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THE LANDOWNER *VERSUS* THE AIRPORT*

I. MARTIN LEAVITT**

THIS subject is one of the most interesting in the field of aeronautical law, and of rapidly increasing importance. All will agree that the airplane is far beyond the experimental stage and, as was said by Chief Judge Cardozo, in *Hesse v. Rath*,

“Aviation is today an established method of transportation. The future, even the near future, will make it still more general. The city that is without the foresight to build the ports for the new traffic may soon be left behind in the race of competition. Chalcedon was called the city of the blind, because its founders rejected the noble site of Byzantium lying at their feet. The need for vision of the future in the governance of cities has not lessened with the years. The dweller within the gates, even more than the stranger from afar, will pay the price of blindness.”¹

The growth of aviation during the past few years has been remarkable but, since the termination of the recent war, its expansion has far exceeded all expectations. During the first seven months of 1946, the domestic airlines of the United States carried 6,419,238 revenue passengers for a distance of 3,177,006,595 revenue passenger miles. This was an increase of 90.26 and 80.17 per cent respectively over the comparable period in 1945. This is amazing, but it has been predicted that by the end of 1946 the revenue passenger miles flown will reach six billion. To this add an estimated one billion cargo ton miles to be flown by the cargo carriers, most of whom have recently entered the field, and we begin to realize the tremendous proportions which commercial aviation has assumed. These figures do not include private planes owned and operated by individuals, or those used at flying schools or activities of that nature.

Larger and faster planes are leaving the hangars of the manufacturers, and are being delivered to the commercial companies as rapidly as possible. The coming year will see many more planes in the sky than we ever dreamed would be there. Some experts are predicting an increase in the number of aircraft within the next ten years from thirty thousand to four hundred thousand.² And, based on the number of airplanes presently on order, and the estimated delivery dates of

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¹ 249 N. Y. 436, 164 N. E. 362 (1928).

² Civil Aeronautics Administration, *CIVIL AVIATION AND THE NATIONAL ECONOMY* (1945).

these planes, it is entirely possible that by the end of 1947 the total seating capacity of all the airplanes in operation in the United States will exceed the total seating capacity of all the railroads. This statement, as well as the others is astounding, but it must be realized that many of the airplanes scheduled for delivery in 1947 will have more passenger seats than the present railroad day coach.

As the planes get larger and the numbers increase, it logically and necessarily follows that our existing airport facilities must be extended and additional airports constructed. In 1926 there were approximately four hundred airfields in the United States listed "as reliable despite rotation of crops." About three of these had paved runways, none of which exceeded three thousand feet in length. Today this number of four hundred has been increased to more than four thousand—many with paved runways, lighting equipment for night operations, and with control towers to direct traffic. These four thousand airfields are, however, as inadequate in number as the four hundred were in 1926. Aviation has advanced so rapidly that there is still the same need for more and more airports in convenient locations as there was twenty years ago.

The seventy-ninth Congress recognized the need for additional airport facilities and passed a law known as the Federal Airport Act.⁹ Without going into detail as to how the funds may be obtained, it will suffice to say that, under this act, the Civil Aeronautics Administrator is the custodian of a five-hundred-million-dollar fund to be apportioned among the several states and the territories of Alaska, Hawaii, and Puerto Rico, for the development of a national airport system. With these federal funds available, an airport program will soon get underway throughout the entire nation, and many communities presently without facilities will build airports commensurate with their needs. It has been said that this act will do for aviation what the federal highway program did for the automobile industry after World War I.

As construction is completed and the facilities placed in operation many additional legal controversies will arise between the landowners on the one hand and the airport owners, or the people who own and fly the planes, on the other.

To a member of the public an airport is clearly in the public interest and, bringing to the surrounding area a modern and accepted mode of transportation, is the symbol of a progressive community. To a landowner in the vicinity of an airport, however, it may, from his point of view, be a nuisance and definitely interfere with the quiet and peaceful

⁹ 60 STAT. 170 (1946), 49 U. S. C. A. §§1101-1119 (Supp. 1946).

enjoyment of his property. He may complain of the noise and planes, either while on the ground or in the air; of the dust created by the terrific backwash of the propellers being turned by powerful engines; of the glare of high-powered airport lights or the landing lights on the planes; of the crowds which are normally attracted to an airport or from the fear and apprehension for his or his family's safety caused by low-flying planes, or a combination of several of these.

