" means air space above the minimum safe altitudes of flight prescribed by regulation by the State Aeronautical Commission (or State Administering Officer). Such navigable air space is subject to a public right of air navigation in conformity with the provisions of this act and with the regulations and Air Traffic Rules issued by the State Aeronautical Commission (or State Administering Officer).

SEC. 2. *Powers and Duties of State Aeronautical Commission (or State Administering Officer).*—The State Aeronautical Commission (or State Administering Officer) shall administer the provisions of this act and for such purpose is authorized and directed to promulgate such regulations as are necessary to execute the powers invested in him by this act, including the establishment by regulation of the minimum safe altitudes of flight and

1. This proposed code is annexed to the preceding report of the Aeronautical Committee.

*There are no sections in this act actually creating the State Aeronautical Commission, or providing for the qualification of members, or appropriation, etc. Such sections will be needed according to each state's own law, unless an existing state officer or body be named as the enforcing agency.

including air traffic rules, which regulations and air traffic rules shall be consistent with and conform to, as far as possible, the then current federal legislation governing aeronautics, the regulations duly promulgated thereunder, and air traffic rules issued from time to time pursuant thereto.

It shall be the duty of the State Aeronautical Commission (or State Administering Officer) to foster air commerce within this state in accordance with the provisions of this act, and for such purpose:

(a) To encourage the establishment of airports, civil airways and other air navigation facilities.

(b) To make recommendations to the Governor and the State Legislature as to necessary legislation or action pertaining thereto.

(c) To study the possibilities for the development of air commerce and the aeronautical industry and trade within the state and to collect and disseminate information relative thereto.

(d) To advise with the Aeronautics Branch of the Department of Commerce and other agencies of the federal government, and of the Executive Branch of this state in carrying forward such research and development work as tends to create improved air navigation facilities.

(e) To exchange with the Department of Commerce and other state governments through existing governmental channels information pertaining to civil air navigation.

(f) To cooperate in the establishment and creation of civil airways and air navigation facilities, with the State Highway Commission.

(g) To enforce the regulations and air traffic rules promulgated as provided hereunder through the assistance and cooperation of state and local authorities charged with the enforcement of law in their respective jurisdictions.

SEC. 3. *Aircraft Construction, Design and Airworthiness. Federal License.*—The public safety requiring, and the advantages of uniform regulation making it desirable in the interest of aeronautical progress, that aircraft operating within this state should conform with respect to design, construction and airworthiness to the standards prescribed by the United States Government with respect to navigation of civil aircraft subject to its jurisdiction, it shall be unlawful for any person to operate or navigate any aircraft within the state, unless such aircraft has an appropriate effective license, issued by the Department of Commerce of the United States and is registered by the Department of Commerce of the United States: Provided, however, that this restriction shall not apply to military aircraft of the United States or possessions thereof, public aircraft of any state or territory, or to aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operation of such licensed aircraft.

SEC. 4. *Qualifications of Pilots. Federal License.*—The public safety requiring, and the advantages of uniform regulation making it desirable in the interest of aeronautical progress, that a person engaging within this state in navigating or operating aircraft in any form of navigation shall have the qualifications necessary for obtaining and holding a pilot's license, issued by the Department of Commerce of the United States, it shall be unlawful for any person to operate or navigate any aircraft in this state unless such person is the holder of an appropriate effective pilot's license or permit, issued by the Department of Commerce of the United States: Provided, however, that this restriction shall not apply to those persons operating military aircraft of the United States or possessions thereof, or public aircraft of any state or territory, or operating any air-

craft licensed by a foreign country with which the United States has a reciprocal agreement covering the operation of such licensed aircraft.

SEC. 5. *Possession and Display of Licenses.*—The certificate of the license required for pilots, and the certificate of the license required for aircraft, shall be kept in such places and exhibited to such persons, at such time and under such circumstances as shall be required by the regulations of the State Aeronautical Commission (or State Administering Officer).

SEC. 6. *Damage to Persons and Property on the Ground.*—Proof of injury inflicted to persons or property on the ground by the operation of any aircraft, or by objects falling or thrown therefrom, shall be *prima facie* evidence of negligence on the part of the operator of such aircraft in reference to such injury.

SEC. 7. *Collision of Aircraft.*—The liability of the owner of one aircraft to the owner of another aircraft or to pilots on either aircraft for damage caused by collision on land or in the air, shall be determined by the rules of law applicable to torts on land.

SEC. 8. *Liability to Passengers.*—The liability of the operator of an aircraft carrying passengers, for injury or death to such passengers shall be determined by the rules of law applicable to torts on land arising out of similar relationships.

SEC. 9. *Jurisdiction over Contracts.*—All contractual and other legal relations entered into by aeronauts or passengers while in flight over this state, shall have the same effect as if entered into on the land or water beneath.

SEC. 10. *Jurisdiction over Crimes.*—All crimes committed by or against an aeronaut, or by or against a passenger or other person, on or by means of an aircraft, while in flight over this state, shall be governed by the laws of this state.

SEC. 11. *Penalties.*—Any person guilty of violating any provision of this act or any of the regulations or rules promulgated hereunder shall be punishable by a fine of not more than \$ _____, or by imprisonment for not more than _____ days, or both.

Such fine and imprisonment, or either or both, shall not be deemed to be a bar to any prosecution or punishment for the same act, if same was a violation of any provision of the Federal Air Commerce Act of 1926, or amendments thereto, or of any of the regulations or rules promulgated thereunder.

SEC. 12. *Federal Law Followed.*—It is hereby declared that the intent of this act is to coincide with the policies, principles, and practices established by the United States Air Commerce Act of 1926, and all amendments thereto.

SEC. 13. *Provisions of this Act Severable.*—The provisions of this act are hereby declared to be severable and if any of its provisions shall be held to be unconstitutional, or the applications thereof to any persons or circumstances invalid, the decision respecting such provisions shall not affect the constitutionality or validity of any other provision which can be given effect without such unconstitutional or invalid provisions.

SEC. 14. *Short Title.*—This act may be cited as the Uniform Aeronautical Code.

SEC. 15. All acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed.

UNIFORM AIRPORTS ACT¹

AN ACT

PROVIDING FOR THE ACQUISITION, CONSTRUCTION, OPERATION AND REGULATION OF AIRPORTS AND OTHER NAVIGATION FACILITIES; DECLARING THE OWNERSHIP AND OPERATION OF AIRPORTS TO BE A PUBLIC, GOVERNMENTAL AND MUNICIPAL PURPOSE; PROVIDING THE RIGHT OF CONDEMNATION FOR AIRPORT PURPOSES BY CITIES AND OTHER POLITICAL SUBDIVISIONS; PROVIDING FOR THE ISSUANCE OF BONDS AND FOR THE LEVYING OF TAXES FOR SUCH PURPOSES; AND EXTENDING POLICE REGULATIONS TO SUCH PUBLIC AIRPORTS.

Be it enacted by the General Assembly of the State of
as follows:

SECTION 1. *Municipalities, Etc., May Acquire Airports.*—Municipalities, counties, and other political subdivisions of this state* are hereby authorized, separately or jointly, to acquire, establish, construct, expand, own, lease, control, equip, improve, maintain, operate, regulate and police airports and landing fields for the use of aircraft, either within or without the geographical limits of such municipalities, counties and other political subdivisions, and may use for such purpose or purposes any available property that is now or may at any time hereafter be owned or controlled by such municipalities, counties or other political subdivisions; Provided, however, that no county shall be so authorized except in an adjoining county and this only jointly with such adjoining county.

SEC. 2. *Airports a Public Purpose.*—Any lands acquired, owned, leased, controlled or occupied by such counties, municipalities or other political subdivisions for the purpose or purposes enumerated in Section 1 of this act, shall and are hereby declared to be acquired, owned, leased, controlled or occupied for public, governmental and municipal purposes.

SEC. 3. *Private Property May Be Acquired by Purchase, Condemnation, Etc.*—Private property needed by a county, municipality, or other political subdivision for an airport or landing field or for the expansion of an airport or landing field, may be acquired by grant, purchase, lease, or other means, if such political subdivision is able to agree with the owners of said property on the terms of such acquisition, and otherwise by condemnation and/or excess condemnation† in the manner provided by the law under which such political subdivision is authorized to acquire real property for public purposes.‡

SEC. 4. *Purchase Price May Be Paid from Bond Issue or Otherwise.*—The purchase price or award for real property acquired, in accordance with the provisions of this act, for an airport or landing field may be paid for by appropriation of moneys available therefor or wholly or partly from the proceeds of the sale of bonds of said county, municipality, or other political subdivision, as the legislative body of such political subdivision shall determine; subject, however, to the adoption of a proposition therefor at a regular or special election, if the adoption of such proposition is a prerequisite to the issuance of bonds of such political subdivision for public purposes generally.

1. This proposed act is annexed to the preceding report of the Aeronautical Committee.

* Each state should consider for itself the question as to whether or not "other political subdivisions" should be granted this authority, depending upon the peculiar and individual nature of such political subdivisions, whether Park Boards, Drainage Boards, Levee Boards, School Boards, etc., etc.

† This clause is intended to give authority for excess condemnation in the case of airports in only those states in which excess condemnation is authorized by law for other purposes.

‡ In states where the right of condemnation is not provided by general statute, a special condemnation law for airports, conformable to the practice of the state in respect to other condemnation proceedings, should be enacted.

SEC. 5. *Authority to Equip, Improve, Establish Fees and Charges, Lease, Etc.*—Counties, municipalities, or other political subdivisions of this state which have established or may hereafter establish airports or landing fields, or which acquire, lease, or set apart real property for such purpose or purposes, are hereby authorized—

(a) To construct, equip, improve, maintain, and operate the same, or to vest authority for the construction, equipment, improvement, maintenance, and operation thereof, in an officer, board, or body of such political subdivision. The expense of such construction, equipment, improvement, maintenance, and operation shall be a responsibility of said political subdivision.

(b) To adopt regulations and establish charges, fees and tolls for the use of such airports or landing fields, fix penalties for the violation of said regulations, and establish liens to enforce payment of said charges, fees and tolls.

(c) To lease such airports or landing fields to private parties for operation, or to lease or assign to private parties for operation space, area, improvements, and equipment on such airports or landing fields, provided in each case that in so doing the public is not deprived of its rightful, equal and uniform use thereof.

SEC. 6. *Funds for Operation, Etc., May Be Raised by Taxation and Otherwise.*—The local public authorities having power to appropriate moneys within the counties, municipalities, or other public subdivisions of this state, acquiring, establishing, developing, operating, maintaining, or controlling airports or landing fields under the provisions of this act, are hereby authorized to appropriate and cause to be raised by taxation or otherwise in such political subdivisions, moneys sufficient to carry out therein the provisions of this act; also, to use for such purpose or purposes moneys derived from said airports or landing fields.

SEC. 7. *Authority to Acquire Air Rights by Purchase, Condemnation, Etc.*—Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports and landing fields acquired or maintained under the provisions of this act, the counties, municipalities, and other political subdivisions of this state are hereby granted authority to acquire such air rights over private property as are necessary to insure safe approaches to the landing areas of said airports and landing fields. Such air rights may be acquired by grant, purchase, lease or condemnation in the same manner as is provided in Section 10 of this act for the acquisition of the airport or landing fields itself or the expansion thereof.

SEC. 8. *Authority to Acquire Easements, Etc., for Lights and Markers.*—Such counties, municipalities, and other political subdivisions of this state are hereby authorized to acquire the right or easement for a term of years, or perpetually, to place and maintain suitable marks for the daytime, and to place, operate and maintain suitable lights for the nighttime marking of buildings, or other structures or obstructions, for the safe operation of aircraft utilizing airports and landing fields acquired or maintained under the provisions of this act. Such rights or easements may be acquired by grant, purchase, lease, or condemnation, in the same manner as is provided in Section 3 of this act for the acquisition of the airport or landing field itself or the expansion thereof.

SEC. 9. *Authority to Police Airports.*—Counties, municipalities or other political subdivisions of this state acquiring, establishing, developing, operating, maintaining, or controlling airports or landing fields under the provisions of this act without the geographical limits of such subdivisions are hereby specifically granted the right to enforce police regulations on such airports or landing fields within the geographical limits of such subdivisions.

SEC. 10. *Construction and Intent of this Act.*—It is the intent and purpose of this act that all provisions herein relating to the issuance of bonds and the levying of taxes for airport purposes, and the condemnation for airports and airport facilities, shall be construed in accordance with general provisions of the law of this state governing the right and procedure of municipalities to condemn, issue bonds, levy taxes, etc.

SEC. 11. *Short Title.*—This act may be cited as the Uniform Airports Act.

SEC. 12. All acts or parts of acts which are inconsistent with the provisions of this act, are hereby repealed.

International Regulation

MEXICAN LAW OF CIVIL AERONAUTICS (Effective June 30, 1930)*

PASCUAL ORTIZ RUBIO, Constitutional President of the United Mexican States, to the inhabitants thereof, KNOW YE:

That by virtue of the power which the National Congress has seen fit to vest in me, in accordance with the Decree of December 31, 1929, I hereby issue the following

LAW OF CIVIL AERONAUTICS:

I—Sovereignty Over Aerial Space and Definitions.

Art. 1. The United Mexican States exercise sovereignty over the aerial space comprised within the limits of their territory and territorial seas.

Art. 2. Airships are considered to be, those apparatuses capable of flying, by means of the static or dynamic sustentation of the air and destined for the transportation of persons or things.

Art. 3. Mexican airships are:

I. The airships matriculated in the Registry of the Department of Communications and Public Works.

II. The Mexican military airships.

III. The airships which pertain to the Federal Government, or to those of the States.

Art. 4. An aerial route is held to be that which is flown over by an airship.

Art. 5. An air line is the regular public service of transportation carried on by airships.

Art. 6. An air lane is the succession of points such as constitute its itinerary.

II—Circulation.

Art. 7. No alien airship shall be permitted to fly, land or alight on waters within the frontiers of the country or on Mexican territorial waters, without previous authorization of the Mexican Government, to be granted through the channel of the Department of Communications and Public Works.

*Copy of this law was furnished through the kindness of Brower V. York, Chief, Information Section, Aeronautics Trade Division, Department of Commerce. Translation supplied by Major Holstein, Secretary of the American Chamber of Commerce, Mexico City.

Art. 8. The flying personnel of the alien airships, having a license to fly, land or alight on waters within the national territory or on territorial waters, should be provided with the proper documents in accordance with the laws of their country, in due form, and the airship should comply strictly with the requirements such as are exacted by the corresponding laws.

Art. 9. There are excepted in connection with the provisions contained in the preceding articles, the airships pertaining to countries with which there are negotiated or have been negotiated special agreements covering aerial navigation, which are to be governed by the conventions already in force.

Art. 10. The pilot and other members of the flying personnel of alien airships who, by virtue of a special authorization, travel over national territory and who may find themselves obliged to land or alight on waters outside of the places specified in this connection by the Department of Communications and Public Works, shall be held responsible for any violation of the Mexican laws.

