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Aircraft Law of Illinois—Comparison with Uniform State Law

Recent Legislation

AIRCRAFT LAW OF ILLINOIS—COMPARISON WITH UNIFORM STATE LAW.—The evolution of the airplane from an inherently dangerous instrumentality to a common means of transportation has opened a new field of law, created new problems, and made necessary new legislation. In August, 1922, the National Conference of Commissioners on Uniform State Laws approved of the present Uniform State Law for Aeronautics, and it has since been adopted, with slight variations, in more than one-fourth of the states and in Hawaii. In the face of the growing sentiment in favor of this law, Illinois has adopted one of a radically different design. Laws 1928, 85, amended by Laws 1929, 172. A comparison of the two is submitted to show their relative values.

Sec. 2 of the Uniform State Law provides that sovereignty in the space above the state rests in the state. The new Illinois statute contains no provision covering this point. Since the proposition is not likely to be doubted, the pronouncement in the Uniform Act can hardly make much difference, and the Missouri enactment of the Uniform State Law has completely omitted this provision. Laws 1929, 122. Sec. 3 of the Uniform Law provides that the ownership of the space above the lands and waters of the state is vested in the owners of the surface beneath, subject to a right of flight. The Illinois statute makes no pronouncement to this effect. But the Uniform Law does not attempt to give the landowner rights which he did not have before; its purpose was rather to deprive him of some. Legislative pronouncement cannot destroy title. If the right of flight does not exist without statutory enactment, there is great doubt whether it will exist with such enactment. Logan, AIRCRAFT LAW—MADE PLAIN (1928) 19-21. Therefore this provision of the Uniform State Law for Aeronautics is of little value. Likewise, the provision that landings made upon private property without the owner's consent are unlawful unless required by necessity causes no material change in the existing law, and might well have been omitted. This also applies to the sections declaring that crimes and torts committed and contracts made over the state shall be determined by the laws of the state, for it is well settled that the admiralty law will not apply. *The Crawford Bros. No. 2* (D. C. W. D. Wash. 1914), 215 F. 269; *In re Reinhardt* (1921), 232 N. Y. 115, 133 N. E. 371.

The one important matter for which the Uniform State Law provides and the Illinois statute makes no provision is that of liability for injuries caused by airplanes to persons and property beneath. The Uniform Law provides absolute liability except in cases where the injured party has been contributorily negligent. This is in accord with the British Air Navigation Act of 1920. Under the Illinois law it would be up to the courts to decide whether the ordinary principles of negligence should ap-

ply, the doctrine of *res ipsa loquitur* followed, or airplanes considered dangerous instrumentalities and the owners thereof subject to absolute liability. Many authorities favor the imposition of absolute liability. Hazeltine, THE LAW OF THE AIR (1911) 86; Logan, *op. cit.* 48-50. But a number of writers agree that since airplanes should no longer be considered imminently dangerous instrumentalities, the application of the doctrine of *res ipsa loquitur* is the better policy. Note (1923) 57 AMER. L. REV. 97; 6 ILL. L. QUARTERLY 71; 12 LAW NOTES 108. For a good discussion of the problem see Zollman, THE LAW OF THE AIR (1927) 68.

Flight is declared by the Uniform Law to be lawful unless at such a low altitude as to interfere with the then existing use of the surface, or unless it is so conducted as to be imminently dangerous to persons or property lawfully on the surface beneath. However excellent this may appear as a theoretical legal principle, it is apparent that the determination of the minimum legal altitude in each case would present a difficult problem. The Illinois statute has avoided this in a sensible manner by adopting the Federal regulations in the Air Commerce Regulations of 1928 which pertain to the height of flight. They provide that no flight shall be made over congested parts of cities and towns except at a height sufficient to permit a reasonable safe emergency landing, which in no case shall be less than 1,000 feet, and no flight shall be made elsewhere at a height less than 500 feet, except where indispensable to an industrial flying operation. The Federal regulations prohibiting acrobatic flying over cities, assemblies, airports, with passengers at any height, and otherwise at a height under 1,500 feet are also followed. It is suggested that the results under this rule will be far more satisfactory than under a provision prohibiting flight "imminently dangerous to persons or property lawfully on the land or water beneath."

But the Illinois statute goes a step farther than the Uniform State Law for Aeronautics in requiring that all persons operating aircraft within the state have a license issued by the authority of the Secretary of Commerce of the United States applicable to the type of flying they do. This is by far the most valuable provision of the statute because it subjects all pilots to the Department of Commerce rules of aeronautics, for breach of which their licenses will be revoked. It must be understood that at least part of the Federal regulations are now in effect in all states, without any enactment by the states. Congress has the power to regulate intrastate commerce where such regulation is necessary to prevent interference with interstate commerce. Such regulation is not an invasion of the states' rights. *Buck v. Kuykendall* (1924), 267 U. S. 307; *State of New York v. United States* (1921), 257 U. S. 591. Therefore all regulations which must be complied with by planes in intrastate flying to prevent interference with interstate commerce are already in force all over the country. These include rules as to taking off, landing, lighting for night flying, conduct of planes passing in the air and probably a number of others; but it is doubtful whether a large number of the regulations of the Department of Com-

merce fall within this rule. By requiring that all pilots in the state have Federal licenses, the problem is solved.

Other states have from time to time enacted statutes somewhat similar to the new Illinois statute, but Illinois is unique in having so whole-heartedly given the control of aircraft to the Federal government. If a few other states followed its example we should have two entirely distinct movements toward unity in air law, one championed by the Uniform State Law, urging that the states of this country should assert their individual powers over aeronautics in one voice, and the other initiated by the Illinois statute, favoring the enactment of only those statutes which subject all flying to the same rules which govern interstate flight. J. A. G., '31.

BANKS—TRUSTEE FOR PROCEEDS OF ITEMS SENT FOR COLLECTION.—It is provided in a recent Missouri statute that "when a drawee or payor bank has presented to it for payment an item or items drawn upon or payable by or at such bank and at the time has on deposit to the credit of the maker or drawer an amount equal to such item or items and such drawee or payor shall fail or close for business as above, after having charged such item or items to the account of the maker or drawee thereof or otherwise discharged his liability thereupon, but without such item or items having been paid or settled for by the drawee or payor either in money or by an unconditional credit given on its books or on the books of any other bank which has been requested or accepted so as to constitute such drawee or payor or other bank debtor therefor, the assets of such drawee or payor shall be impressed with a trust in favor of the owner or owners of such item or items for the amount thereof or for the balance payable upon a number of items which have been exchanged, and such owner or owners shall be entitled to a preferred claim upon such assets, irrespective of whether the fund representing such item or items can be traced and identified as part of such assets or has been intermingled with or converted into other assets of such failed bank." It continues by providing for such a preference in the assets of a bank other than the drawee or payor which shall fail after collecting items sent to it for that purpose, but before actual payment by it to the owner of such items. Mo. Laws 1929, 208, sec. 11.

Since the decision of *First National Bank of Lapeer v. Sanford* (1895), 62 Mo. A. 394, the courts of this state have applied substantially the rule expressed above. "The Missouri doctrine thus appears to be that in the absence of intention to the contrary, as designated by a reciprocal accounts arrangement to send paper for collection and remittance creates the relationship of principal and agent which is not changed by an act of the agent in contravention of his authority by the method of collection, credit, attempted remittance or by mixing the proceeds with general assets, provided that funds sufficient to constitute a res exist in the insolvent bank or solvent correspondent banks at the time of the charge and of insolvency." Note (1929) 14 ST. LOUIS L. REV. 406. This view is opposed to that an-