

ON APPEAL FROM THE SUPREME COURT
OF CANADA.

IN THE MATTER OF A REFERENCE AS TO THE RESPECTIVE LEGISLATIVE
POWERS UNDER THE BRITISH NORTH AMERICA ACT, 1867, OF THE
PARLIAMENT OF CANADA AND THE LEGISLATURES OF THE PROVINCES
IN RELATION TO THE REGULATION AND CONTROL OF AERONAUTICS IN
CANADA.

BETWEEN

THE ATTORNEY-GENERAL OF CANADA - - - *Appellant*

AND

THE ATTORNEY-GENERAL OF THE PROVINCE OF
ONTARIO, THE ATTORNEY-GENERAL OF THE PROVINCE
OF QUEBEC AND THE ATTORNEY-GENERAL OF THE
PROVINCE OF MANITOBA - - - - - *Respondents.*

RECORD OF PROCEEDINGS.

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OF CANADA.

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RECORD OF PROCEEDINGS.

No. 1

Order of Reference by the Governor General in Council

P.C. 367

No. 1

Order of
Reference
by the
Governor
General in
Council,
15th April,
1929.

CERTIFIED COPY of a Report of the Committee of the Privy Council approved by
The Deputy of His Excellency the Governor General on the 15th April, 1929.

The Committee of the Privy Council have had before them a report, dated 27th February, 1929, from the Minister of Justice, submitting that by the Air Board Act, Chapter 11 of the Statutes of Canada, 1919, (1st session), (which, with amendments thereto, is consolidated in the Revised Statutes of Canada, 1927, under the title of
10 "The Aeronautics Act," Chapter 3 of the said Revised Statutes), provision was made by the constitution under the authority thereof of a Board on Aeronautics (called the Air Board) and the vesting in the Board of the administrative duties and powers thereby given to it (which duties and powers were by the National Defence Act, 1922, Chapter 34 of the Statutes of Canada, 1922, vested, by way of transfer, in the Minister of National Defence), and by the Air Regulations, 1920, and amendments thereto, approved by the Governor in Council under the authority of the said Act, for the regulation and control in a general and comprehensive way of aerial navigation within Canada and over the territorial waters thereof.

The Minister apprehends that this legislation was enacted by Parliament by
20 reason not only of the expediency of making provision for the regulation of a service essentially important in itself as touching closely the national life and interests, but also of the necessity of making provision for performing the obligations of Canada, as part of the British Empire under the Convention relating to the regulation of Aerial Navigation which, drawn up by a Commission constituted by the Peace Conference at Paris in 1919, was, on 13th October of that year, signed by the representatives of 26 of the Allied and Associated Powers including Canada.

This Convention was ratified by His Majesty on behalf of the British Empire on 1st June, 1922, and is now in force, as the Minister is informed, as between the British Empire and 17 other States.

30 The Minister observes that the Air Regulations, 1920, conform in essential particulars to the provisions of the said Convention, and are designed to give effect to the stipulations thereof in discharge of the obligations of Canada, as part of the British Empire, towards the other contracting States.

The Minister states that at the conference at Ottawa between representatives of the Dominion and the several Provincial Governments in the month of November, 1927, the representatives of the Province of Quebec raised a question as to the

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 Order of
 Reference
 by the
 Governor
 General in
 Council,
 15th April,
 1929.
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legislative authority of the Parliament of Canada to sanction regulations for the control of aerial navigation generally within Canada, at all events in their application to flying operations carried on within a Province; and it was agreed that the question so raised was a proper question for the determination of the Supreme Court of Canada.

The Committee, therefore, on the recommendation of the Minister of Justice, advise that Your Excellency may be pleased to refer the following questions to the Supreme Court of Canada for hearing and consideration pursuant to the provisions of section 55 of the Supreme Court Act, R.S.C., 1927, chapter 35:—

1. Have the Parliament and Government of Canada exclusive legislative and 10 executive authority for performing the obligations of Canada, or of any province thereof, under the Convention entitled "Convention relating to the Regulation of Aerial Navigation"?

2. Is legislation of the Parliament of Canada providing for the regulation and control of aeronautics generally within Canada, including flying operations carried on entirely within the limits of a province, necessary or proper for performing the obligations of Canada, or of any province thereof, under the Convention aforementioned, within the meaning of section 132 of the British North America Act, 1867?

3. Has the Parliament of Canada legislative authority to enact, in whole or in part, the provisions of section 4 of the Aeronautics Act, chapter 3, Revised Statutes 20 of Canada, 1927?