The pilot, in these cases, is required to notify the nearest municipal authority.

Art. 11. The national airships are allowed to freely fly over Mexican Territory, subject to the provisions of the present law and to the corresponding regulations as may be issued.

Art. 12. The airships, excepting the cases of *force majeure*, for the purpose of taking off and landing, or alighting on waters, shall only be permitted to utilize the airports that are authorized by the Department of Communications and Public Works, with the exception of the military airships which are to be governed by the regulations such as may be dictated by the Department of War and Marine.

Art. 13. The provisions relating to the general safety, the rules covering the matter of lights and signals and those governing the transit movements, shall be observed, both by the crews of national airships, as well as by those of alien airships.

Art. 14. No airships shall be permitted to fly over the national territory or its territorial waters, until the safety of same has been certified to in the manner as established in this law, its regulations or in later legal rulings. The pilots who carry passengers are required to have licenses covering transportation activities without limit, and to furthermore comply—the same as the entire transportation crew—with the conditions established for the safety, inspection periodically and examination to be made prior to each flight. In each airship there shall be carried the certificates as provided for the purposes of safety.

Art. 15. All airships are strictly prohibited:

I. From flying over any inhabited place under an altitude of five hundred meters (1640 feet).

II. From flying over places specified as prohibited zones in the regulations of this law or in later legal rulings.

III. From making acrobatic flights and giving such exhibitions over any inhabited place.

IV. From letting fall during a flight, any objects which may do injury to or molest persons or properties, in contravention of the provisions contained in the regulations of this law.

Art. 16. The crews of airships who effect trial flights or for purposes of technical demonstration, are required to provide themselves first with the authorization necessary for the execution of these evolutions, to be issued by the Department of Communications.

Art. 17. The sanitary action, in relation to the aerial traffic, shall be regulated in conformity with the International Conventions and Sanitary Code in force at the time.

III—Registry.

Art. 18. The Registry for the inscription of airships shall be in charge of the Department of Communications and Public Works. Said Registry is public; and, consequently, any person may obtain a certified copy of its entries.

Art. 19. The inscription to which reference is made in the preceding article, shall contain the following specifications:

- I. Type and description of the airship.
- II. Name and domicile of the constructor.
- III. Number of the series of the airship.
- IV. Type and trade-mark of the motor or of the motors.
- V. Number, year and series of the motor.
- VI. Horse power.
- VII. Value, according to invoice.
- VIII. Name, nationality, and domicile of the proprietor.
- IX. Habitual airport of the airship.
- X. Service for which it is destined.

Art. 20. Only an airship owned by a Mexican citizen or Mexican company can be registered. In case that it belongs to an alien or to an organization that might have, or could have later on, one or more alien partners, it may be registered provided that the interested parties declare before the Department of Foreign Relations, that they will consider themselves as Mexicans in connection with same and that they will not invoke, in this respect, the protection of their governments; under penalty, in case of failing to comply with the agreement, of forfeiting in favor of the Nation the registered airship and the rights such as might be derived from the aforementioned registry.

Art. 21. An airship which has been matriculated in an alien country cannot be inscribed in the Registry of Mexico, if it is not proven that that matriculation has been cancelled. In the case of a simultaneous registry of an airship in Mexico and in an alien country, the inscription in the Registry of Mexico shall produce all the legal effects corresponding to said airship.

Art. 22. All operations or contracts which may transfer or modify the ownership or impose encumbrances on an airship, must be inscribed in the Aeronautical Registry of the Department of Communications and Public Works, and only after the execution of this registration, can they be inscribed in the public Registry and the Commercial Registry, for their legal effects with reference to third parties.

Art. 23. Every application for matriculation includes the item of the inspection of the machine or machines, in order to be sure that their condition authorizes the exploitation or service in which they are going to operate.

Art. 24. When an airship undergoes a change of ownership, the Department of Communications and Public Works should be notified of this, within a period of time not to exceed ten days, for the purpose of making the corresponding entries and extending the new certificate, upon the return of the former one.

Art. 25. When an airship goes out of service, the cancellation of its entry shall be applied for, and the certificate of matriculation returned.

The person or concern that does not comply with this requirement shall be barred from obtaining any further matriculations of airships.

Art. 26. It is prohibited to modify the letters of matriculation, without the express authorization of the Department of Communications and Public Works.

Art. 27. The national airships that go into service, are obliged to carry painted on each wing, a circle with the national colors; and on board, the matriculation certificate, the navigation permit and the following books: of route, of apparatuses, of motor, and of signals, in the manner as may be stipulated in the regulations.

IV.—Crews

Art. 28. The pilots and other members of the operating crew of an airship, are required to be provided with the license to be issued by the Department of Communications.

Art. 29. The license referred to in the preceding article shall be issued after the proofs of good conduct, ability and health of the interested party, have been obtained by means of theoretical and practical examinations effected by the said Department, in the manner and terms specified in the regulations of this law, and by means of the medical examination to be made by specialists authorized by the Department.

Art. 30. The licenses for the pilots shall consist of three classes: for tourists' pilots, for transportation pilots limited to determinate zones or routes, and for transportation pilots without a limit.

Art. 31. The licenses of the pilots must be revalidated every six months, after a medical examination which shows that the physical and mental conditions of the applicant capacitate him for continuing the exercise of this profession.

Art. 32. When a pilot has not been exercising his profession, during a period of more than six months consecutively, his license cannot be revalidated without new practice flights, equal to those of the original examinations.

Art. 33. The licenses of pilots and other members of operating crews of an airship, issued in alien countries shall be accepted as valid by the Mexican Government, when they have been granted by official institutions or recognized by the alien government in question, provided that such licenses are in force, and where international reciprocity exists.

Art. 34. Every person who desires to exercise the practical teaching of aviation, must have a license as a transportation pilot without limit.

This license empowers its possessor, for making flights for purposes of instruction or of examination, in which connection only the professors are obliged to comply with the requisite of the license.

V.—Airports.

Art. 35. An airport is to be understood as being, a limited surface area of land or water, arranged for the departure, arrival and stationing of airships.

Art. 36. Airports shall be public or private ones. They are public which are constructed by the Federal, State or Municipal Governments, for the common and public use. Private airports are those maintained by aerial navigation companies or by individuals.

Art. 37. Both the public airports as well as the private ones, shall be governed, after their opening and functioning, by the regulations as issued by the Department of War and Marine in connection with airports destined for military services, and by the Department of Communications and Public Works in connection with airports destined for military services, and by the Department of Communications and Public Works in connection with airports destined for civil services.

These latter ones, as well as the edifices which are erected therein, shall be equally governed by the Sanitary Code and respective regulations.

Art. 38. An airport cannot be opened to the public service, without the previous inspection and authorization of the Department of Communications and Public Works.

Art. 39. The airships that utilize a private airport, shall be obliged to pay for the service, in conformity with the tariff rates ordered by the Department of Communications.

Art. 40. The Department of Communications and Public Works, in accord with the military, customs, sanitary, migration, and police authorities, etc., shall specify the permanent ports in order that the said authorities may exercise their functions.

The selfsame Department shall also specify the places where the entrance and departure of alien airships, in and out of the country, on visits of courtesy or other similar ones can be permitted, as well as the special routes which they should follow.

VI.—Concessions.

Art. 41. The establishment and operation of aerial lines may only be carried into effect through the channel of concessions granted by the Executive Power, through the Department of Communications and Public Works, subject to the precepts of this law.

The Executive may decline to grant aerial concession, when in his opinion it is not convenient for the national interests.

With reference to the private airships, destined exclusively for the private use of their owners or for purposes of experimentation, a concession shall not be necessary in order for them to fly, but their owners should obtain a special permit from the Department of Communications and Public Works, and obligating themselves, moreover, to comply, in connection with the airship in question and its flying personnel, with the provisions of this law and its regulations. Those permits shall be issued invariably with the character of being revocable at any time, without the necessity of any formality whatever.

Art. 42. The Federal Government shall have the power to establish special lines for any of its exclusively official services. These lines may be granted to a company or private parties, at a public sale, specifying the compensation which should be authorized in favor of the enterprises and the conditions that are to be exacted for the functioning of the line. The adjudication or award shall be made in favor of the highest bidder, and in the manner and terms as established in Art. 82.

Art. 43. In order to be able to take part in the public sales to which reference is made in the preceding article, it shall be necessary to accredit the fact that there has been constituted a deposit in the Banco de Mexico, S. A., for the amount of One Thousand Pesos, national gold, for every one hundred kilometers, to guarantee the proposition presented.

Art. 44. The parties who are interested in obtaining a concession or permit for the establishment and operation, in such case, of an aerial

navigation line, shall make their application to the Department of Communications, in accordance with the prescriptions of this law and its regulations.

Art. 45. The applicants for concessions covering air lines, are required to accredit, to the satisfaction of the Department of Communications, the existence of their technical and financial capacity, and also, with the respective application they must attach certificates of deposit for the amount of One Thousand Pesos, national gold, for every one hundred kilometers, as a guarantee that the line shall be established. The deposit shall be returned to the interested party, as soon as the service is inaugurated, or it shall be forfeited if the interested party abandons the prosecution of the concession.

Art. 46. The concessions covering aerial navigation lines, shall be granted for a period of time not to exceed that of 30 years.

Art. 47. The concessions for the establishment and operation of air lines, shall only be granted to Mexican citizens or to companies organized in conformity with the laws of the country and provided also, that in case they might have or could have later on one or more alien partners, the interested parties declare before the Department of Foreign Relations, that they will consider themselves as Mexicans in connection with the concession and that they will not invoke, in this respect, the protection of their governments; under penalty, in case of failing to comply with the agreement, of forfeiting in favor of the Nation all the properties which may have been acquired for the exploitation of the concession and the rights such as might be derived from same.

Art. 48. The concessions covering aerial lines comprise, fundamentally: the construction of airports, landing or emergency fields, proposed by the concessionaire and approved by the Department of Communications; the construction of stations, edifices for auxiliary services and other appurtenances in connection with both, and the operation, during the life of the contract, of the line of its auxiliary services, as well as the meteorological ones, of the electric communications and all those which may be indispensable for the security and better service of the line.

With respect to the electric communications that are required for the service of the aerial navigation lines, there shall be observed the corresponding International Conventions and their service regulations, as well as the Law of Electric Communications and its Regulations.

Art. 49. The concessionaires, for the purpose of guaranteeing the fulfillment of their obligations, shall execute a bond for the amount of one thousand pesos, national gold, for every one hundred kilometers or fraction thereof, of the line that is to be established, to the satisfaction of the Department of Communications.

Art. 50. Neither the concessions nor any of the rights which they confer, can be transferred to a third person. There can only be transferred, after approval of the Department, the aerial transportation services to which the concession refers, together with same, when the said services duly approved by the Department are duly functioning, after a proof of the technical and financial capacity of the company or person who is benefited by the transfer has been substantiated.

Art. 51. In no case can there be transferred, mortgaged, or in any manner alienated or encumbered, the concession, the rights contained therein, the line, its buildings, its auxiliary services, its dependencies and appurtenances, in favor of any government or foreign State, and therefore it would become null and void, *ipso facto*, any alienation, cession, transfer, mortgage or encumbrance that might be effected in this connection.

Neither can there be admitted under any circumstances an alien government or State as a partner, and any operation of this nature would be null and void.

Art. 52. No concession for an aerial navigation line shall be considered as a monopoly.

Only in those cases where there is no violation of Art. 28 of the Constitution, it may be stipulated in the respective concession that during a period of time not to exceed that of 10 years, the Executive Power shall not authorize the operation of a line that touches the same points as those of the line already established.

Art. 53. The aerial navigation lines with their auxiliary services, their dependencies and other appurtenances, are the property of the concessionaire. They are subject, with reference to their organization, maintenance and operation, to this law and its regulations and as regards any case not provided for, there shall govern the provisions of the common law, in so far as it may not be determined by other special laws.

Art. 54. At the expiration of the concession the Government may purchase the line with all its lands, stations, auxiliary services, storehouses, shops and other dependencies, as well as its flying material, tools, furniture and fixtures, at the price fixed for the line by the expert appraisers appointed,—one by the Government, the other by the interested person, and a third expert to be appointed by both parties to serve as umpire in case of a controversy, or by the District Judge in case the said parties are unable to come to an agreement.

Art. 55. The aerial lines are works of public utility. Consequently, the Department of Communications, at the request of the interested parties or on its own behalf, when it is a question of national lines, shall declare and administratively order, in name of the Executive, the expropriation of the lands, waters and construction materials of private ownership, such as may be required for the establishment and reparation of said lines, their auxiliary services and other dependencies and appurtenances. The expropriation shall be carried into effect in accordance with the provisions of the Federal Code of Civil Procedure, and subject, moreover, to the following bases:

I. The Department of Communications, for the purpose of declaring the corresponding expropriation, shall determine the place and the surface area of the lands which should be expropriated, after having made a study of the needs of the line.

II. If for the establishment of the line, there may be a necessity to occupy lands already occupied by another one, or destined for different uses of same, or which were being employed in some other work of public utility, the Department of Communications, after hearing the interested parties, shall investigate if the occupation of the lands by the new line does detriment to the first line to such a serious extent as to render inconvenient the establishment of the new line, and shall decide if the route of this one should be changed or if the expropriation should be carried into effect, in which case the new line shall be obliged to pay to the old one the indemnification such as may correspond on account of the occupation of the land, the interruption of the transit or material damage caused.

III. Pursuant to the terms as provided in the preceding paragraph, action shall always be taken correspondingly whenever there is a need to occupy lands destined for a work of public utility, as declared by the State of Municipal Governments.

IV. If for the establishment of an aerial line, its auxiliary services, its landing fields, its emergency fields, stations and other dependencies and appurtenances, it might be necessary to destroy or tear down, wholly or partially, edifices, trees, fences or other obstacles, this shall be done by the Department in accordance with the stipulations contained in this article.

V. The Executive shall not permit the construction of edifices, electric transmission lines, posts, fences and other works which might interfere with the aerial transit activities.

The regulations of this Law shall determine the perimeter to be covered by this provision.

VI. After the declaration of public utility, in the terms of Art. 27 of the Constitution, if the company asks for it, if the needs of the establishment of a national line demand it, or if it should not be possible to fix the area of the land to be occupied, the Judge, prior to the expropriation procedure and in audience with the Government Engineer, or in case of his absence with the expert which he himself appoints, shall fix a sum which should remain on deposit while the procedure is being substantiated, and shall authorize the company, in proceedings of voluntary jurisdiction, to occupy at once the land or materials in question. If the final appraisalment of the experts, made during the procedure, is greater or less than the sum deposited by the company, the latter shall pay what is lacking or receive the surplus.

VII. As soon as the decree is issued in which an expropriation is declared and ordered, if no agreement has taken place with the owner, the matter shall be submitted to the corresponding District Judge, according to the location of the expropriated properties, and the procedure continued in accordance with the provisions contained in the Federal Code of Civil Procedure, with the company exercising the actions and rights such as the said Code confers upon the authority who orders the expropriation.

