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# Aeronautics--Wrecked Aircraft--Examination of, Before Removal

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risk is shifted from our citizen and placed on the municipal corporation against whom the crime has been committed, and who, through its professional police officer, has drafted the assistance, if it results in harm to him who answered the call. Thus society, which has always recognized the right to assistance of the wronged, now must compensate the avenger who is himself harmed while so upholding the peace.

LAWRENCE T. GRESSER, JR.

AERONAUTICS—WRECKED AIRCRAFT—EXAMINATION OF, BEFORE REMOVAL.—The aviation policy of New York, according to the State Aviation Commission, is predicated on the belief that the basic control of aeronautics is primarily a function of the federal government.[1] In conformity to this, all aircraft and airmen are required to procure a federal license,[2] and comply with the federal standards for airworthiness.[3] However, since 1928, there has been a rapid increase in the number of state laws supplementing the national statutes, resulting in the imposition of stringent local requirements.[4]

Such a law became effective in July, 1932,[5] in the case of accidents occurring through the falling or faulty landing of an airplane. It reads as follows:

> "When an aircraft falls or lands in a wrecked condition or is wrecked by the fall or in landing and an occupant thereof is killed or severely injured thereby or escapes death or injury by the use of a parachute, neither such aircraft or any part of it shall be destroyed or removed before the expiration of twenty-four hours thereafter without the permission of an inspector of the United States Department of Commerce or a member of the state police and if, before it is destroyed or removed, such an inspector or member of the state police shall appear at the scene of the wreck for the purpose of examining the aircraft it shall not be destroyed or removed until the examination is completed within forty-eight hours of the time that the aircraft fell or landed. This section shall

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and thirty, one hundred and thirty-two, one hundred and thirty-three and one hundred and thirty-four of the Decedent Estate Law.

[1] "Foreword," LAWS AFFECTING AVIATION OF THE STATE OF NEW YORK, 1932, published by the New York State Commission on Aviation, Albany, N. Y.

[2] Laws of 1928, c. 233, art. 14, §241.

[3] *Ibid.* §243.

[4] Laws of 1928, cc. 169, 233, 373, 408; Laws of 1929, cc. 16, 31, 53; Laws of 1930, cc. 289, 334, 488; Laws of 1931, cc. 99, 101, 225; Laws of 1932, cc. 121, 187, 594.

[5] S. Int. 652, March 15, 1932. Introduced Feb. 3, 1932.

not prevent or postpone the destruction or removal of a wrecked aircraft lying in a public street or highway in a position that causes a blockade of traffic, or lying in a navigable waterway in a position that impedes or imperils navigation, or which lands or falls on a public building or structure, or in a case where the immediate destruction or removal of the aircraft is necessary to prevent injury to persons; but such necessity, in the case last mentioned, shall be matter of defense in any prosecution for a violation of this section. A person who destroys or removes, or causes to be destroyed or removed, a wrecked aircraft in violation of the provisions of this section is guilty of a misdemeanor." [6]

It is a necessary characteristic of a good legislative system that it be able to keep pace with current development in the civilization it governs. This statute is a good illustration of the possession of that ability by our legislature, which under its power of enacting laws protecting the safety of our citizens, has deemed it wise to be stricter with, and to secure more control over, the airplane than the various other types of public carriers. Motor vehicle operators must *report* their names and license numbers, either to the person they injure or to a police officer.[7] Railroads [8] and vessels [9] must *report* the circumstances concerning accidents in which they are involved. But now in New York, remains of airplane accidents are to lie untouched till official *inspections,* much the same as the corpse after a murder. Merely reporting this type of accident does not satisfy the statute.[10]

We wonder whether this connotes a general tendency in airplane legislation, and, if so, how far it will lead; but as to the instant law we believe that no charge of unconstitutionality on the grounds of undue discrimination can be made out. The section falls within the trend of legislation permitted by the Supreme Court of the United States.[11] The policy of the national government would appear to be

[6] Laws of 1932, c. 121, GEN. BUS. LAW §257, subd. 1 and 2.

[7] Laws of 1910, c. 374, §290, subd. 3; People v. Rosenheimer, 209 N. Y. 115, 102 N. E. 530 (1920).

[8] Laws of 1907, c. 429, §47.

[9] Laws of 1903, c. 430, §4.

[10] Neither the federal law (Air Commerce Regulations, Laws of 1928, c. 3, §34), nor the state laws (Conn. Laws of 1929, c. 253, §§31, 32; Mass. Order of Dept. of Public Works, June 10, 1929; Pa. Laws of 1929, c. 315, §704; Vt. Laws of 1929, art. 79, §11; Va. Regulations of Corp. Comm. Rule 34, July 1, 1929), except New Hampshire (Order #2234, Aug. 1, 1930, art. X, §§ b and 2; 1930; 1930 U. S. Aviation Report 435) and New York (*supra* note 6), require more than the reporting of airplane accidents. The Uniform State Law on Aviation (1928 U. S. Aviation Reports, 438 *et seq.*) is silent on the subject. For a discussion of these laws see *Aviation Law and the Constitution,* (1930) 39 YALE L. J. 1113-1129.