4. Has the Parliament of Canada legislative authority to sanction the making and enforcement, in whole or in part, of the regulations contained in the Air Regulations, 1920, respecting—

- (a) The granting of certificates or licenses authorizing persons to act as pilots, navigators, engineers or inspectors of aircraft and the suspension or revocation of such licenses;
- (b) The regulation, identification, inspection, certification, and licensing of all aircraft; and
- (c) The licensing, inspection and regulation of all aerodromes and air stations? 30

E. J. LEMAIRE,

Clerk of the Privy Council.

No. 2
Order of Supreme Court for Inscription of Reference and
Directions

No. 2
—
Order of
Supreme
Court for
Inscription
of Reference
and
Directions,
18th May,
1929.

IN THE SUPREME COURT OF CANADA

Before the Right Honourable the Chief Justice of Canada.

SATURDAY, the 18th day of May, A.D. 1929.

IN THE MATTER of a reference as to the respective legislative powers under the British North America Act, 1867, of the Parliament of Canada and the legislatures of the Provinces in relation to the regulation and control of aeronautics in
10 Canada.

Upon the application of the Attorney-General of Canada for directions as to the inscription for hearing of the case relating to the above questions referred by His Excellency the Governor General, for hearing and consideration by the Supreme Court of Canada under the provisions of section 55 of the Supreme Court Act, R.S.C., 1927, upon hearing read the Order in Council, dated 15th April, 1929, (P.C. 367), setting forth the said questions, upon reading the affidavit of Charles P. Plaxton filed herein, and upon hearing what was alleged by counsel for the applicant;

IT IS ORDERED that the said case be inscribed for hearing at the head of the list for the October, 1929, session of the Supreme Court and filed on or before June 15,
20 1929.

AND IT IS FURTHER ORDERED that the Attorneys-General of the Provinces of Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Alberta and Saskatchewan be notified of the hearing of the argument of the said case by sending to each of them by registered letter on or before the 29th day of May, 1929, a notice of hearing of the said reference and a copy of the said Order in Council and of this Order.

AND IT IS FURTHER ORDERED that the said parties be at liberty to file factums of their respective arguments on or before the 15th day of September, 1929, and that they be at liberty to appear personally or by counsel upon the argument of the
30 said reference.

AND IT IS FURTHER ORDERED that notice of the said reference be given in the *Canada Gazette* on or before the 1st day of June, 1929.

Ent'd. Fol. 133,
O.B. No. 7,
G.A.A.

(Sgd.) FRANK A. ANGLIN,
C.J.S.C.C.

No. 3
—
Notice of
Hearing,
28th May,
1929.

No. 3
Notice of Hearing

IN THE SUPREME COURT OF CANADA

IN THE MATTER of a reference as to the respective legislative powers under the *British North America Act, 1867, of the Parliament of Canada and the legislatures of the Provinces in relation to the regulation and control of aeronautics in Canada.*

Take notice that the reference herein has, by order of the Right Honourable the Chief Justice of Canada, dated 18th May, 1929, been inscribed for hearing at the head of the list for the October, 1929, session of the Supreme Court, and you are hereby notified of the hearing of the said reference pursuant to the terms of the said order, copy of which is annexed hereto.

Dated at Ottawa, this 28th day of May, A.D. 1929.

W. STUART EDWARDS,
Solicitor for the Attorney-General of Canada.

To the Attorneys-General of the Provinces of Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Alberta and Saskatchewan.

No. 4
The Aeronautics Act, R.S.C., 1927, Chap. 3

No. 4
The
Aeronautics
Act, R.S.C.,
1927,
Chap. 3.

CHAPTER 3

An Act to authorize the control of Aeronautics

SHORT TITLE

1. This Act may be cited as the Aeronautics Act. 1919, c. 11, s. 1; 1922, c. 34, Short title. s. 7.

2. In this Act, unless the context otherwise requires, "Minister" means the "Minister." Minister of National Defence. 1922, c. 34, s. 7.

10 **3.** It shall be the duty of the Minister

Duties of
Minister.

- (a) to supervise all matters connected with aeronautics;
- (b) to study the development of aeronautics in Canada and in other countries, and to undertake such technical research as may be requisite for the development of aeronautics, and to co-operate with other institutions in carrying out such research;
- (c) to construct and maintain all Government aerodromes and air stations, including all plant, machinery and buildings necessary for their efficient equipment and upkeep;
- (d) to control and manage all aircraft and equipment necessary for the con-
20 duct of any of His Majesty's services;
- (e) to operate such services as the Governor in Council may approve;
- (f) to prescribe aerial routes;
- (g) to co-operate with other officers of His Majesty, and to assist in the carry-
ing out of any services under their jurisdiction which may require aerial
work of any nature, and to collaborate with the officers employed in exist-
ing air services of His Majesty in such extension of their present work as
the development of aeronautics may require;
- (h) to take such action as may be necessary to secure, by International Regu-
lation or otherwise, the rights of His Majesty in respect of His Government
of Canada in International Air Routes;
- 30 (i) to co-operate with the officers of his Department on all questions relating
to the air defence of Canada;