As larger airplanes with more powerful engines are placed in operation, the complaints of landowners will more often be concerned with noise and low-flying. The question of noise and low-flying is today one of the major topics of conversation among the residents of Alexandria, Virginia, located near the Washington National Airport, one of the largest and busiest airports in the world. And in Chicago, a petition bearing seven hundred signatures has been presented to the air carrier inspector of the Civil Aeronautics Administration threatening court action against the airlines serving the Chicago area unless the noise nuisance caused by incoming and outgoing planes is abated; the petitioners allege that the nervous strain from these operations has become unbearable. In Akron, Ohio, a hotly contested court action is being waged between the residents of a fashionable West Akron neighborhood, and the owner of a partially completed private airport; the residents are seeking to enjoin the completion of the airport because they claim that its operation will create a hazard to their homes and property, and the noise of the airplanes and the noise and dust raised in landings and take-offs will be a nuisance; the airport owner, on the other hand, denies these allegations and asserts that the location of the field is ideal for providing the area with a much needed private flying field and hangar space; at the present time, this trial has been recessed for several weeks in order that additional evidence may be collected.

As those who travel by air well know, the maximum noise from an airplane occurs when the plane is taking off because the engines are of necessity operating at full throttle. The same is true of low-flying. To land and take off the planes must travel at low altitudes while approaching or leaving the field. These two complaints are those most often heard, and are the ones for which more suits are being brought than for any other causes attributable to airport operations.

But all of the complaints which are voiced are not directed against the airport or the operator of the plane. Like every other controversy there is another side to it. The owner of the airport may object to the landowner using his property so as to interfere with the normal and safe operation of the airport. The landowner may cause great quantities of

smoke to pour from his chimneys creating a condition which may result in the cancellation of all flights into and out of the field because of poor visibility, or he may erect tall buildings, towers or poles which will create an equal safety hazard. In some cases these hazards, if permitted to continue, may make the entire airport absolutely worthless as far as its original and contemplated operation is concerned. Thus it readily can be seen that the owner of an airport must be accorded relief in certain instances if his airport is to survive.

The Civil Aeronautics Administration, whose duty it is to prescribe regulations to promote the safety of flights, has, among other things, established the minimum distance which obstructions must be from airports in order that planes may land or take off with safety. This regulation, known as the airport approach standards, provides that all airports, except those of a size suitable to accommodate only small personal planes, must have aerial approaches free from obstructions at least two miles from the ends of the runways in order that planes can descend or climb at the ratio of thirty feet horizontally to one foot vertically. If the weather is bad and the plane is required to use instruments to approach and land, then this ratio is increased to forty to one. Thus no obstruction within two miles of the airport in line with its runways can be higher, depending upon the type of operation proposed, than one thirtieth or one fortieth its distance from the end of the runways. In order for a pilot to meet the safety requirements in landing or taking off, an object fifty feet high, on the same elevation as the airport, located five hundred feet from the end of the runway reduces the usable length of the runway by one thousand feet, and under instrument conditions by fifteen hundred feet.

You can readily see that there are many real possibilities of conflict between the landowner and the airport pilot. These conflicts have raised, and will continue to raise, many interesting problems such as the preservation of private property rights of individuals as well as the preservation of airports, most of which are owned and operated by states or some subdivision thereof, and built with public funds.

For convenience of consideration these problems may well be stated in two questions. (1) Does the landowner to whom the operations of an airport or the low-flying of airplanes is objectionable, have cause of action for damages or injunctive relief against the owner of the airport or the pilot of the airplane, and (2) does the owner of the airport have recourse against a landowner who uses his property in such a manner as to create a hazard to the landing or taking off of airplanes, or in any other manner interferes with the proper use of the airport?

Turning to a consideration of the first of these questions, namely, whether or not an airport is a nuisance, it is well settled by the authorities that an airport, flying school, or landing field is not a nuisance *per se*, but it may very well become such if it is constructed in an unsuitable location or if its operation interferes unreasonably with the comfort of adjoining landowners.⁴ The question which then becomes apparent is when, or under what circumstances, will injunctive relief be granted to abate as nuisances certain airport operations? As the airplane and airport play such an important role in our every-day life and are becoming more important as aviation progresses, it may be said that the determination of whether or not a particular operation should be enjoined involves a balancing of interests between the landowner and the airport. In resolving such interests, the courts must consider the extent of the injury complained of by the landowner and balance that against the value of the airport to the public in the light of the universal acceptance of aviation.