[11] *In re* Considine, 83 F. (1st) 157 (C. C. D. Wash. N. D. 1897); Slaughter House Cases, 83 U. S. 36 (1872); Atchison, Topeka & Santa Fe R. R. Co. v. Matthews, 174 U. S. 96, 19 Sup. Ct. 609 (1899); Jacobson v. Mass., 187 U. S. 11, 25 Sup. Ct. 358 (1904); People *ex rel.* Lieberman v. Van De Carr, 199

that it will not interfere with the state regulation of industry, where the cause arising may be brought in under the general heading of police power of the state,[12] within these bounds; if the result to be attained is of itself reasonable, even though the means to accomplish that end be not of the best, and, in fact, even if it fall short of expectations, so long as it is in pursuance of the general reasonable aim, the law will be upheld. Inasmuch as this law is aimed at ways and means of furthering safety, it comes under the foregoing general proposition.

The management of some air-carriers feel that the best way to aid the industry is not to pass more laws, but to give more freedom until the industry is further developed.[13] However, while most airmen may have a high regard for public welfare and will not abuse any privileges granted to them, all might not have the same high standards, and a *laissez-faire* policy towards them would be perilous. When it is remembered how new the industry is, how great the need to learn the causes of its fatalities, and how wary, as yet, the public is towards its widespread use in travel, then this law which at first seems harsh, because it imposes a stricter rule on airplanes than on other carriers, becomes more understandable. Despite the spectacular achievements of aeronautics,[14] its inherent dangers have been magnified by its growth.[15] In fact, reported casualties in the United

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U. S. 552, 26 Sup. Ct. 144 (1905); Laurel Hill Cemetery v. San Francisco, 216 U. S. 358, 30 Sup. Ct. 301 (1909); Noble State Bank v. Haskell, 219 U. S. 104, 31 Sup. Ct. 471 (1911).

[12] Police power is not limited to regulations for promotion of public health, safety or morals alone, but extends to public convenience, notwithstanding it may interfere with the enjoyment of private property. Novelty is no argument against such regulations. See Village of Carthage v. Frederick, 122 N. Y. 268, 25 N. E. 480 (1890); People *ex rel.* Tyroler v. Warden of City Prison of City of New York, 157 N. Y. 116, 51 N. E. 1006 (1898); People v. C. Klink Packing Co., 214 N .Y. 121, 108 N. E. 278 (1915); Edgar A. Levy Leasing Co., 230 N. Y. 634, 130 N. E. 923 (1921); Wulfsohn v. Burden, 241 N. Y. 288, 150 N. E. 120 (1925).

[13] See article by John F. O'Ryan, *Limitation of Aircraft Liability* (1932) 3 AIR L. REV. 35.

[14] For excellent short summaries of the growth of industry see: "Commercial Aviation," The Conference Board Bulletin, Oct. 15, 1929; "The Aviation Industry," the Index, New York Trust Co., March, 1932; Wall Street Journal, June 27, 1932, 9; "Aviation and National Industry," United States Aviation Magazine, March 8, 1930.

[15] A short statistical tabulation of the industry in the United States indicates this growth:

SUMMARY OF AIR TRANSPORT OPERATIONS

| *Year* | *Miles Flown* | *Passengers* |
|---|---|---|
| 1926 | 4,608,880 | 5,782 |
| 1927 | 5,242,839 | 12,594 |
| 1928 | 10,472,024 | 52,934 |
| 1929 | 20,242,891 | 165,263 |
| 1930 | 28,833,967 | 385,910 |
| 1931 | 43,305,478 | 457,753 |

— AIRCRAFT YEAR BOOK FOR 1932, AERONAUTICAL CHAMBER OF COMMERCE OF AMERICA, 519.

States have increased twofold within four years.[16]

Although some may urge that insufficient experience exists upon which to base aerial legislation, still the need to protect the public is so well known that it forms a more than proper groundwork for laws in this field. It was, of course, this need that promoted the instant law. Whether the desired end will be accomplished thereby rests with the future.

FLORENCE S. HERMAN.

ADVERSE POSSESSION—REDUCTION IN TIME REQUIRED.—In the laws of New York for 1932, the legislature has seen fit to amend the Civil Practice Act in relation to adverse possession under a written instrument or judgment.[1] Section 37 now provides that "where the occupant or those under whom he claims entered into the possession of the premises under claim of title, exclusive of any other right, founding the claim upon a written instrument, as being a conveyance of the premises in question, or upon the decree or judgment of a competent court, and there has been a continued occupation and possession of the premises included in the instrument, decree, or judgment, or of some part thereof, for *fifteen years,* under the same claim, the premises so included are deemed to have been held adversely * * *." Section 262 allows a presumption in favor of the one possessing legal title but such presumption is deemed to have been overcome when the premises have been held and possessed adversely to the title for *fifteen years* before the commencement of the action. The adoption of the fifteen-year limit has been applied to sections 34-5 and 36 also.

It is quite evident from this legislation that a more or less radical change has been inaugurated in limiting to fifteen years action previously allowed twenty. That this modification is the expression of more progressive views on this phase of the law can hardly be denied. The development of the law in this regard has been slow. In fact, the trend in the beginning was to increase instead of decrease the period in which to bring actions against one holding adversely.[2] The earliest legislation is to be found in the statute of 20 Henry 3rd, c. 8, in which an action could not be maintained if the person claiming adversely had so held from the reign of Henry 2d, which was a period of seventy years. In 1275, this period was increased to eighty years by 3 Ed. 1st, c. 39, providing as it did "that the adverse possession barring the action was fixed from the time of Richard the First."[3] This was the duration of time for such actions until the

[16] "Accidents in Civil Aeronautics," *ibid.* p. 34.

[1] GEN. LAWS OF N. Y. (1932) cc. 261-2-3-4-5.
[2] DIGBY, HISTORY OF THE LAW OF REAL PROPERTY (5th ed. 1898).
[3] WALSH, LAW OF REAL PROPERTY (2d ed. 1927).