VIII. If the possessor or owner of the thing should be vacillating or doubtful on account of litigation or other causes, the District Judge shall fix as the amount of the indemnification, the sum that results in view of the appraisalment of the expert appointed by the company and of the one designated by the selfsame Judge in representation of the owner of the thing. The sum that is finally fixed, shall be deposited in conformity with the legal prescriptions, and delivered to whomsoever substantiates his right to the indemnification.

Art. 56. The aerial navigation lines, their auxiliary services, with their dependencies and appurtenances, the amounts of capital and loans invested therein, the shares, bonds and debentures emitted by the enterprises, at no time shall have taxes imposed on them by the State and Municipal Governments. Neither shall they be subject to local taxes imposed by the Federal District and Territories.

Art. 57. The enterprises that establish and operate air lines shall be allowed to import free of imposts and duties, all the materials, merchandise, machinery and goods destined for the construction and operation of said lines, their dependencies and appurtenances, on the following basis:

I. The imposts and duties whose exemption is granted, shall be those which the Department of the Treasury specifies, in accord with the Department of Communications, from the group that is established by the Revenue Law for levying duties on imports.

II. In the Customshouses, the dispatch of such properties shall be subject to the provisions contained in the respective regulations of the Customs Law, in the part relating to the handling of customs declarations covering goods, made the object of special exemptions.

III. The exemption shall be restricted, according to the opinion of the Department of the Treasury, in connection with articles which constitute a protective tariff in favor of similar ones of national production.

IV. The aforementioned exemption shall be suspended when the value of the unpaid impost and duties reach the maximum amount fixed by the Department of the Treasury, in accord with the Department of Communications, in pursuance of the general rules as may be issued.

The airship factories, with respect to the construction materials, shall enjoy the exemptions which are granted in this article, in pursuance of the regulations as may be issued.

Art. 58. The material, implements and machinery whose free importation is authorized, in conformity with the preceding article, shall be applied to the exclusive use of the lines, factories, and their dependencies and appurtenances; they may only be alienated or employed for uses different from those which motivated the exemption, by means of a permit from the Department of the Treasury and the payment of the corresponding imposts. The said Department may only grant that permit for justifiable reasons. In case the goods in question are alienated or employed in contravention of what is ordained in that article, the Department of the Treasury shall collect the corresponding imposts, and the infractors shall suffer the penalties stipulated in the respective laws.

Art. 59. The persons or companies who establish or operate aerial navigation lines, or airship factories, may utilize in the construction, maintenance and improvement of the lines, factories, auxiliary services, dependencies and appurtenances, the lands of Federal ownership and the materials existing on national lands and in the rivers of Federal jurisdiction, subjecting those utilizations to the laws, tariffs, and relative provisions. The Department of the Treasury, whenever it considers it justifiable and at the request of the interested parties, may grant an exemption or reduction of the rates fixed in the relative tariffs, only in connection with the use of national lands.

Art. 60. The Federal Government may lend economic assistance to the companies that establish or operate air lines. This assistance is to be given only when the Department of Communications, after a study of the case, and by a ruling of the President of the Republic, declares that the line is necessary and of urgent creation, and provided that the corresponding item is included in the Budget.

Art. 61. All those services and facilities which, without being indispensable for the service, are established by the air line companies, in benefit of the travelers, loaders and consignees, as services incidental to or in connection with the lines, shall not enjoy the immunities as authorized in the present Law.

VII. Operation of Aerial Lines

Art. 62. An aerial navigation line cannot be operated, without having the landing fields, emergency fields, hangars, stations, auxiliary and accessory services, all arranged in the proper manner; its airships registered, its flying material inspected, and the previous approval of the Department of Communications.

Art. 63. The concessionaires of aerial lines shall submit for the approval of the Department, fifteen days in advance, their itineraries, tariffs, regulations covering their relations with the public, as well as the modifications which subsequently may be made to one and the other, except in the cases of the reduction of special tariffs, for excursions of general interest and tourists' trips, in which case a previous notice given to the Department of Communications will suffice.

Art. 64. In the concessions there shall be set forth the maximum rates for the general tariffs covering the passenger and freight traffic and for the special tariffs, which the Department of Communications considers necessary to incorporate therein, as well as for storage items, loading, unloading and transportation maneuvers, for the transmission of messages, etc.

Art. 65. The concessionaires are obliged to revise their tariffs, regulations and itineraries every year, and to submit for the approval of the Department, the matter of their re-issuance, modification or cancellation, as may be in order, fifteen days in advance.

The approved tariffs, should be published eight days previous to their application.

Art. 66. The tariffs for the public service of the line include the rates and the conditions according to which the company obligates itself to carry on the service in question.

Art. 67. The airships of alien matriculation, shall not be permitted to perform commercial services within the national territory or to cross it, excepting in the cases specified in Art. 9.

Art. 68. The concessionaires of aerial lines shall have the right to operate their line in connection with other alien lines. They may also make connection with other means of communication.

The contracts, agreements, arrangements or bases covering connections with alien lines, or with other means of communication, shall be submitted for the approval of the Department.

Art. 69. The airships require a special permit, in each case, from the competent authority, for the transportation of arms, munitions, asphyxiating gases, carrier pigeons, and unpacked photographic instruments.

Art. 70. The concessionaires shall establish their legal domicile in the city of the Republic that is shown in the concession, without this preventing them from establishing whatever agencies they may deem convenient to their interests, at diverse places in the country or in alien ones; with their being required to always maintain in the capital of the Republic, one or more attorneys-in-fact sufficiently instructed and with their expenses paid for taking up matters with the Federal authorities.

Art. 71. Every person or company that operates aerial services is obliged to notify the Department of Communications whenever they change their address, their domicile.

Art. 72. Every enterprise that operates aerial navigation services is obliged to keep, at the place in the Mexican Republic where it has its domicile or principal office, all the accounting books, etc., covering its entire business, in accordance with the terms of the Commercial Code, including the operations effected in an alien country.

Art. 73. The aerial navigation lines shall have the obligation to employ in their personnel, Mexican citizens to the number of eighty (80%) per cent of the whole.

In order to employ, in any of their dependencies, a number of aliens in greater proportion than the one specified, they will require a special authorization from the Department of Communications.

Art. 74. The personnel of the Board of Directors shall be composed of Mexican citizens to the number of thirty-three (33%) per cent of the whole, as a minimum, and at least one of the Directors of the Company shall likewise be a Mexican.

Art. 75. With the restrictions that are established in Art. 50 with reference to the alienation of concessions, the companies, under the conditions which the said precept sets forth, may execute, inside and outside of the country, all the contracts such as are exacted for the purposes of the concession; they may issue all kinds of shares and debentures and dispose of them, as well as mortgage the routes or their dependencies. In the mortgage document there may be stipulated after being so authorized by the Executive, the transmission, wholly or partially, of the right to operate the route.

Art. 76. The contracts entered into by the aeronautical enterprises in alien countries, whether they produce personal or real obligations, that have for an object the line or some immovable property incorporated with it, its auxiliary services, or with its dependencies or appurtenances, are governed by the Civil Code of the Federal District, in connection with everything not determined by this law or by special laws. With respect to the other contracts, if they only produce a personal obligation, they shall be governed by the laws of the place of their execution, although the contract should be executed in the Mexican Republic, unless it is expressly declared that it is to be governed by the Mexican laws.

Art. 77. The mortgages, and in general all the acts and contracts that are subject to registration, should be inscribed in the office of the Public Registry of the City of Mexico, and that registration shall be held as a sufficient proof for the purposes of their validity and legal execution, in connection with all the lines and branches, without the necessity of effecting a local registration in the States or places through which the lines pass.

Art. 78. In all cases where it is necessary to designate in the registry, the location of a line, it will suffice to express the extreme points of it, as well as branches, just as they are specified in the concession or concessions, and the dates of these.

Art. 79. The shares, debentures or bonds issued by the company, and which were acquired by an alien government or State, from the moment of their acquisition would have no value nor effect whatsoever for their holder,—with this person forfeiting, in favor of the Nation, all the rights corresponding to the shares, bonds or debentures herein referred to.

VIII. Cancellations

Art. 80. The concessions shall be cancelled owing to any one of the following causes:

I. Owing to the failure to present the plans of the survey and location of airports and emergency fields, shops and other installations, within the time limit as specified in the concessions.

II. Owing to the failure to establish, during each year, the part of the line agreed upon, or owing to the failure to terminate the whole of it within the time limit as set forth in the concession.

III. Owing to the interruption, without a justifiable cause, of the public service of the line, wholly or partially, during a period of three consecutive months, without the authorization of the Department of Communications.

IV. Owing to the alienation of the concession, some of the rights contained therein, the route, its auxiliary services, its dependencies or appurtenances, in contravention of the provisions of Art. 50.

V. Owing to the transfer, alienation, mortgaging, or in any other manner encumbering the concession, or some of the rights established therein, or the line, its auxiliary services, its dependencies or appurtenances, to any alien government or state, or owing to the company having admitted it as a partner in same.

VI. Owing to there having been placed in the hands of the enemy in cases of an international war, some of the flying apparatuses or some of the dependencies or installations.

VII. Owing to the failure to execute the insurance contract against accidents, so as to guarantee the amount of the liability connected with aerial transportation, or in the absence thereof, the bond which should substitute it.

Art. 81. In case of cancellation on account of any of the causes mentioned in the sections I, II, III, IV and VII of the preceding article, the

concessionaire shall forfeit, in favor of the Nation, the amount of the guarantee given according to Art. 49.

Art. 82. In case of cancellation on account of the causes set forth in the sections V and VI of Art. 80, the concessionaire, besides forfeiting the guarantee as constituted, shall also forfeit, in favor of the Nation, the line together with all its holdings, movable and immovable properties, its auxiliary services and other dependencies and appurtenances.

If the Government considers it not convenient to carry on for its account the operation of the line, it shall proceed, at a public sale, to dispose of the movable and immovable properties which form part of that line, in pursuance of the bases as fixed by the Department of Communications and Public Works, including among them the following:

I. There shall be published in the *Diario Oficial* (Official Gazette) of the Federation and in one of the newspapers of largest circulation in the City of Mexico, three times during the period of one month, edicts announcing the holding of the auction.

II. The bids shall have to be approved of by the Department of Communications.

III. For the purpose of guaranteeing their bids, the bidders shall be required to constitute prior to the sale and in the Banco de Mexico, S. A., (Bank of Mexico), a cash deposit, at the rate of one thousand pesos, national gold, for every one hundred kilometers of route.

IV. There shall not be admitted any bid that is inferior to the two-thirds part of the official appraisalment, or even when higher, if it is not sufficient to cover the administration expenses and the amount of the mortgage credits or of any other kind, previous to the declaration of the cancellation; but with the bid it may be proposed that the sum total of the unpaid credits be considered as a part of the price and be paid at maturity. In this case the non-mortgage credits shall be guaranteed by means of the value of the properties sold, with the preference and in the order such as may correspond to them in conformity with the laws.

V. The bidder who receives the award shall forfeit the deposit if he fails to fulfil his offer, and thereupon this shall have no validity nor legal effects, and the auction proceedings shall be repeated.

VI. From the moment that the purchaser takes possession of the line with all its properties, both the first mentioned and the latter shall be governed by the officially cancelled concession, which shall remain in force for the purchaser, during the period that may be still lacking for its expiration.

VII. If the concession declared as cancelled should comprise a part of the unconstructed line, the purchaser shall have the right within the period of six months, reckoning from the date of the authorization of the corresponding public instrument, to refuse or to accept the concession as regards the part of the line lacking construction. If he accepts, he shall constitute the deposit which corresponds to said part.

VIII. Out of the proceeds of the sale, there shall be paid in their order, the administration expenses, the mortgage credits and those of other kinds, for account of the company, such as occurred prior to the declaration of the cancellation, and contracted in connection with the operation of the line, the subventions which the concessionaire may have received and the surplus, if any, shall be turned over to the concessionaire.

IX. All that is not provided for in this article in connection with the sale, at public auction, of the line and other properties, shall be governed by the provisions contained in the common law.

Art. 83. In the concessions the line may be divided into various sections in order that the cancellation covering any one of them, may not affect the validity of the concession with respect to the others.

Each section should form a line susceptible of being operated independently of the others.

Art. 84. The cancellation shall be administratively declared by the Department of Communications and Public Works in conformity with the following procedure:

I. The Department shall notify the concessionaire in regard to the concurring motives for the cancellation, and shall concede him a time limit of thirty days in which to present his proofs and defense arguments.

II. After the presentation of the proofs and defense arguments, or on the expiration of the time limit as set forth in the preceding section, without the said presentation having taken place, the Department shall dictate its resolution, declaring the corresponding cancellation if in its opinion the allegations of the concessionaire are not to be taken into consideration, or it shall proceed, in such case, in accordance with the stipulations contained in Art. 87.

Art. 85. In the case of the bankruptcy of an aerial company, the judicial authority who takes cognizance of it shall concede to the Department of Communications the legal intervention such as corresponds to it, for the purpose of securing the rights of the State.

Art. 86. The Department of Communications, in accord with the interested parties, may, at any time, rescind the concessions covering the air lines.

Art. 87. The periods of time fixed by the concession shall be suspended on account of a case of *force majeure* or fortuitous circumstances which may impede the fulfillment of the obligations as contracted by the concessionaire.

IX. Inspection

Art. 88. The Department of Communications shall exercise an inspection of the aerial lines, through the channel of technical inspectors that it commissions for the purpose. The said inspectors are empowered:

I. To require the concessionaires to comply with the concession, with the laws and regulations covering aeronautics, giving them in this connection all the orders and instructions necessary.

II. To caution them to properly carry on throughout the line, its auxiliary services, dependencies and appurtenances, as well as in connection with its flying material, all the necessary reparations and renovations; duly attending to the needs of the service and seeing that they have the indispensable number of employees.

III. To suspend the public service of the line in those cases where proper conditions of safety do not exist and to authorize its resumption as soon as the deficiencies have been remedied.

IV. To prohibit and in case of necessity to prevent the employment of flying material which does not insure due safety or which is not in good condition, as well as the use of any dependency of the line that may be in a bad condition.

V. To exact that the flying personnel of the airships comply at all times with the requirements of this law.

VI. To visit the airship factories, shops, etc., and to inspect construction materials employed.

VII. To exercise all the other technical powers such as may be specially conferred upon them by the Department of Communications and Public Works.

Art. 89. The post of inspector of the aerial service is incompatible with any commission or employment of the concessionaires of aerial navigation lines; the inspectors shall not be permitted to perform any services, whether remunerated or not, nor receive from the concessionaires, salaries, emoluments, bonuses or payments of any nature whatsoever, nor to enter into any contract with the aforementioned lines.

Art. 90. The aerial navigation lines are obliged to gratuitously transport the duly accredited inspectors of the service.