In addition to this, the courts must further inquire as to the effect the granting of the relief prayed for will have on the present and future operations of the airport. If the balance of interests is in favor of the landowner, then the operation complained of will be declared a nuisance and relief granted; but if the balance is in favor of the airport, then the injuries complained of are justified and no nuisance has been created.

Examples of the circumstances under which the landowner would be entitled to relief are where the airport is privately owned and privately operated, but its normal and proper operations extensively interfere with the nearby landowner's quiet and peaceful enjoyment of his property; or where the injury to the landowner could easily be avoided or lessened. In both cases damages and injunctive relief should be granted. A distinction, however, must be made in regard to the extent of the applicability of the injunction. In the first example, if the operations complained of could not be corrected in any manner so as to eliminate the alleged injury, then the entire airport should be abated. In the second example, only those operations specifically complained of should be enjoined.

There are situations, however, where the balance of interests is in favor of the airport and relief to the landowner will be denied. An example of this is where the airport is suitably located, properly operated

⁴ *Swetland v. Curtiss Airports Corp.*, 55 F. (2d) 201 (C. C. A. 6th, 1932); *Batcheller v. Commonwealth*, 176 Va. 104, 10 S. E. (2d) 529 (1940); *Delta Air Corp. v. Kersey*, 193 Ga. 862, 20 S. E. (2d) 245 (1942); *Thrasher v. Atlanta*, 178 Ga. 514, 173 S. E. 817 (1934); *Vanderslice v. Shawn*, 27 A. (2d) 87 (Del. Ch. 1942); *Warren Township School Dist. No. 7 v. Detroit*, 308 Mich. 460, 14 N. W. (2d) 134 (1944).

and is owned by the public, or, if privately owned, serves a great public need, but the landowner alleges that the low-flying, noise, dust or other complaints incident to airport operations are nuisances and seeks damages and an injunction. If the airport were being operated properly and none of the injuries complained of could be corrected without interfering with the safety and efficiency of the airport, then relief would be denied to the landowner and his right to the quiet and peaceful enjoyment of his property would be subordinated to the public interest and welfare.

*Smith v. New England Aircraft Company*⁵ was almost the first, if not the very first, case in which landowners sought to enjoin the operation of airplanes over their property alleging that the noise created constituted a nuisance. In denying the injunctive relief sought, on the basis that the flights complained of were over densely wooded areas and the noise, proximity and number of aircraft had not been such as to be harmful to the health or comfort of ordinary people, the court said, "The law affords no rigid rule to be used as a test in all instances of alleged nuisance. It is elastic. It requires only that which is fair and reasonable in all the circumstances."⁶

However, in several cases injunctive relief has been granted in connection with the use of an airport or the operations in and out of it.⁷ And, in at least two cases, the entire operations of the airport have been abated.⁸ In another case, the court held that low-flying was a nuisance to adjoining landowners which entitled them to damages if not injunctive relief.⁹ And in a very recent case the court warned a city that the proposed operation of a contemplated airport might be a nuisance because of its proximity to three schools, a church and an U. S. O. building.¹⁰

In deciding these cases, the courts have indicated that the public interest in the operation of airports has strongly influenced their decisions, although in each instance they have based their findings on other grounds. In each case it has been held that only the unusual, unneces-

⁵ 270 Mass. 511, 170 N. E. 385 (1930).

⁶ *Ibid.*

⁷ *Burnham v. Beverly Airways, Inc.*, 311 Mass. 628, 42 N. E. (2d) 575 (1942); *Thrasher v. Atlanta, Vanderslice v. Shawn*, both *supra* n. 4.

⁸ *Swetland v. Curtiss Airports Corp.*, 55 F. (2d) 201 (C. C. A. 6th, 1932) (construction and operation of privately owned airport enjoined at request of nearby residential property owners); *Gay & Rush Hospital v. Taylor*, 1934 U. S. Av. Rep. 146 (Pa. Common Pleas Ct. 1932) (operations of privately owned airport enjoined at request of country estate owners and hospital).

⁹ *Delta Air Corp. v. Kersey*, 193 Ga. 862, 20 S. E. (2d) 245 (1942).

¹⁰ *Warren Township School District No. 7 v. Detroit*, 308 Mich. 460, 14 N. W. (2d) 134 (1944).

sary and unreasonable operation may be classed as a nuisance for which relief may be had and, in most instances, the courts have found that the operations complained of were such as could be classed as incidental to the ordinary and necessary functions of an airport and thus not nuisances. But if the operation complained of can be corrected the court will enjoin that operation and award the proper damages, but it will not abate the entire project. This is evident in the 1942 Georgia case of *Delta Air Corporation v. Kersey*,¹¹ wherein the petitioner complained that the city of Atlanta had constructed and maintained its airport in such a manner "as to require such low-flying over the home of petitioner as to constitute an unreasonable interference with the health of petitioner and his family." In finding that the lower court had incorrectly sustained the city's demurrer and in remanding the case for trial, the supreme court said, "From all that appears the conditions causing the low-flying may be remedied, but if on the trial it should appear that it is indispensable to the public interest that the airport should continue to be operated in its present condition, it may be that the petitioner should be denied injunctive relief."¹²

No problem is presented where the airplane actually comes in contact with the land or any structures thereon. This is clearly a trespass and the operator is held accountable for all damages which may result. A problem is presented, however, where the airplane does not come into physical contact with any of the landowner's possessions, but merely travels through the airspace above his property. The question with which we are then confronted is whether old time-honored common law concepts of ownership and trespass shall govern or whether the new conditions of life incident to the development of air transportation will give rise to new legal principles applicable to this situation.

Three hundred years ago when the law of real property was in the process of development in England, and every effort was being made to protect the landowner's quiet and peaceful enjoyment of his property, Lord Coke wrote that "he who owns the land owns up to the sky." At that time the question of ownership of airspace, as we think of it today, was purely academic, because *Baten's Case*,¹³ in which this now famous maxim was first used judicially, held only that projecting eaves from which rain water fell upon the plaintiff's land constituted a nuisance. Although this maxim was pure dictum in *Baten's Case*, nevertheless it was subsequently followed by the courts and became

¹¹ 193 Ga. 862, 20 S. E. (2d) 245 (1942).

¹² *Id.* at 872, 20 S. E. (2d) at 251.

¹³ 9 Co. 516 (1611).

firmly entrenched in our law. It was a good rule of thumb, so to speak, and it did have logic in its favor because the only situations then confronting the courts dealing with the invasion of the air space above the land without contact with its surface were those concerning projecting eaves of a building, leaning walls, thrusting of an arm across a boundary line, and like situations, all of which occurred near the earth and actually interfered with the quiet and peaceful enjoyment of the surface thereof. Since the advent of the airplane, however, the impracticability of the application of Lord Coke's words of wisdom has become apparent.

An examination of the authorities wherein the "*ad coelum*" maxim has been applied, reveals that this rule has not been given a literal application by the courts with respect to airspace ownership in the field of air navigation. In his concurring opinion in *Northwest Airlines v. Minnesota*,¹⁴ Mr. Justice Jackson stated:

"The ancient idea that landlordism and sovereignty extend from the center of the world to the periphery of the universe has been modified. Today the landowner no more possesses a vertical control of all the air above him than a shore owner possesses horizontal control of all the sea before him. The air is too precious as an open highway to permit it to be 'owned' to the exclusion or embarrassment of air navigation by surface landlords who could put it to little real use."¹⁵

In *Hinman v. Pacific Air Transport*¹⁶ the court analyzed the rights in airspace as follows:

"The air, like the sea, is by nature incapable of private ownership, except in so far as one may actually use it. This principle was announced long ago by Justinian. It is in fact the basis upon which practically all of our so-called water codes are based.

"We own so much of the space above the ground as we can occupy or make use of, in connection with the enjoyment of our land. This right is not fixed. It varies with our varying needs and is co-extensive with them. The owner of land owns as much of the space above him as he uses, but only so long as he uses it. All that lies beyond belongs to the world.

"When it is said that man owns, or may own, to the heavens, that merely means that no one can acquire a right to the space above him that will limit him in whatever use he can make of it as a part of his enjoyment of the land. To this extent his title to the air is paramount. No other person can acquire any title or exclusive right to any space above him.

¹⁴ 322 U. S. 292, 64 S. Ct. 950, 88 L. ed. 1283 (1944).

¹⁵ *Id.* at 302.

¹⁶ 84 F. (2d) 755 (C. C. A. 9th, 1936), *cert. denied* 300 U. S. 654, 57 S. Ct. 431, 81 L. ed. 865 (1937).