Art. 91. The companies that operate aerial lines, shall submit to the Department of Communications, in the month of March of each year, a report to contain with reference to the preceding year, the technical data and statistics corresponding to said companies.

Art. 92. Prior to each departure, the airships shall be inspected in their functioning parts for the safety of their flying movements.

Art. 93. Every airship that undergoes any essential modifications in the motors, elements or groups of elements, whether their characteristics or their performances become changed or not, shall not be allowed any flights until it has been inspected anew and authorized by the Department of Communications.

X. Rights of the Nation

Art. 94. The Federal Government has the right to take over, in case that it is considered necessary for the safety, defense or tranquillity of the country, the lines, their auxiliary services, their appurtenances and dependencies, movable and immovable properties and their flying material, and to dispose of all of same, as it deems convenient.

In this case, the Nation shall indemnify the interested parties. If no agreement should be arrived at in regard to the amount of the indemnification, this shall be fixed by expert appraisers according to the terms established in Art. 54.

In case of a foreign or civil war, or of extraordinary circumstances, according to the opinion of the Executive, this functionary may dictate the measures deemed convenient for putting out of service totally or partially, the lines in question or any of their auxiliary services, dependencies or appurtenances.

That which becomes destroyed shall be reestablished at the expense of the Nation, provided that the destruction has been ordered by the Government and as soon as the cause which originated it has ceased to exist.

Art. 95. In case that the Executive orders the suspension of the service, in the interest of the defense of the country or of the public peace, he may also decree that, at its expense, all the flying material, or any other kind, shall be gathered together at the places to be designated by the Department of War and Marine.

Art. 96. The Nation reserves unto itself the right to declare, at any time, determinate territories as being closed to aerial navigation, either provisionally or permanently, or for a determinate altitude for flying.

Art. 97. Every aerial navigation line is obliged to carry on the mail transport service, under the terms of the respective contract as entered into with the Department of Communications.

Art. 98. The General Post Office Department shall make the necessary arrangements with the companies for the carrying of the mails, and provide the Department of Communications with the corresponding details for the execution of the contracts, whether in connection with international mails or those destined for interior points.

Art. 99. The contracts to which reference is made in the preceding article shall be executed by the Department of Communications, for a period of five years which may be extended.

Art. 100. The Nation shall enjoy the right to a reduction of fifteen (15%) per cent off the rates as fixed by the tariffs in force in their applica-

tion to the public, for any official service that is furnished by the concessionaire.

XI. Responsibilities

Art. 101. The owner of an airship is responsible for the damages caused by it to persons or properties. If any person should make use of an airship without the consent or the knowledge of the owner, that person shall be obliged to make reparation for the damages caused, in accordance with the terms of this Chapter.

Art. 102. The owner of an airship who rents it or lends it to another person for commercial services shall be held as being equally responsible with the latter if the Department of Communications is not opportunely notified in regard to the operation.

Art. 103. The owner of an airship is not responsible for the damages that it occasions in cases of *force majeure* or of fortuitous circumstances or as the result of flights ordered by the authorities.

Art. 104. The owner and the flying personnel of an airship shall not incur any responsibilities on account of accidents to persons, if they prove that they took every reasonable and technical measure—as indicated for the avoidance of the damage.

Art. 105. The responsibility of the owner of an airship in the cases of accidents to persons, shall be limited only to the amount of Ten Thousand Pesos, national gold, per person.

Art. 106. The persons entitled to the referred to indemnification, with the limit set forth in the preceding article are, the passengers who have paid the full price of their fares, the crew of the airship, the public employees who are traveling on an official mission and with the discount to which reference is made in Art. 100, and the inspectors of the aeronautic service.

Art. 107. The amount of the liability to which reference is made in Art. 105, can be increased through an agreement had between the company or owner of the airship and the passenger.

Art. 108. If in the transportation of passengers there participate several carriers, that one shall be responsible on whose line the accident occurred.

Art. 109. All arrangements or agreements tending towards exonerating or changing limit of the liabilities of the carriers as established in this Chapter shall be null and void.

Art. 110. Every enterprise or person who applied for a concession contract or special permit for aerial transportation services shall be required to evidence the execution of an insurance contract to cover the indemnifications to which they are obliged in conformity with this law; or in default thereof, the constitution of a bond whose amount shall be determined by the passenger capacity of one of the affected apparatuses in the service applied for. The contract or the bond, must be executed within the period of ninety (90) days reckoning from the date of the concession-contract or permit.

Art. 111. The indemnification for professional risks of the crew and personnel in the service of a company or owner of an airship, shall be determined by the relative provisions contained in the Labor Law of the State, Federal District or Territory wherein the contract has been executed.

Art. 112. In case of an accident that causes the death of the persons to which reference is made in Art. 106, the relatives of the deceased shall be entitled to the payment of the indemnification, in the following order:

I. The minor children or those of age: either legitimate or illegitimate ones duly recognized.

II. When there are no children, the legitimate wife.

III. When there are no children nor wife, the legitimate or foster mother who has recognized the child.

IV. When there are no children, wife nor mother, the legitimate or foster father who has recognized the child.

V. When there are none of the relatives mentioned, the brothers and sisters.

Art. 113. The carrier is responsible for the loss or damage of the baggage intrusted to it, within the terms established in the transportation contract as approved by the Department of Communications and provided that it is not proven that the damage is due:

I. To the negligence of the sender.

II. To the insufficient or defective packing.

III. To the defects or peculiar nature of the goods.

IV. To a case of *force majeure* or of fortuitous circumstances.

Art. 114. Every liability action for damages caused to a third party, is barred after the period of two years, reckoning from the date on which the damage was done. The action relative to the contract covering the transportation of merchandise, is barred after one year reckoned from the day following the date of their delivery.

Art. 115. Every liability action for damages caused to a third party, shall be heard before the courts at the place of domicile of the company or owner of the airship.

Art. 116. When an airship has disappeared without receiving any news of it, it shall be considered as lost three months after the receipt of the last reports in regard to its flight. The Department of Communications, and, in such case, the Department of War, shall declare the loss of the airship, during the fifteen (15) days following the period of time herein before set forth.

Art. 117. The presumption of the death of the persons who were traveling on board of a lost airship, may be declared by a decree of the corresponding judicial authority, upon the petition of a party, six months after the making of the declaration mentioned in the preceding article; but immediately after the declaration is made the Judge may decree the taking of the provisional measures as contained in the Civil Code of the Federal District and Territories, in the event of a case of absence.

Art. 118. There shall also be presumed the death of the persons who were traveling on board of an airplane that is destroyed, provided that they do not appear within the terms set forth in the preceding article, as also the death of the persons who disappear from an airplane during its flight, with the respective declaration in this last case to be made immediately.

XII. Penalties

Art. 119. The circulation of airships not inscribed, unjustifiably, in the registry of the Department of Communications or which fraudulently possess two or more nationalities, shall be punished with a fine of from five hundred to one thousand pesos. The fraud, in this case is presumed, unless there is proof to the contrary.

Art. 120. He who flies over zones prohibited by the aeronautical regulations or by the later legal rulings, shall suffer the penalty of from one to two years of imprisonment.

Art. 121. The construction of airports and the preparation of land areas for the uses of aerial navigation, without the previous authorization of the Department of Communications, shall be punished with a fine of from five hundred to one thousand pesos.

Art. 122. From six months to one year of arrest shall be applied:

I. To those who fly airships that are without distinctive marks or evidences of nationality and matriculation.

II. To those who fly airships without carrying on board the documents required by this law.

III. To those who transport, to be used on board, photographic apparatuses or of any other kind, destined for the drawing up of plans, without due authorization.

IV. To those who transport explosives, arms and war munitions without the corresponding legal authorization.

V. To those who fly over any inhabited place, under an altitude of five hundred meters (1640) feet.

Art. 123. A penalty of from one to two years of imprisonment shall be imposed on those who make acrobatic flights and give such exhibitions, over any inhabited place.

Art. 124. Those who without an authorization from the National Executive, establish or operate aerial navigation lines, shall suffer a fine of one thousand pesos or arrest of from one month to one year, or both penalties according to the seriousness of the case.

Art. 125. There shall be imposed a fine of from twenty to one hundred pesos, on he who, within the time limit of ten days does not notify the Department of Communications in regard to the changes in the ownership of an airship.

Art. 126. He who without a justifiable cause refuses to make a landing, when required to do so by the authorities, and he who may make a landing voluntarily beyond the airport or land area officially prepared for that object, shall have applied to him an arrest for over six months and a fine of from one hundred to two hundred pesos.

Art. 127. He who contracts the services of any member of the flying personnel of an airship, and to this party, without having previously executed the bond or acquired the insurance against accidents to which reference is made in Art. 110, shall have applied to them a fine of from one hundred to one thousand pesos.

Art. 128. The illicit drawing up of plans, the execution of photographs or drawings or other kinds of reproductions of the places over which it has been declared that no flights can be made, shall be punished with four years of imprisonment.

Art. 129. The illicit drawing up of plans, the execution of photographs or drawings or other kinds of reproductions of any other places, apart from those specified in the preceding article, shall be punished with one year of arrest.

Art. 130. There shall be imposed a fine of from one hundred to two hundred pesos, on anyone who having knowledge of the existence of an abandoned airship, does not report the discovery to the Department of Communications, with the time limit of ten (10) days.

Art. 131. The failure to comply with the legal ordainments relating to beacons and signals, both on the part of the personnel in charge of same, as well as on the part of the personnel that fly an airship, shall be punished with arrest up to the limit of one year.

Art. 132. There shall be imposed the penalties as established in the Penal Code, for the crime which results committed as the consequence of throwing objects or stones from an airship, during its flight, unjustifiably.

Art. 133. Aerial piracy shall be considered to consist of those acts which are enumerated in Chapter I, Title III, of Book III, of the Penal Code, executed in aerial navigation, and there shall be imposed in their respective cases, the said penalties as set forth in that Chapter.

Art. 134. There shall be imposed fifteen years of imprisonment on the person who by means of fire, explosion or in any other manner causes the fall or destruction of an airship, having one or more persons on board.

If the last mentioned circumstances does not occur, the penalty shall be for eight years.

Art. 135. If besides the destruction of the airship, another crime results, there shall be applied the rules of accumulation.

Art. 136. There shall be imposed an arrest of from six months to one year on the person who in any manner whatsoever destroys, makes useless, extinguishes, removes or changes a signal as established for the safety of aerial navigation.

He who burns or in any other manner destroys or places signals which may occasion the loss or grave impairment of the airships in circulation, shall be punished with five years of imprisonment.

If the mentioned accidents are occasioned, there shall be applied the rules of accumulation according to the crime or crimes consummated.

Art. 137. Every pilot of an airship, as well as the other flying personnel of same, who make flights without possessing the certificates of health and aptitude which accredit the fact of their fitness, shall incur the penalty up to one year of arrest and their disqualification during a period of from one to two years, if the act does not constitute a more serious crime.

Art. 138. The same penalty shall be incurred by the crews who, without the authorization as required by the law, make trial flights or for the purposes of technical demonstration.

Art. 139. The same penalty set forth in the preceding article, shall be incurred by the functionary who, without duly examining and proving the conditions of the pilot and other members of the flying personnel of an airship, issues the certificates of health and aptitude of the pilots and mentioned personnel.

Art. 140. The punishable imprudence to which reference is made in Art. 16 of the Penal Code shall be considered as a grave occurrence, when there is admitted on board of any airship, an excessive load of merchandise in relation to the capacity of the apparatus and corresponding regulations.

Art. 141. There shall be imposed a penalty or from two to six years of imprisonment on the person who may flood, wholly or partially, an airport, emergency field or land area officially destined for landing purposes, or casts water over it in a manner which causes damage.

The penalty shall be reduced to a one-sixth part of same, when the inundation is the result of punishable imprudence.

Art. 142. There shall be applicable to aeronautical activities, in such case, the stipulations contained in Arts. 456 to 470 of the Penal Code.

Art. 143. Any member of the flying personnel of an airship who travels in a state of intoxication or under the effects of an enervating drug, shall incur an arrest up to the limit of one year, and be disqualified during a period of from six months to one year, without this preventing the application of the penalties to which reference is made in Art. 523 to 525 of the Penal Code.

Art. 144. Any modification of the letters of matriculation of an airship, made without a previous authorization issued by the Department of Communications, shall be punished with arrest of from six months to one year.

Art. 145. The precepts of this law shall not constitute acquired rights at any time; as a consequence thereof, the said precepts may be modified or abolished.

TRANSITORY ARTICLES

1. This law shall be in force from the date of its publication in the *Diario Oficial* ("Official Gazette") of the Federation.

2. A time limit of six months is granted to the persons who possess airships and to the companies that operate aeronautical services, in which to comply with the provisions contained in this law, excepting those relating to fiscal matters, and which shall become obligatory at once.

3. The concessions granted by the Department of Communications to the companies who at present have all their lines in operation, are considered as automatically extended, for the time that still remains for them to complete the thirty years to which Art. 46 refers.

4. For the legal effects of the preceding article, the Department of Communications shall issue certificates that accredit the fact of the operation of the lines of a company throughout their entire routes.

5. The airships which exist at the present time in the country, those which may be constructed therein and those which may be brought in hereafter, permanently or for a minimum period of one month, are required to be inscribed in the registry of aeronautics in charge of the Department of Communications and Public Works.

I, therefore, order it to be printed, published, circulated and . . .

BRAZILIAN AERONAUTICS DECREE (No. 19,902), APRIL 22, 1931*

The Head of the Provisional Government of the Republic of the United States of Brazil, exercising the power which Article 1° of Decree No. 19,398 of November 11, 1930, confers upon him, and

Considering the necessity for effecting permanent organization in civil aerial navigation services;

Considering that aeronautic services involve technical, juridical and administrative problems of an entirely new character, which call for methods and plans of procedure different from those at present adopted in public administration;

Considering the relations which must in future be maintained with foreign organizations and, particularly, with the International Commission of Aerial Navigation, in the form of international conventions;

Considering that these objectives cannot be attained, with propriety and efficiency, by any of the existing bureaus of the Ministry of Communications and Public Works;

Considering further that the need for the creation of a new organ of federal administration, intended to control civil aeronautic services, may be met from their own resources accruing from the operation of the services

*Translation furnished through the kindness of Brower V. York, Chief, Information Section, Aeronautics Trade Division, Department of Commerce.

referred to, and formed with respect to the portion allotted to the Union by the levy of the surtax on air mail, as yet without application:

Decrees:

Article 1°. The Department of Civil Aeronautics is created, the same being directly subordinate to the Ministry of Communications and Public Works, and the attached regulation governing the services in charge of the said Department is approved.

Article 2°. Beginning with the fiscal year 1932, the portion allotted to the Government in the levy of the surtax on air mail shall be incorporated in receipts of the Union, and at the same time there shall be included in the budget of the Ministry of Communications and Public Works a separate item to defray expenditures by the Department of Civil Aeronautics.

First Paragraph. In so far as not authorized or provided for in this article, expenditures in connection with personnel, according to the respective table, and daily allowances of the same when on inspection trips, as well as expenditures for material required for installation and maintenance of the Department, shall be borne by the portion allotted to the Government in the levy of the surtax on air mail, collected by the treasury of the Office of the Director General of Posts, which shall be transferred to the National Treasury, in the form of a deposit for that particular purpose.

Article 3°. Provisions to the contrary are revoked.

Rio de Janeiro, April 22, 1931, the 110th of Independence and the 43rd of the Republic.

GETULIO VARGAS.
José Americo de Almeida.
José Fernandes Leite de Castro.
Conrado Heck.

REGULATION TO WHICH DECREE No. 19,902 OF THIS DATE REFERS

I—Objects of the Department

Article 1°. The Department of Civil Aeronautics has for its object the control of services connected with civil and commercial aeronautics.

II—Organization of the Department

Article 2°. The functions of the Department shall be assigned to three Divisions: 1) Administrative Division; 2) Division of Operations; and 3) Traffic Division.

III—Duties of Divisions

Article 3°. It is the duty of the Administrative Division to provide for:

- 1) Collection and annotation of domestic and foreign legislation relative to civil and commercial aeronautics;
- 2) Study and annotation of international conventions on aerial navigation and of cases involving aviation law, as well as of controversies which arise in its application;
- 3) Formulation of rules and instructions for execution of international conventions and of Brazilian laws relating to civil and commercial aeronautics;
- 4) Study of programs of congresses and international or national conferences on civil and commercial aeronautics and preparation of topics for discussion and directions for the guidance of delegates appointed by the Government to attend these meetings;

5) Investigation of the legal status of companies which solicit concessions or licenses to operate aeronautic services;

6) Study of questions arising from the rights and obligations of aviators, among themselves and in relation to owners or outfitters of aircraft;

7) Maintenance of relations and intercourse of the department with international organizations and foreign departments of civil and commercial aeronautics, in the form of conventions, agreements or treaties signed by Brazil;

8) Understanding and agreement of the department with civic bureaus which take part in civil and commercial aviation, and with associations and institutions which are devoted to aeronautics;

9) Compilation of reports, publications and data concerning services in charge of the department.

Article 4°. It is the duty of the Division of Operations to provide for:

1) Inspection, entry, and registration of aircraft;

2) Concession, revalidation or renewal of certificates of registration and navigability and of licenses for aircraft;

3) Installation, equipment, and crews required for aircraft;

4) Examination, enrolment, and registration of civil aviators;

5) Concession, revalidation or renewal of credentials, certificates and licenses of civil aviators;

6) Study and expression of opinion concerning establishment of airports, airdromes, landing, emergency and inspection fields of the respective enterprise;

7) Marking out and lighting of air routes;

8) Study and expression of opinion concerning establishment and operation of schools of civil aviation and of aircraft factories, and supervision of their activities, in the form of concessions and licenses;

9) All other measures and steps relative to aircraft, aviators, and ground organizations.

Article 5°. It is the duty of the Traffic Division to provide for:

1) Preparation of the plan and chart of commercial aerial communication;

2) Study of establishment and operation of lines of aerial navigation;

3) Concessions for aerial traffic and special licenses for execution of flights by domestic or foreign civil aircraft;

4) Consideration of questions relative to organization of lines, routes, trips, timetables, fares, transfers, and inter-traffic arising from concessions for aerial navigation;

5) Inspection of traffic and transportation services operated by concessionaires;

6) Compilation of statistics of aeronautic services under the supervision of the department;

7) Observance of regulatory provisions and of instructions referring to determination of course, security, and operation of traffic by civil aircraft.

Article 6°. The general business and accounting offices of the Department shall be in charge of the Administrative Division.

IV—Personnel

Article 7°. The personnel of the Department, as shown in the attached table, shall be assigned as follows:

a) In the Administrative Division: The Chief of Division, the first assistant and a second assistant;

b) In the Division of Operations: The Chief of Division, the draughtsman and a second assistant;

c) In the Traffic Division: The Chief of Division and two second assistants.

First Paragraph. For incidental tasks of extraordinary character or technical nature the Minister may, on recommendation from the Director of the Department, employ temporarily the necessary personnel, fixing the respective remuneration in each case, in accordance with the appropriation set aside for that purpose.

V—*Duties of Personnel*

Article 8°. Direction of the Department shall be exercised by one of the Chiefs of Division, appointed by commission and without prejudice of his particular duties.

Article 9°. Duties of the Director consist of responsibility for and allocation of services, conduct of the business of the Department, and official representation of the latter.

Article 10°. Duties of Chiefs of Division comprise direction of and responsibility for activities assigned to their respective divisions.

Article 11°. It is the duty of the first assistant and of the second assistants to aid Chiefs of Divisions, in all tasks committed to them, and to lend their cooperation in activities of other divisions.

Article 12°. Services of inspection and supervision which may be resolved upon by the Director of the Department, at the suggestion of Chiefs of Division, may also be assigned to assistants.

Article 13°. Duties of the draughtsman involve execution of commissions related to his specialty which may be entrusted to him by the Chief of the Division of Operations or by the Director of the Department.

VI—*Sundry Provisions*

Article 14°. The Ministers of War and of Marine shall keep attached to the Department of Civil Aeronautics two official aviators, one belonging to the military aviation and the other to the naval aeronautics branch, as liaison officers and collaborators in the study of aeronautic problems and in the discharge of specialized technical functions.

Article 15°. General problems of aeronautics shall be studied conjointly by chiefs of divisions and official aviators and proposed to the Minister by the Director of the Department.

Article 16°. Methods of operation and a schedule of service shall be prescribed in instructions from the Minister, following consultation with the Director.

First Paragraph. Those instructions shall be considered an integral part of this regulation and may be modified, in the judgment of the Minister, according to technical or administrative exigencies of services.

Article 17°. Appointment to positions in the Department shall be made after consultation with the Director, with due regard to capacity and preliminary training required for discharge of the respective functions.

Article 18°. In case of absence and illness of an employee of the Department, his duties and responsibilities shall be assumed and performed by another of the same rank, without prejudice of the functions of the latter and independently of additional compensation; or else by an employee from some other bureau of the Ministry of Communications and Public Works, designated by the Minister following consultation with the Director.

Article 19°. Appointments, leaves of absence, dismissals, resignations, holidays, disciplinary measures, and all that relates to duties and privileges

of employees shall be regulated by provisions in force in the Office of the Secretary of State for Communications and Public Works.

Temporary Provision

Article 20°. In so far as the scale of salaries of the personnel of the Department is not fixed, employees assigned to respective duties shall continue to receive from the bureaus to which they belong the salaries now paid them.

Rio de Janeiro, April 22, 1931.—*José Americo de Almeida.*

Table of Personnel of Department of Civil Aeronautics

1 director (chosen among division chiefs).
3 division chiefs.
1 first assistant.
4 second assistants.
1 draughtsman.
1 messenger.
1 attendant.

Rio de Janeiro, April 22, 1931.—*José Americo de Almeida.*

STATEMENT OF REASONS

The geographical position of Brazil confers upon it an exceptional situation in relation to international air traffic.

The great connecting air routes from Europe and from North America to South America will be obliged to make use of Brazilian area and territory for crossing and landing of aircraft.

That situation has led, with no burden on the country, to the establishment of various aerial navigation companies, organized and operated by financial groups interested in expansion of the aeronautic industry, and competing for international routes.

Thus it is that, without any aid whatever from the Union, commercial air lines totaling 13,643 kilometers in length are at present in operation in the littoral zone of the country, from the extreme north to the extreme south.

Development of the said lines has proceeded rapidly.

In 1930 there were in operation 62 aircraft, which traveled 1,617,977 kilometers, carrying 4,667 passengers, 32 tons of mail, 23 tons of baggage, and 9½ tons of freight.

The establishment of the above lines, developed by three Brazilian companies and one foreign company, in addition to the services which it renders on the coast, is stimulating the organization of air lines for the interior, with great advantage to the solution of the problem of our means of communication.

That tendency in direction towards the Brazilian *hinterland* arises from the necessity for attracting to the great coastal lines new items of transportation, involving chiefly postal matter intended not only for foreign parts, but also for the large centers of Brazil.

One of the said interior lines, that from Corumbá to Cuyaba, has been in operation since September of the past year. And another, from São Paulo to Corumbá, on the air route to the west, of extreme importance for Brazil, will soon be in service.

Problems presented to the Government in connection with commercial aeronautics have called continually for a new administrative agency: The Department of Civil Aeronautics.

In 1920 the supervision of aerial navigation services, as yet undeveloped in Brazil, was assigned to the Office of the Federal Inspector of Navigation.

The Regulation for Civil Aerial Navigation Services, issued in 1925, provided for the reorganization of the above office, for the purpose of qualifying it for the discharge of the functions prescribed in the same.

However, regular air transportation services having been inaugurated in the country in the latter part of 1927 and it having been found that reorganization of the said office would not meet the requirements of the new means of transportation, the Aerial Navigation Commission was appointed provisionally and as an experiment, by order of January 4, 1928, and directly subordinated to this Ministry.

Since 1928 commercial air traffic has been developed to a considerable extent in the country, so that the Commission has become incapable of exercising, even in part, the activity laid upon it.

The inadequacy referred to relates not only to the ordinary duties of the Commission, that is to say, those imposed by present exigencies of traffic over air lines. A great part of the objectives of civil aeronautics has not yet been attained.

The evolution of aeronautic problems requires an administrative agency which is better adapted for its purposes, and is directed by minds untrammelled by the bureaucratic exigencies which still impede departments of public administration.

In the first place, it is essential that autonomy and independence of action be assured the new organization, in order that it may remain in direct contact with the Minister.

Moreover, it suffices to take into account facts collected during the period of operation of the present Aerial Navigation Commission, to the effect that in foreign countries civil aviation is controlled either by a new ministry (England, Italy, and France), or by autonomous agency of one of the ministries (United States of America and Germany).

All practices unnecessary and prejudicial to the service are eliminated in the new regulation, for the purpose of promoting and insuring rapid progress of all measures.

Efficiency of the services is thus considered under the threefold aspect: simplicity of means, convenience of action, and coordination of efforts.

As regards the personnel, a small table has been prepared for a relatively comprehensive plan of services.

In relation to internal organization, care to articulate divisions entrusted with the various affairs of the Department, in such manner that connected and dependent activities are concentrated on the same object, has been paramount.

In view of relations of interdependence of civil aeronautics and of military aviation, of which the former constitutes a reserve, permanent contact has been established between this ministry and Ministries of War and of Marine, by means of official aviators, designated by the respective Ministers, in pursuance of what the Regulation for Civil Aerial Navigation Services already prescribes.

Article 19 of Law No. 4,911, of January 12, 1925, authorized the government to contract for the transportation of mail by air, through payment to the companies of proceeds (or part of the same) derived from the sale of special stamps, a schedule of prices of which it would be empowered to compile.

In virtue of the above authorization, after a period of three years of experimentation, the system of participation by the Government in the levy of surtaxes on air mail, on domestic and foreign coastal lines, without loss of ordinary taxes which are collected simultaneously in any case, is at present established.

The above participation is based on the fact that the Post Office pays the companies for transportation of air mail at the rate for the *actual* weight of the same, so that rebates to the Government result.

During the fiscal year 1930, the levy of the surtax on air mail amounted to 2,186,617\$270, and the Post Office paid the companies the sum of 1,904:-

834\$787, the balance of 281.782\$483, which is on deposit, being realized.

The said deposit may be used to defray the expenditures by the Department during the current fiscal year. In subsequent fiscal years, the Government's share in the levy of the surtax on air mail may be incorporated in general receipts of the Union and expenses of the Department are to be borne by a separate appropriation, included in the budget of this ministry.

Rio de Janeiro, March 7, 1931.—*José Americo de Almeida.*

Foreign Jurisprudence

A. GERMAN AERONAUTICAL CASES*

(1) Judgment of the Kammergericht, 4th Strafsenat¹

June 30, 1930

1. Licenses to conduct an airline under the Air Commerce Act are not bestowed under the police power but are in the nature of franchises.

2. Since such licenses are franchises they may be coupled with limitations which go beyond that which the police may impose.

3. A license granted for the transportation of persons and property through the air as a business, though expressly qualified by a condition according to which the installation of scheduled flying is dependent on special permission, can be affected only by an express revocation, since any other such clause is inconsistent with the general permission.

4. The daily transportation by air of newspapers between two definite points at about the same time of day and under a contract does not make the carrier a public one.

5. The fact that the messenger of the newspaper whose papers are transported accompanies the shipments and that occasionally other persons are transported does not make an airline a public carrier.

Defendant was a director and manager of the *G.m.b.H.* under the firm name of *Nordbayrische Verkehrsflug* whose main office was in Fuerth, Bavaria and which has been changed into a stock company. He was found guilty on January 31, 1929 of violating section 11, subsection 5, of the Air Commerce Act of August 1, 1922 (*RGBL* p. 681) see section 74 *StGB*, because he had as manager of the company first intentionally maintained, without the permission of the imperial department of commerce, a scheduled flight between Berlin-Leipzig/Mockow through which persons and personal property (newspapers) were punctually started from the Templehofer Platz at 5 P. M. and, secondly, had continued such flights in violation of section 9 of the temporary rules² though a need for such flights had not been shown and no permission had been obtained and though he had repeatedly been requested to stop his flights or obtain the permission.

On motion the trial court absolved him from blame. The Landgericht however reversed the judgment and imposed a fine on him.

According to the facts found, the company had obtained from the *RVM* on January 15, 1927 a temporary permission to transport persons and property on the route Plauen-Leipzig/Mockow on condition that "scheduled"

*Translated by Carl Zollmann, Marquette University School of Law.

1. Reported in 1 *Archiv für Luftrecht* 64 (1931).

2. Installation and operation of scheduled flying requires the special permission of the department of commerce.

flying needed a special permission and permission to fly to Berlin had been denied because there was no need for such service. This denial was maintained over the contention that negotiations had already been entered into with both a Berlin and a Leipzig publisher for daily transportation in the final decree of the *RVM* of May 8, 1928 in which the minister pointed out that he had no objection against needed flights from Leipzig/-Mockow to Berlin but that such flights would become scheduled if they were conducted daily at the same time and that this settled the question of the transportation of papers between these points. Nevertheless the company, at least from April 23 to July 21, 1928, maintained between Berlin and Leipzig/Mockow regular flights by transporting papers as soon as they had left the printer, with exception of July 12, and also transported the messenger of the publisher and sometimes two or more passengers.