“Any use of such air or space by others which is injurious to his land, or which constitutes an actual interference with his possession or his beneficial use thereof, would be a trespass for which he would have remedy. But any claim of the landowner beyond this cannot find a precedent in law, nor support in reason.”¹⁷

When it first became apparent that airplanes were being accused by landowners of committing trespasses, a definite rule had to be established to supersede the ownership to the sky theory. The courts discarded Lord Coke's maxim once and for all by holding that the air was free above certain altitudes as fixed by federal and state statutes; and, in the absence of such statutes, that the landowner owns so much of the airspace above his property as he could effectively use in the enjoyment of such property, and any flights of aircraft within such limits might be considered a nuisance to the use to which the property was then being put, or, in some jurisdictions, a technical trespass.

Thus a major issue is presented. Should a landowner have any remedy against low-flying aircraft if such flights cause him no harm? The jurisdictions which have had this particular problem to determine are divided into two schools of thought which may be classed as the technical trespass and nuisance schools. These opposing theories are ably discussed by the supreme judicial court of Massachusetts in *Smith v. New England Aircraft Company*,¹⁸ as modified by *Burnham v. Beverly Airways, Inc.*,¹⁹ and by the Circuit Court of Appeals for the Sixth Circuit in *Swetland v. Curtiss Airports Corporation*.²⁰ The technical trespass advocates set the limit of ownership of airspace at the height to which the landowner may effectively and reasonably use it whereas the nuisance proponents set this limit at the height below which airplanes would annoy or injure the landowner in the quiet and peaceful enjoyment of his property. In the technical trespass jurisdictions, a trespass action for nominal damages would be sustained even though there was no actual interference with property rights and if such flights continue they could be enjoined. In the nuisance jurisdictions, however, actual damages must be proven before any relief will be granted.

The Supreme Court, in the case of *United States v. Causby*,²¹ had the question of ownership of airspace squarely presented to it. The facts of this case are extremely interesting, and should be noted in some detail because no doubt quite similar facts will be presented in future cases in-

¹⁷ *Id.* at 758.

¹⁸ 270 Mass. 511, 170 N. E. 385 (1930).

¹⁹ 311 Mass. 628, 42 N. E. (2d) 575 (1942), cited *supra* n. 7.

²⁰ 55 F. (2d) 201 (C. C. A. 6th, 1932) cited *supra* n. 4.

²¹ 66 S. Ct. 1062, 90 L. ed. 971 (U. S. 1946).

volving low flying. Although this case concerns an action against the federal government, nevertheless the principles involved may as well be applicable to civil airplanes.

The Causbys owned two and eight-tenths acres near an airport outside of Greensboro, North Carolina. On this property were a dwelling house, a barn, and various out-buildings used mainly for raising chickens. The end of the airport's northwest-southeast runway was 2,220 feet from the barn and 2,275 feet from the house. In landing and taking off, the planes passed over the Causby property at 83 feet, which was 67 feet above the house, 63 feet above the barn and 18 feet above the highest tree. In May, 1942, the United States leased this airport for use by various types of military aircraft. These planes, including four-engined heavy bombers, other planes of the heavier type, and fighter planes frequently passed over the Causby property in considerable number and rather close together. They came close enough at times to appear barely to miss the tops of the trees and at times so close to the tops of the trees as to blow the old leaves off. The noise was startling, and at night the glare from the planes' lights brightly illuminated the place. As a result of the noise and lights, the Causbys were forced to abandon their poultry business. Many of the chickens were killed by flying into the walls from fright and the productivity of those remaining fell off. In addition, the Causbys were frequently deprived of their sleep and the entire family became nervous and frightened.

This action was brought in the Court of Claims to recover seven thousand dollars for the alleged taking of the land and for damages to the poultry business. The Court of Claims held that the United States had taken an easement over the property under the Fifth Amendment of the Constitution and fixed the value of the property destroyed and the easement taken at two thousand dollars.²² In approving the Court of Claims' finding that there was a taking under the Fifth Amendment, but remanding the case in order that it might be determined whether the taking was permanent or temporary, the Supreme Court, in an opinion by Mr. Justice Douglas stated:

"It is ancient doctrine that at common law ownership of the land extended to the periphery of the universe—*Cujus est solum ejus est usque ad coelum*. But that doctrine has no place in the modern world. The air is a public highway, as Congress has declared. Were that not true, every transcontinental flight would subject the operator to countless trespass suits. Common sense revolts at the idea. To recognize such private claims to the airspace would clog these highways, seriously interfere with their control

²² 104 Ct. Cl. 342, 60 F. Supp. 751 (1945).

and development in the public interest, and transfer into private ownership that to which only the public has a just claim."²³

How, then, could the Supreme Court hold that the instant case was a taking of property by the United States? To answer, we must go back to the Air Commerce Act of 1926,²⁴ as amended by the Civil Aeronautics Act of 1938.²⁵ Under these statutes the United States has "complete and exclusive national sovereignty in the airspace" over this country. They grant any citizen of the United States "a public right of freedom of transit in air commerce through the navigable airspace of the United States." "Air Commerce" is defined as including "any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce," and "navigable airspace" is defined as "airspace above the minimum safe altitudes of flight prescribed by the Civil Aeronautics Authority." The minimum safe altitudes which have been prescribed are five hundred feet during the day and one thousand feet at night for air carriers and from three hundred feet to one thousand feet for other aircraft, depending on the type of plane and the character of the terrain. It will be noted that no provision is made for planes landing or taking off. The absolute minimum which has been set is three hundred feet, and the airplanes complained of in the instant case were flying at eighty-three.

The further question arises, suppose the Civil Aeronautics Administration should make a regulation providing for safe altitudes for landing or taking off? It will be recalled that the airport approach standards were previously mentioned wherein planes landing or taking off must descend or climb at the ratio of thirty feet horizontally to one foot vertically, with this ratio being increased to forty to one if instruments are used. But this is not included in the prescribed safe altitudes. If the administration did fix such takeoff or landing altitudes then the validity of such regulation, depending upon the altitudes fixed, would be for the courts, and if they were held proper, then any airspace needed for landings or takeoffs could be appropriated, and flights which were so close to the land as to render it uninhabitable would be immune.

What the Civil Aeronautics Administration will do remains to be seen, but it is readily apparent that the holding in the Causby case will require some action by it to provide for landings and takeoffs which are essential to flying. Mr. Justice Douglas did state, however, that "flights over private land are not a taking unless they are so low and so frequent

²³ 66 S. Ct. at 1065 (1946).

²⁴ 44 STAT. 568 (1927), 49 U. S. C. §171 (1934).

²⁵ 52 STAT. 973 (1938), 49 U. S. C. §401 (Supp. 1939).

as to be a direct and immediate interference with the enjoyment and use of the land."²⁶ This holding is merely a reiteration of the nuisance theory, requiring actual damages before any recovery can be had.

We come now to the second major problem, namely, whether or not the owner of the airport has any recourse against the landowner.

In constructing a new airport or extending present ones, the potential hazards may be eliminated by the purchase or acquisition of sufficient surrounding property. This would be the only manner in which existing obstructions could be legally removed. It would not be economically feasible however, to purchase enough property to prevent the future erection of structures which may be considered as hazards to the safe operation of the airport. In fact, this is not necessary.

As has always been held by the courts, a landowner may use his property in such manner as would be necessary to its enjoyment. However, the courts will enjoin the erection and maintenance of obstructions to normal airport operations if such obstructions were erected for spite or with the intent to interfere with the necessary low-flying in and out of the airport. In cases of this nature, the courts have said that the erection of obstructions with the intent to make the operations of the airport dangerous does not constitute a proper use and enjoyment of the landowner's property and would not be necessary for its enjoyment.

If the obstructions are erected in good faith and without any ulterior motive, then the courts have refused to grant relief to the airport. And it may be possible that such obstructions may cause the operations of the airport to be so hazardous that such operations must be suspended.²⁷

To prevent this very situation from arising the state police power, under certain conditions and with certain limitations, may be invoked. This may be accomplished by city or county zoning regulations or by statewide zoning regulations having as their only purpose the prohibition of airport hazards. These zoning regulations have been advocated by the Civil Aeronautics Administration, but like any other exercise of the state police power, these regulations must be reasonable in their application to private property rights. If they are not reasonable they will undoubtedly be held invalid by the courts. Time will not permit an analysis of the legal principles governing the reasonableness of police regulations, but the problem seems to be again the balance of interests between aviation and the rights of the private property owner.

²⁶ 66 S. Ct. at 1068.

²⁷ Cf. FIKEL, *LAW OF AVIATION* (2d ed. 1945) 100, 101.

Thus it presently appears that a reasonable zoning law is probably the most effective means of protecting the approaches to airports.

In conclusion, the answers to the problems which have been discussed must be left to the legislatures, both federal and state, and to the courts. From the decisions of the courts, however, it appears that they are not as concerned with the protection of the rights of the landowner or the owner of the airport as they are with the great public interest attendant upon the advent of the airplane and its development into a new mode of transportation.