The trial court held that this operation was not a scheduled one. He considered that only such travel on a particular route can be considered as scheduled which, according to a definite and published plan, is conducted during the entire period with such punctuality that each passenger who appears at the appointed time will find transportation except where the plane is already filled or bad weather or other hindrance has set in. This was not the case here. The timetable of the company for 1928 was for the period ending September 1, 1928. During this time there were no flights on July 12, and August 28, and on May 5, 16 and 17, the flights were begun before the scheduled time—a thing never happening in scheduled flying. Accordingly, the published timetable designated the flights as "according to circumstances" (*bedarfsmaessig*). Also the carrying out of the contract with the Berlin evening paper, which created a daily demand, did not make the flights scheduled ones. For in any case no flight was held on July 12.

On the other hand the Landgericht deemed the flights from Berlin-Leipzig/Mockow as scheduled, laying stress on the fact that the flights were regularly repeated at definite days and at definite hours. In contrast to this, the trial court stressed the contention that a flight according to circumstances (*bedarfsverkehr*) exists only when the flights are not made according to a definite timetable available to the public, and covering a definite period and on definite days and at definite hours. Such occasional flights are to serve only occasional, not enduring, demands and are intended to serve the purposes of transportation of persons and property whenever this is found to be necessary. The mere addition of the note "according to circumstances" (*nur nach Bedarf*) to the schedule, of course, would not affect the situation. The timetable takes its character not from its words but from its acts. These acts, however, show that the flights were according to schedule. The contract with the Berlin evening paper by which the *NBV* was obligated on each weekday to transport at 5 P. M. 325 kg. of papers from Berlin to Leipzig is of particular importance. Such transportation would be the beginning of all the essentials of scheduled flying. The fact that the starting time would not always be the same would make no difference. Defendant should have known, at least after May 8, 1928 when the final decision of the *RVM* was rendered, and did know that he must desist from flying the route according to the schedule without the

permission of the *RVM* and that this decides also the question of transporting the freight in question. At least he knew that he was acting contrary and acted with a set intention. In contrast to this, the trial court limited any possible infraction to the time between May 8, and June 21.

The Senat cannot agree with these contentions.

According to Section 11, Subsection 1, of the Air Commerce Act of August 1, 1922, all undertakings to transport persons or property through the air, as a business, must be licensed. According to paragraph 32, section 1, subsection 5, of the Air Commerce Act, one who intentionally "in violation of the conditions" undertakes to transport by air (paragraph 11) is punishable by imprisonment of not more than two years or a fine or both. According to paragraph 2 of the *Vorschrift* negligent action in violation of the law is punishable with imprisonment not exceeding three months or by a fine.

In regard to the manner and character of the conditions imposed on aircraft undertakings, the defense mistakenly contends that it follows from the principle of freedom of trade laid down in section 1 of the *Reichsgewerbe-Ordnung* (limited only by the *GewO*) that the conditions imposed by section 32, subsection 5, of the Air Commerce Act, according to which a license is necessary for aerial undertakings, are based on the police power which so far as Prussia is concerned also can be deduced from *ALR* 2, section 17 and the *PolVG* of March 11, 1850 (compare *KG* in *GewArch.* Vol. 8 p. 535). Defendant does not recognize that transportation by aircraft of persons and property as a business is regulated by the Air Commerce Act in the same manner as this has been done for truck lines by the law of August 26, 1925 (*RGBL.* p. 319) supplemented by the truck line order of October 20, 1928 (*RGBL.* p. 380) particularly Article 8, subsection 2, and that, hence the principles of the *GewO*. apply only to the extent that the subject has not been treated by the air commerce act and other similar laws and orders such as that for the building of aircraft of July 13, 1926 (*RGBL.* p. 643) and the still future air commerce regulations (Article 17 of the Air Commerce Act). (*von Landmann-Rohmer, GewO.* 8 Ed. Vol. 1, Part 1, introduction pp. 56 and 57, *Bredoy-Mueller LuftVG.Bln.* 1922/27 p. 135, *Busse* *dass. Bln* 1928, p. 86. There is an exhaustive regulation covering the flights by aircraft as compared with the *GewO*. The license contemplated by section 11 of the Air Commerce Act is, in its very nature, not an exercise of the police power (as contended by *Busse*, Introduction p. 15 and *Besarke, Das Recht der Luftfahrtunternehmen* in *ZLR* 1927/8 p. 64) but is more in the nature of a franchise. This follows not only from the fact that the Air Commerce Act is founded on the sovereignty of the empire over the air space (*Stenglein-Conrad, LuftVG in strafrechtl. Nebengesetze* Vol. 5, page 622 *Vorbem.* 3) but also on the further fact that the empire, in the first instance, claims the right for itself to transport persons and goods through the air as a business. It is true that the statute does not directly state this contention. However, section 16 of the Air Commerce Act expressly gives to the empire the right to take over aircraft transportation and the property connected with it on paying due compensation. The fact that the Air Commerce Act, in section 1, announces the right of everyone to use the air space is not in conflict with this conclusion. This section is dealing essentially with private

rights, its purpose being to limit the right of the owner of property in the airspace above (Section 905 *RGB*) (compare *Stenglein-Conrad a.a.O. zu* section 1 *LuftVG*. Ann. 2 and *Busse*) and it contemplates limitations both by the statute itself and the regulations passed under it. One of these limitations is furnished by the analogies of the railroads. Since the empire has the right to build and conduct railroads and transport persons and property on them as a business it follows that it may similarly install and operate airlines. Accordingly, section 11, subsection 4, of the Air Commerce Act exempts imperial and state operations, which are affected by a public interest, from the necessity of obtaining a license. Finally, a license for air travel over various countries is a matter for the imperial department of commerce (section 11, subsection 2 *Ziff. 2 LuftVG*. compared with the law of January 3, 1920 and the proclamation of the imperial government of January 9, 1920) and may in accordance with section 11, subsection 3, sentence 1, of the Air Commerce Act be denied and should be denied unless there is a need shown. Therefore, the question of the need for an aerial undertaking must be decided under said section 11 and planless competition which might hinder the development of aviation is prevented. It is also the contention of text-writers *Fleiner, Institutionen de dtsh. Verw. Rechts* 8th ed. *Bln.* 1928 to section 20 p. 341, 344, 345) that the license contemplated under section 11 of the Air Commerce Act represents a sovereign act in the nature of a franchise just as is the case in regard to radio (compare *Ges. Ueber Fernmeldeanlagen* of Jan. 14, 1928 *RGB1* p. 8).

Since this is a franchise (compare *Wesen des Verleihung Fleiner a.a.O. Otto Mayer dtsh. Verw. Recht* 3d Ed. Leipzig, Vol. 2, section 49 p. 243) which confers a right on the grantee, as contrasted with a license which merely establishes that the police have no objection to the plans of the applicant (*Fleiner a.a.O.* p. 345), the permission granted under section 11 of the Air Commerce Act is subject to limitations which go beyond those which the police could impose. A limitation that the installation and operation of scheduled flying is subject to special permission of the *RVM* is therefore justified.

This does not decide the question of the extent to which these conditions can be enforced through the criminal courts. It should not be overlooked that the provisions of section 32, subsection 5, of the Air Commerce Act, so far as it deals with crime, is a blanket law which must be supplemented by the provisions which the authorities have imposed on the undertaking in each individual case. These provisions should be clear and beyond doubt both in their words and their meaning; otherwise it would be absurd to inflict punishment. It further follows, once the permission to transport persons and property through the air has been given under a proviso that only scheduled flying needs a special permission, that such special permission must be limited to scheduled flying and may partially interdict it but that such special permission may not be inconsistent with the general permission to conduct air flights.

The main permission of January 15, 1927 given to the company of which defendant is the manager provided for "the transportation of persons and property by air as a business." This included without a doubt the right to transport the goods and agents of a particular business for a compensation through the air. This right given to the company could be

affected only by an express revocation of the permission. It is true the *RVM* had qualified its permission by a condition that the installation of scheduled flying was dependent on special permission. The *RVM* further by its letter of May 8, 1928 granted to the company for the summer and fall business a particular stretch which excluded the stretch Leipzig/Mockow-Berlin. The *RVM* in connection with this expressed the thought that there was no objection against needed flights on this excluded stretch but that such flights would become a scheduled one if it occurred daily at about the same time and that this also decides the question of the transport of papers on the stretch. The question therefore is whether this is consistent with the general permission already given to the company.

The court is of the opinion that it is inconsistent.

The reservation in the original permission that the installation and operation of scheduled flying needed a special license can be understood only in the light of similar provisions contained in laws dealing with similar questions and which aim to prevent competition which is harmful to the public. The law in regard to automobile lines of August 26, 1925 contains such a provision requiring the permission of the commission designated by the government of the particular state to transport persons or property for hire beyond the boundaries of counties on designated routes and for pay. The title of the statute, including as it does the term "automobileline" which indicates a public utility, affects the construction of the word "line operation" as meaning public commerce and this is what the law of August 26, 1925 is limited to. (*Stenglein-Schneidewin, Kraftfahrlineenges*, 5th Edition, Vol. 1, p. 330; *Mueller, Automobilelaw*, 5th Edition 769, *OLG. Kiel* in *JRdsch* 1928 No. 2075, *Bayr. Obst. LGStr. JW.* 56 p. 801, *Kg.* 3, p. 860/23 in *DJZ.* 1929 p. 959, *OVG.* p. 7169). There is no such public use, however, when the use of the automobiles is limited to a certain number of persons, for instance when the service is rendered on the behest of an individual, though such orders are regularly repeated. (Compare the reasoning in the draft of the automobile order by the *RVM* of August 3, 1928 *Reichstagsdrucks* p. 96 of the year 1928 section 1, subsection 2, also *Mueller a.a.O.S.* 781, note 11, p. 782 note 12, also p. 769). This meaning of the word automobile-line was again legally adopted in section 1, paragraph 1, of the automobile-line order of October 20, 1928 (*RGBI* p. 380) according to which automobile-line commerce is an undertaking serving the public needs by transporting persons or property beyond the boundaries of counties and with a certain amount of regularity and for pay and excludes circular tours.

There is no reason why the conception of an airline should be different than that of an automobile-line. Even though it may not be like the undertaking of section 1 of the automobile line *VO.* of October 20, 1928, the underlying conception of it is concerned with a public and regular transportation scheme. The Air Commerce Act therefore in section 11 of paragraph 5 speaks tautologically of aircraft undertakings with scheduled *public* operation and imposes the duty on such undertakings to transport mail with each scheduled flight for a compensation. (compare *Best* in the *Amtsbl.* of April 1, 1926 p. 144). This is also the construction adopted by the *RVM* as is apparent from 33, *Tagung* of the *Reichsrat* which contains a draft of a proposed order about aerial travel which in turn is founded

on an order built around section 17 of the Air Commerce Act. (*Reichsratsdrucksache* No. 57 1929). In attempting to put air navigation on the same legal basis as automobile traffic and navigation the draft proposes in section 53, subsection 1 under the heading "lines of flight" (*Fluglinien*) the following definition: "Whoever wishes to undertake the transportation of persons or property by aircraft on designated stretches for pay publicly and with a certain degree of regularity and frequency" (new section 54 *LuftVO.*) and demands for such an activity the obtaining of a special in addition to the general permission. The argument is made that experience has shown the necessity that the regulation of lines of flight be by special permission because the line of flight is very analogous to an automobile route. (Section 1 of the law concerning automobile-lines of August 26, 1925 compares with section 1 of the law of October 20, 1928. Compare page 54 of the reasons stated for the draft). It follows that the present construction of the *RVM* is to the effect that the fact that persons and freight are daily transported at about the same time is not decisive but that the element of public use must be added; that is, a use which is open to everybody and on which everybody can rely.

It follows that, since the principal permission contained only the condition that only the installation and operation of scheduled flying lines need a special permission of the *RVM*, the further condition which would include daily transportation of newspapers at about the same time within this restriction is not permissible. If the aircraft of defendant's company on this route served exclusively the needs of one publisher there could not be any question concerning a public utility or a line operation. For this kind of transportation, the original permission was fully sufficient. Against these considerations the punctuality and regularity of the transportation is of no weight. For this was dependent on the nature of the transportation contract since the newspapers, according to the contract, must be transported at once after their arrival at the airport—which would be about the same time each day—in order to be distributed on the same day at their destination.

It follows that the opinion expressed by the *RVM* in its special permission of May 8, 1928 that an occasional transport (*Bedarfsverkehr*) becomes scheduled line transportation if the flying is daily at substantially the same time is in error. It is doubtful whether the contrast sought to be established between occasional transportation (*Bedarfsverkehr*) and line transportation (*Linienverkehr*) is conducive to clear legal reasoning particularly as the *Linienverkehr* includes the *Bedarfsverkehr* since it serves the general public. Not only such person as flies at the request of an individual flies as needed (*nach Bedarf*) but also he who is at the service of the public but who reserves the decision to himself whether or not to make the flight. The *Bedarfsverkehr* therefore becomes a *Linienverkehr* only when it is first at the service of the public and secondly is conducted with such regularity and frequency that the public can rely on it.

Since the conditions of the special permission are contrary to those granted to the company in the principal permission they could not legally function to spell out section 32 *Ziffer 5* of the *LuftVG*. Nor can it be successfully contended that they amount to a partial revocation of the

principal permission. Even though such a partial revocation may be possible it must be in express language. That was not the case here.

It follows that the defendant must be acquitted.

Even if the conditions of the special permission and its interdiction of transportation of persons and property over the route Leipzig/Mockow-Berlin are narrowly construed to refer only to transportation in public line transport and if, further, this construction is considered as not being in conflict with the principal permission, the conviction of the defendant on the basis of the *LuftVG* cannot be maintained.

Defendant between April 23, 1928 and July 21, 1928 transported freight daily except on July 12 in accordance with a contract with a Berlin evening paper by taking the papers destined for Leipzig and Plauen after they arrived at the Templehofer Platz at Berlin daily to Leipzig and Plauen, the papers being regularly accompanied only by the messenger of the publisher. Since this transportation was not open to the public, but was limited to the Berlin publisher referred to, no public transportation and hence no *Linienbetrieb* existed on the route.

Nevertheless the transportation of persons could have the effect of creating a *Linienbetrieb*. But not so in this case.

No reasons need be stated why the transportation of the messenger who accompanied the newspapers did not make the operation a public one. It is true that on some days other persons have been transported. It does not follow from this that the general public had a transportation opportunity in the sense of a *Linienbetrieb*. There was regularity only in regard to the newspaper freight. Under the contract with the publisher this was the only freight which must be transported regularly. Its volume, which would naturally be variable, would determine whether other passengers outside of the messenger could be transported. If they were transported, it was a matter of luck. It follows that the transportation of persons, even though it was not subjectively limited, lacked the essential element of regularity though such regularity was present in regard to freight transportation which, however, for other reasons was not a *Linienbetrieb*.

The fact that the published timetables available at the travel agencies contained a reference to the route Berlin-Leipzig and return is of no consequence, for the tables expressly contained the annotation as needed (*bedarfsmaessig*). This annotation aside from its ambiguity already mentioned makes it certain that on the route there could be no question of the punctuality and regularity necessary in a *Linienbetrieb*. Even though it may be true that timetables are evidence that the route is operated in the public *Linienverkehr* this conclusion is rebutted by the annotation *bedarfsmaessig*. Only the actual operation of the line on a particular route is decisive on the question whether a *Linienverkehr* in regard to either persons or property exists.

Defendant therefore has in no way violated the conditions of his permission within the meaning of section 32, subsection 1, line 5, of the *LuftVG*.

It remains to inquire whether he has violated the postal law of October 1871, and its amendments, by helping political papers, appearing oftener than once a week, to be transported from a city having a postoffice to another city also with a postoffice without using the mail for this purpose.

The question whether this transportation is within the provision of the statute concerning newspaper freight accompanied by a messenger need not be considered. (Compare *RGStr.* Vol. 19 p. 108, Vol. 35 p. 220, Vol. 37 p. 101, 389, Vol. 38 p. 136, 138; *JW.* 1911 pp. 857, 858; *KG.* pp. 118, 117; *Bay Obst. LG. Str.* Vol. 10 p. 271; *Niggl.* Postal Law second edition, Stuttgart 1928, section 2 annotation 4; *Stenglein-Schneidewin strafrechtl. Nebenges.* 5th edition, Volume 1, p. 305). That defendant is not to be prosecuted under this law follows from the fact that the directors of the mail at Berlin-Charlottenberg have discussed the matter in a letter of January 7th, 1929 and decided not to prosecute. The public prosecutor, however, can act in a postal case only when the directors turn the matter over to him or when the defendant moves for a judicial proceeding (sections 35 and 42 *PostG.* compare *Niggl. a.a.O.* introduction to section 33, annotation 4, p. 114). A criminal prosecution therefore under section 34 of the postal law presupposes action by the post directors as a necessary condition. (*Stenglein-Schneidewin strafr. Nebenges.* 5th edition, introduction to section 34 *Postg.* annotation 1, Vol. 1, p. 310).

The conviction of the defendant must therefore be reversed and defendant must be acquitted.

(2) Judgment of the Seeamt Stettin¹

August 13, 1930

1. A seaplane which, by propellor trouble, is forced down on the water and reaches it in a condition to continue its trip on the water is a merchant ship (*Kauffahrteischiff*) within the meaning of section 2, subsection 2, of the statute in relation to investigating mishaps at sea.

2. Neither the owner nor the pilot of a seaplane is liable where a hidden defect in the propellor makes necessary an emergency landing at sea.

3. A pilot on a seaplane which has been forced down on the water, whose education and experience as a sea-going man are quite limited, is not guilty of negligence because of his insufficient observation of the sea and the wind and his failure to use opportunities to transfer the passengers to nearby ships.

FACTS

The cause of the accident of the aircraft "Dornier Wal D 864" which belonged to the German Luft Hansa and happened at Bornholm on July 7, 1930 was principally due to the fact that the propeller broke (probably because of hidden defects) and that an emergency landing on the water became necessary. After drifting for a while the seaplane finally capsized. Management in the matter was not guilty of negligence.

The means adopted to save the passengers were adequate. The assistance rendered by the Danish motorboat "Maja" was particularly entitled to recognition. It would be fitting if the German Reich would compensate the crew of the Maja.

The equipment of the seaplane with emergency apparatus was insufficient.

1. Reported in 1 *Archiv für Luftrecht* 54 (1931).

REASONS.

The seaplane, whose home harbor was at Stettin-Altdamm, on July 7, 1930 left the port at 2 P. M. destined for Stockholm. The persons on board were the pilot, the mechanic, the radio expert and five passengers. It also carried mail.

The pilot testified that the weather report was favorable and prognosticated improvement and cessation of the winds. He based his testimony merely on the weather notice handed to him. The notice stated that the wind was between strong and stiff and was to be expected from W-WNW.

When the coast was past at Misdroy at 2:28 P. M. the customary notice was given by the plane. The altitude was only 30 feet because, according to the pilot, seaplanes at such an altitude travel much better. At 5:10 the mechanic noticed that the rear motor accelerated. He choked it off in order to avoid the danger of fire. He saw that the propeller connected with such motor had disappeared. Parts of it had gone through the upper deck. The gasoline tank and the generator had been so damaged that they were useless. The pilot at once determined to bring the plane down and succeeded completely. The sea was going 2 to 3 and the wind came from the northwest. The plane was about 20 knots south of Due Odde, Bornholm. The motor boat "Maja" from Ommel, under the command of Captain G. J. was near by. His attention was attracted by the distress signal. He at once came and sent out a strong tow line about 100 yards long. Since the plane had no hook to which to tie the line only the second attempt succeeded. It was 4:25 before it could be attached to the plane. A so-called "Hahnepot" was also fastened to the tow line but did not come into actual use. The motorboat, which also had sails, towed hard to the wind in a northerly direction. The towing went well since the plane kept steady. The pilot was of the opinion that no danger existed and that the cabin was absolutely safe for the passengers. For a short time he left his post in charge of the mechanic, went to the passengers, explained the situation to them, and had them put on the lifebelts which had been inflated. There were 13 such belts on board—more than the entire number of passengers and crew.

The pilot resumed his post while the mechanic took his station so as to be able to watch the tow line. He explained to the passengers how to use the life belts. Emergency rations were distributed among the passengers. An inspection of the hull showed that no water was leaking through.

At 4:30 the steamer "Theodor" passed the plane at a distance of about 425 yards. The pilot testified that, since the plane was in the neighborhood of land and the weather notice prognosticated an improvement in the weather he believed that there was no danger and that, therefore, it was desirable to avoid the somewhat risky manoeuver of transferring the passengers. For this reason he paid no further attention to the steamer which apparently had not slackened its speed.

Captain B_a of the steamer, as well as its first mate L, testified that a schooner was sighted shortly before 4 o'clock which was towing a seaplane; that at 4:30 the course was taken toward the schooner and one life boat was gotten ready; that the speed was slowed down; that for about 20 minutes he was within 110 yards of the plane; that, since no signal was given by the latter, he continued his voyage and that the

position of the steamer at this time was 54° 42' North and 14° 55' East at a distance of about 18½ knots southwest from the southwestern corner of Bornholm. He further testified that it would have been possible to save the passengers of the seaplane with the help of the life boat which was about 9 yards long, that the seaplane was not pitching or rolling; that he did not think that anything would happen to the passengers; that he believed they would make land and that otherwise he would have remained in the neighborhood. He adds that, later, when the weather became worse he had some doubts whether the towing would be successful, but this was when he was already far away.

(The portion of the opinion dealing in highly technical language with the wind, weather and sea conditions which brought about the capsizing of the seaplane and the death of some of the passengers and crew and the history of the seaplane itself is omitted).

The admiralty court in view of the fact that a seaplane was involved has investigated its jurisdiction in the matter—there was no order under section 2, subsection 2, of the sea disaster investigation law—and found that such jurisdiction exists. According to section 2 of this law sea accidents by merchant ships (*Kauffahrtschiffe*) are the subject of investigation by the admiralty courts. The question therefore was whether seaplanes are merchant ships within the meaning of the law. The statute itself does not clearly define the subject of the investigation. From its history and analogies the purpose of the lawmakers to cover all ship disasters is clear since the investigation is made in the public interest for the purpose of increasing safety in navigation. This main purpose of the investigation is present in every sea disaster regardless of the kind and purpose of the ship. The definition "merchant ship" means merely all ships which are not a part of the navy. (Compare *Sassen*, The investigation of sea disasters § 13; 3 Decisions of *O.S.A.* 101). This definition of the term "merchant ship" has been incorporated into various proposed statutes. The construction and purpose of the ship therefore will be immaterial in the investigation. A seaplane, therefore, as soon as it lands on the water whether voluntarily or involuntarily, must be regarded as a ship unless it is already a wreck before it reaches the water. This was not the case here. D 864 was fully capable of floating and being towed and could have even been propelled by its own power through this of course was not advisable.

A finding of the cause of the mishap to the D 864, while it was in the air, therefore is, strictly speaking beyond the scope of the investigation. However the investigation could be made to cover it because the accident to the rear motor affected the capacity of the plane to operate as a ship.

There can be no doubt but that the propeller broke. The cause of this break could not be definitely determined. Since other causes cannot be ascertained, it must be assumed that a hidden defect in the material was responsible. This defect could not be ascertained by an ordinary inspection and might not have been ascertained even by a microscopic investigation. Neither the owner nor the crew, therefore, is in any manner culpable.

Since the flight was at a height of 10 yards, an emergency landing was absolutely necessary after the rear motor was disabled. The height, however, has no casual connection with the accident. Of course the hanging

aerial could not be used at such a height and in consequence the radio apparatus could neither send S. O. S. messages or receive weather reports. It might, therefore, be advisable to fly so far as clouds and visibility permit at a minimum height of 200 yards. In the present case S. O. S. signals could not have been given since the radio apparatus has been made useless through the break in the propellers. The means adopted by the pilot after the emergency landing to save the passengers were correct under the circumstances. It was better to accept a tow line than to drift. The lack of a hook to which to fasten the line was a defect in the plane. Valuable time was lost before the line could be fastened. The installation of the "Hahnepot" was too difficult in view of the situation. But it was not used since the pilot thought that it would not stand the stress of towing. A proper mechanical device for casting off the tow line (Schlippvorrichtung) was not on the plane. Possibly the plane would not have turned over if it had been possible to cast off when the danger became apparent. It is to be regretted that the pilot did not transfer the passengers to the "Theodor". This decision was doubtless mistaken from the viewpoint of a sea captain whose chief duty it is to save the passengers in case of a disaster unless there is no doubt of their safety where they are. In this case such a measure was the more appropriate since the pilot had to figure that at least four hours would be used up in reaching Bornholm and that during this time the situation might easily change for the worse. According to the weather notice which he had the situation was not as favorable as he testified to. That he did not, then and there, reach this conclusion indicates that his education as a seagoing man is insufficient. This insufficiency explains why he did not ask the passengers whether they wished to be transferred to the "Maja" while he naturally would stay on the plane. It is to be regretted that there are no directions issued to pilots as to what to do in case of an emergency landing at sea. It would be well to issue such a direction that passengers under such circumstances must be transferred to nearby ships as soon as this is reasonably possible. In view of his defective experience as a sailor, the pilot was not guilty of negligence because of his insufficient observation of sea and wind and his failure to use the opportunities which he had to save the passengers. He placed too much reliance on the fact that the Wal seaplanes had shown desirable qualities while being towed. It should also not be overlooked that the transfer of the passengers could have been accomplished only by means of the water which involved a certain risk.

(The rest of the opinion deals with the recommendation made in regard to emergency safety devices and is omitted because it involves no points of law).

(3) Judgment of the Amtsgericht Hamburg¹

November 21, 1930

An aerial advertiser who does not own the airplane used in her advertising and who does not employ the pilot, but who rents the plane with pilot at irregular intervals from an airport owner, is not responsible for the damages caused to the owner of a horse and buggy by the fact that the aircraft, at the direction of her agent

1. Reported in 1 Archiv für Luftrecht 77 (1931).

in the airplane, flies low over a street and by abnormal noise frightens the horse so that it runs away. She is not a "Flugzeughalter" within the meaning of section 11 of the *Luft V. G.*

The plaintiff sets up that defendant habitually conducts her advertising business by chartering aircraft at the airport Nordmark and making advertising flights with them. He contends that the defendant is an operator of aircraft (*Flugzeughalter*), and undertakes, within section 11 of the *Luft V. G.*, to use aircraft for purposes of competition and therefore is liable under section 19 for the damages caused by the aircraft. On June 22, 1930, while the dirigible "Graf Zeppelin" was at hand, defendant by her pilot K had various advertising flights executed particularly for the firm Teppichjuster. K descended below 100 meters though the permitted height was 400 meters. When the plane flew over the Claus Groth street the motor made a most abnormal noise. This frightened plaintiff's horse so that it ran away. Both horse and buggy drawn by it were damaged.

Plaintiff demands damages. Defendant moves that the complaint be dismissed.

She denies being a *Flugzeughalter*. She contends that she does not constantly rent aircraft, that K is not her pilot, and that K is not in her service. She contends that the aircraft was exclusively under the control of the Nordmark airport. She denies that the craft flew too low. She specifically contends that she would in any case be liable only if the damages occurred through an operation mishap (*Betriebsunfall*) and takes the position that the action of the horse is not a mishap in connection with the operation and is not a proximate consequence of it. She says that if a horse is restless this cannot be held against the *Luftzeughalter*. A liability under section 831 *BGB* is denied on the ground that K was carefully selected for his task. Finally the amount of damage is put in question because the wagon, through the repair, was made more valuable.

The facts were ascertained at the trial.

REASONS.

It must be stated, categorically, that the plaintiff cannot rely on section 11 of the *LuftVG*, because no persons were transported. The persons in the aircraft were there merely to service the advertising machinery. There was also no transportation of property for the machinery used in advertising was not transported but merely used during the flight. There was also no competitive flight (*Flug im Dienste des Wettbewerbs*) for such competition is a competition of aircraft (compare *Busse* section 11 note 3 *b.u.c.* and section 57 of the *LuftVO*, of July 19, 1930).

The decisive question is, therefore, whether defendant was a *Flugzeughalter* within the meaning of section 19 of the *LuftVG*. This term is not specifically defined. Its meaning must therefore be ascertained by analogy to the word *halter* as it occurs in other statutes. As far as known the word occurs for the first time in section 833 *BGB*. It is apparent therefore that such word cannot immediately be applied to the *halter* of an aircraft because the material is used in a different manner. However analogies may be drawn with an aircraft.

The closest analogy is that concerning auto vehicles because they use motors to achieve great speed. It should also be considered whether ships

furnish an analogy since the purpose of aircraft, like that of ships, is to transport persons and goods over large distances and in international commerce and aircraft, in their newest form, may do such transporting of large masses of material in one plane while auto vehicles will serve more in intrastate commerce with less speed and less capacity. Furthermore the auto vehicle is dependent on highways while aircraft, like a ship, fly in the ocean of air and are exposed to wind and weather like a ship. The newest air commerce regulations therefore provide for rules of the road and lights in a very similar manner as is the case in regard to ships.

Viewed from the viewpoint of maritime law the "*halterschaft*" is equivalent to the "equipper" (*Ausruester*) mentioned in section 510 *HGB*. An *ausruester* is one who uses a ship which he does not own either by manoeuvring it himself or by putting it under the control of another. He, in his relation to a third person, is a *Reeder* and, as such, is responsible under section 485 *HGB*. The question whether aircraft is used for the purpose of gain is of minor importance though it is necessary that some use for gain be present. The important question is whether the aircraft was used for the defendant and whether she furnished the pilot. She did not furnish the pilot for K was exclusively employed by the airport Nordmark and was paid by such airport. The defendant rented the aircraft with the pilot. It follows that defendant was not, within maritime law, the *halter* of the aircraft here in question. The question whether it was used by the defendant therefore, need not be considered.

This does not dispose of the case for, according to the weight of present day opinion, the conception of a *halter* is taken from the law of motor vehicles (compare *Busse* note 8 to section 19 *LuftVG.*).

In this sense, one who uses the aircraft on his own account and has considerable control over it is a *halter*. The operation is on his own account as a rule when economic gain is gotten from the aircraft and the costs of storing, upkeep, and manning the craft is borne by the one claimed to be the *halter*. It is not necessary however that the *halter* bear this burden alone. One may be a *halter* though another bears the major portion of the financial burden. The relationship of a *halter* is an economic and factual one. Whether the operation is short or long makes no difference. The essential matter is the power to control. If an auto vehicle enterprise constantly uses the vehicles of another in such a manner that it houses, mans, fuels, and repairs the vehicle, it is the *halter*. (*Mueller* page 229) None of these essentials is present in this case. The costs of housing the aircraft was exclusively borne by the airport Nordmark, and defendant does not bear even a small part of the depreciation but merely pays rent which is measured exclusively by the lengths of the respective flights. She is not a constant user of the aircraft of the Nordmark airport and is not concerned with the housing of the aircraft, the putting in of fuel, etc. Last, but not least, she does not furnish the pilot. In this respect she is not to be distinguished from an advertising venture which rents an automobile and parades the streets with it while the advertising is fastened to the sides of the vehicle. Only one matter might incline the mind in the other direction, namely, the fact that defendant had the right of direction (*Verfuegungsgewalt*) which is considered as essential. The facts show that defendant, through her agents in the plane, gave directions when the

flight was to commence, when it was to end and where it was to take place. But this is about the same as the condition when land advertisers designate the streets which are to be traveled. The decision about the beginning and ending of a flight does not include any considerable right to direct. The decisive thing is that, in both cases, the technical conduct of the flight is entirely independent of the will and directions of the renter. If the chauffeur of the motor vehicle disregards the rules of the road, he is primarily responsible and it is no defense to him that the renter has directed him to make a left turn or to disregard a traffic signal. It is, therefore, of no consequence that defendant, through her agents, gave a special direction to fly low over the Claus Groth street in order that the advertising could be seen to better advantage. For keeping the requisite altitude the pilot alone was responsible. The defendant had no such power of control as ended the control of the Nordmark airport. The defendant therefore was not a *halter*.

Defendant therefore is not liable. Section 831 *BGB* does not support the plaintiff in his contention, for the pilot K was not in the service of defendant but was in the service of the airport Nordmark.

Questions of causations therefore, need not be considered.

(4) Judgment of the Schöffengericht in Oppeln¹

January 31, 1931

A Polish military flyer, well educated for his work and experienced in it, who loses his way under bad weather conditions while attempting to fly his plane from one Polish post to another and lands in Oppeln in Silesia, without carrying a passport, violates the sovereignty of the German Reich and is to be duly punished by confinement in jail for two weeks.

Defendant is accused of having, on January 9th, 1931, in Germany at Oppeln, by one and the same act violated the law as follows: (a) That he crossed the boundaries of Germany without being in possession of any paper establishing his identity. (b) Being a foreigner, that he came within the boundaries of the Reich without a pass or other identification papers (section 2 pass order of June 10, 1919) (*R. Ges. Bl.* p. 216). (c) That he violated an order made in the interest of public order and security in connection with aerial transportation (section 100 of the order of July 19, 1930) (*R. G. Bl.* 1 page 363) according to which foreign aircraft may come into German airspace only when such flight has been either generally permitted by a treaty or where a special permission has been obtained.

At the trial the following facts were established. On January 9, 1931, at about 1:30 P. M. three Polish military airplanes flew over Oppeln. After twenty minutes, two of them landed in the neighborhood of the range of the Oppeln military reservation. The first to land was defendant W. Witness M. was in the neighborhood and at once approached the craft. Defendant W. asked him: "Is this Germany or Poland?" When M. told him that he was in Oppeln, Germany, W. slapped his forehead and said, "What have I done?" W. further asked M. about the direction to Kattowitz. When this information had been given by M., W. signalled to I., his co-defendant, who was still circling in the air to proceed to Kattowitz.

1. Reported in 1 *Archiv für Luftrecht* 72 (1931).

The sentinel stationed at the range had noticed the landing and had given the electrical alarm. Corporal S. who was in reserve at once went with privates U. and B. to the place of landing. S. demanded of W. that he shut off the motor and disembark. W. complied with this request, approached S. and said "I am a military flyer." S. answered: "Of course you are Polish. I am sorry but I must arrest you." While this was taking place, the codefendant, I., who had misunderstood the signal given to him by W. had landed in the immediate neighborhood. The third Polish military aircraft had separated some time previously from the other two craft. I. also was arrested and taken with W. to quarters of the post. Neither of them had a pass or other equivalent paper, or special permission to fly over Germany. All they had was their pilots' license. W. is first sergeant of the first aerial regiment in Krakau. I. is a sergeant of the same regiment. Neither of them were armed. Aside from their pilot's license, each was in possession of a military certificate from Graudenz to Krakau and a written order covering their mission. No weapons, radio, or photographic apparatus were on board. The aircraft were one seaters of the French type "Vibault." Books were found in the craft giving information concerning the craft and the meters. The compasses were near the feet of the pilots. They were of French manufacture. They were so fastened that they could be turned only in one direction.

Defendants deny that they crossed the boundary intentionally. They state that their orders were to take the aircraft from Krakau to the flying school at Graudenz and that bad weather and poor visibility caused them to shift their course and cross the boundary. They further say that there are strict military orders against crossing the boundary, which orders are announced to them once a month.

W. testified that, being the leader, he went to the meteorological department of the regiment to get information concerning the weather. He found out that the wind was from north-northeast. At 12:30 the start was made. Behind Skala, a place about 20 miles north of Krakau, the weather became worse. They were in clouds, and even snow, and could fly only at a height of 50 to 80 yards and partly not even that high but at the height of trees. In consequence of the weather they could not see and could not orient themselves with the help of their maps. W., in addition, lost his map between the seat and the side of the aircraft. He noticed that the wind was very strong and came from the right. In order not to come near to the boundary he took his course 20 degrees to the east. After some time he suddenly saw a river through the snow and thought it was the Weichsel. Since he had been on his way about an hour and was flying at a rate of about 95 miles (150 kilometers) this appeared a not unlikely conclusion. He realized that he must have completely lost his way. He, therefore, looked for an opportunity to land and finally did land at Oppeln. Defendant I. stated that his compass, even before the start, was not in order. He reported that fact to the mechanic of the regiment. He was informed that there was no other compass and that he should undertake the flight because it was a simple one. His duty was, as a military man, to follow the leader. W. had told him to follow him. It is true the general orders not to cross the boundary are superior to such special commands. But he did not notice that W.'s craft made any special

maneuvers. He, therefore, was of the opinion that they were on the right route and, having confidence in W., followed him. Only shortly before the landing did he notice that W's craft maneuvered. He concluded that W. wished to get information. He misunderstood his signal and landed alongside of him. No reason exists to doubt any of these statements. There is nothing to show that the crossing of the boundaries was in obedience to military commands. The written orders and military certificate which the defendants had on their persons point the other way. Nor should it be supposed that defendants intentionally and in violation of their orders have crossed the boundary. If this had been the case, they would not have landed in Oppeln and certainly not in the neighborhood of the range of the military reservation because they would have known that they would be arrested and suffer other inconveniences. Even if they, after an intentional crossing of the boundary, had lost their bearings they would not have landed for the purpose of getting information near a city of considerable size but rather in the open country or near a small village. It is true that defendant W. soon after the landing asked the question: "Is Bruening here today?" He denies asking this question, however. However, the statements of witnesses S. and B. prove that he made it. It is true that the German *Reichskanzler* was in Oppeln on this particular day. But it does not follow, from this question standing alone, that the defendants intentionally crossed the boundary and came to Oppeln. It may also be that defendant W. asked this question only after he gained the information of Breuning's whereabouts following the landing. Witness M. stated that he accused W. of coming to Oppeln because of the presence of the *Reichskanzler*. All the other facts do not point toward intentional action. According to the statements of the expert Police Captain O. there was a possibility of losing direction. The compass can swing only to the right and left. It is therefore possible that it may, on a bad flight, stay in the one or the other direction and regain its equilibrium only after flying normally for some time. It is therefore possible that W., according to the compass, assumed that he was flying east while in fact he was flying west. The flight, in fact, was under unfavorable weather conditions. On January 9, 1931, at noon, snow was descending in the direction of region of the Oder which naturally caused poor visibility in the locality. Therefore the court is not convinced that the defendants intentionally crossed the boundary without permission and thus violated the passport ordinances. There is further no sufficient proof that the defendants had the intention "*dolus eventualis*"; in other words, that they did not wish to cross the boundary but were conscious that their manner of flight could bring them over the boundary and were satisfied with this result if it should ensue. Their action on landing is inconsistent with this assumption.

Passport regulations are primarily police regulations. Their purpose is to enable the police to know who is in the country. The police must have some control over persons who are not on the list of the *Einwohnermeldeamt*. Unwanted elements are thus to be kept out of the country. It is recognized that, where penal provisions are principally of a police character, mere negligence is sufficient to make the defendant subject to punishment even though negligence is not expressly mentioned in the law. (Compare *R. G. St.* 49, 116-118.) This is true in regard to passport in-

fractions (*Stenglein* Treatise on the Penal Law of the German Reich, 5th edition, p. 476 line 8). Such negligence is present when the defendant does not use the care which he should use under the circumstances, in view of his personal capacities and knowledge, and when in consequence he has not foreseen the result or, if he has foreseen it, has thought confidently that it would not ensue. (*R. G. St.* 56, 349.) The care which may be required of defendants is that which may be expected from a fully trained military flyer. Defendant W. was, from 1915 to 1918, a pilot in a German squadron and flew with numbers 44 and 250. After the war, he was a part of a boundary squadron in Kurland, that of *Rittmeister v. B.* which belonged to No. 424 until it was demobilized in the spring of 1922. After he, in 1922, had become a Polish prisoner he remained in Poland. He acted as pilot of the reserve and enlisted in 1927 in the active flying service of the Polish army and became a first sergeant. He has also been active in stunt flying. Defendant I. had three semesters of the technical school in Sosnowitz. He enlisted in 1925 and served for a time with number 2 in Krakau. In 1929 he was in the flying school in Bromberg. Then he returned to his former command in Krakau and at the time of the landing was a sergeant.

Defendant W. has repeatedly changed his statements in regard to the flight. Immediately after his arrest he stated that the compass ceased to function at a height of 200 yards and that this forced him to fly north. Then the snow forced him to descend. He lost his bearings at Scala and proceeded on nevertheless. Later, he stated that when he was about 35 miles from Krakau he noticed that the compass was out of order and that he had gone too far to the left. Still later, he declared that the compass did not cease to function at a height of 200 yards but did not function at all. At the trial, he stated that the compass functioned and that he continued his flight depending on it. Without attempting to determine which of these statements is correct, all of them, taken together, justify the conclusion that he knew shortly after ascending while he was still in Poland that he was not master of the flight. His maneuver in turning 20 degrees to the east was not sufficient to meet this situation. He knew the defect in his compass. Then he got into snow which made a normal flight impossible. He should, therefore, have counted the possibility that the direction of his flight would be changed and that the compass would not show this fact. The result shows clearly that the measures taken by him were not sufficient. He could not trust to the compass alone. The court is convinced that he as an experienced flyer was well aware of this. He knew and so stated expressly, during the trial, that the compass was unsatisfactory and that lack of experience was in no manner the reason for his loss of direction. He knew that the boundary was near, its crossing forbidden, and the wind from the east very strong. It would, therefore, have been his duty to land immediately for the purpose of information. In view of the proximity of the boundary and the speed of the craft his landing one hour after losing his way was clearly too late. If defendant, when he lost his way at Scala, had landed immediately he would have landed in Poland, for Scala is sufficiently far away from the boundary. His position as a military flyer made extra care a duty for the crossing of a military airplane is not the same as that of an ordinary plane but is

more of an infraction of the sovereignty of Germany. Defendant admits that he knew that Polish military flyers had repeatedly crossed the boundary and that the German Government had vigorously objected to this. Defendant was fully capable to make an emergency landing. Under the circumstances he was guilty of negligence which negligence caused the crossing of the boundary. He should have foreseen this result. His carelessness continued until the boundary had been crossed. He cannot rely on necessity (section 54 *Str. G. B.*) or that an emergency landing beyond the boundary would have meant danger of life and limb. He did not omit to land in Poland in order to avoid danger. It should not be overlooked that every emergency landing is coupled with some danger and that such danger is the same on both sides of the boundary and that danger is a part of the soldier's profession. Besides defendant W. did not previously mention the fact that he had executed stunt flights involving greater danger than does an emergency landing in bad weather.

After defendant had passed the boundary without the necessary papers, the necessary consequence was that he could not prove his identity by a passport or other paper. He should, therefore, not be punished on a ground which necessarily follows from his first infraction. Section 31 of the Air Commerce Act fixes the fine for infraction of its provisions at 150 marks, or confinement in jail, unless other provisions of the law inflict a greater punishment. It results that the provisions of the Air Commerce Act is auxiliary to other laws. Since defendant's act violated section 1, line 1, of the passport regulations of April 6, 1923, it followed that punishment under section 31 of the Air Commerce Act, in connection with section 100 of the Air Commerce Regulations of July 19, 1930, was not to be inflicted. Since the indictment in all the three counts is based on the same facts a particular verdict of not guilty in regard to count (b) and (c) was not necessary.

It is therefore established that defendant W. on January 9, 1931, crossed the boundary without a passport or other identification. He therefore is punishable according to section 1, line 1, of the passport regulations of April 6, 1923.

No negligence has been established against defendant I. It is true that he, also, is a well schooled military flyer from whom a high degree of care may be expected. But he was under the command of the other defendant and, in duty, bound to obey such command. W. being a pilot of long experience and reliability, I. was justified in trusting him. Flying behind the leader in mist and snow alone would require a considerable degree of attention. If it could be established as against I. that he had sound reasons for believing that the course had been lost, he would, indeed, have been obliged to take measures to prevent a crossing of the boundary. Since, however, his statement that he knew of the fact that the course had been lost only shortly before the landing cannot be disputed, he must be freed on the ground that no case has been proved against him.

If only the degree of guilt of defendant W. were to be considered even though his negligence was not inconsiderable a fine would be the proper punishment. However, the consequences of his act must be considered. These are considerable. The crossing of military aircraft causes mutterings of the population and when it occurs in upper Silesia, has the

tendency to complicate the German-Polish relations which are already complicated enough. Defendant's act might easily have led to mob violence which would have caused heavy damages to the German Reich if the German soldiers had not intervened. The court therefore is of the opinion that only imprisonment is adequate as a punishment. (Section 27b *Str. G. B.*) This has been set at two weeks jail and according to section 60 *Str. G. B.*, since defendant, pending the trial, spent two weeks in jail he has already paid the penalty. Costs are regulated by sections 465, 467 *Str. P. O.*