No. 4
—
The
Aeronautics
Act, R.S.C.,
1927,
Chap. 3.
—Continued

- (j) to co-operate with the Air staffs or authorities of other governments or countries for any purposes pertaining to air services;
- (k) to investigate, examine and report on all proposals for the institution of commercial air services within or partly within Canada or the limits of the territorial waters of Canada;
- (l) to consider, draft, and prepare for approval by the Governor in Council such regulations as may be considered necessary for the control or operation of aeronautics in Canada or within the limits of the territorial waters of Canada; and
- (m) to perform such other duties as the Governor in Council may from time to time impose. 1919, c. 11, s. 3; 1922, c. 34, s. 7.

Powers of
Minister
to make
regulations
with
approval
of Governor
in Council.

4. Subject to approval by the Governor in Council, the Minister shall have power to regulate and control aerial navigation over Canada and the territorial waters of Canada, and in particular, but not to restrict the generality of the foregoing terms of this section, he may, with the approval aforesaid, make regulations with respect to

- (a) licensing pilots and other persons engaged in the navigation of aircraft, and the suspension and revocation of such licenses;
- (b) the registration, identification, inspection, certification and licensing of all aircraft; 20
- (c) the licensing, inspection and regulation of all aerodromes and air-stations;
- (d) the conditions under which aircraft may be used for carrying goods, mails and passengers, or for the operation of any commercial service whatsoever, and the licensing of any such services;
- (e) the conditions under which goods, mails and passengers may be imported and exported in aircraft into or from Canada or within the limits of the territorial waters of Canada, or may be transported over any part of such territory;
- (f) the prohibition of navigation of aircraft over such areas as may be prescribed, either at all times or at such times or on such occasions only as may be specified in the regulation, and either absolutely or subject to such exceptions or conditions as may be so specified; 30
- (g) the areas within which aircraft coming from any places outside of Canada are to land, and the conditions to be complied with by any such aircraft;
- (h) aerial routes, their use and control;
- (i) the institution and enforcement of such laws, rules and regulations as may be deemed necessary for the safe and proper navigation of aircraft in Canada or within the limits of the territorial waters of Canada; and

(j) organization, discipline, efficiency and good government generally of the officers and men employed in the Air Force.

2. Any person guilty of violating the provisions of any such regulation shall be liable, on summary conviction, to a fine not exceeding one thousand dollars, or to imprisonment for any term not exceeding six months, or to both fine and imprisonment. Penalty.

3. All regulations enacted under the provisions of this Act shall be published in the *Canada Gazette*, and, upon being so published, shall have the same force in law as if they formed part of this Act. Publication of regulations.

10 4. Such regulations shall be laid before both Houses of Parliament within ten days after the publication thereof if Parliament is sitting, and if Parliament is not sitting, then within ten days after the next meeting thereof. 1919, c. 11, s. 4; 1922, c. 34, s. 7. To be laid before Parliament.

5. The Minister may employ such officers and men under this Act as may be authorized by the Governor in Council, under such conditions as to discipline and pay as the Governor in Council may determine, and may make such arrangements for their proper training, housing, board, clothing and equipment as may be deemed necessary and as may be approved by the Governor in Council. 1919, c. 11, s. 5; 1922, c. 34, s. 7. Officers and men.

20 6. Such officers, clerks and employees as may be necessary for the proper administration of this Act may be employed in the manner authorized by law. 1919, c. 11, s. 6; 1918, c. 12. Civil staff.

7. The Governor in Council may make regulations prescribing the compensation to be paid, the persons to whom, and the manner in which, such compensation shall be payable, for the death or injury resulting directly from a flight undertaken in the course of duty in the public service of Canada of any person employed in the public service of Canada, or employed under the direction of any department of the public service of Canada. Governor in Council may prescribe compensation payable for death or injury, directly resulting from a flight undertaken in course of duty.

30 2. Such regulations shall not extend to the payment of compensation for any death or injury in respect of which provision for the payment of compensation or a gratuity or pension is made by any other Act, unless the claimant elects to accept the said compensation, instead of the compensation, gratuity or pension under any such other Act. 1922, c. 6, s. 1. from a flight undertaken in course of duty.

8. All salaries mentioned herein and all expenses incurred under the provisions of this Act shall be paid out of such money as may be appropriated by Parliament therefor. 1919, c. 11, s. 7. Payment of expenses, etc., under Act.

No. 5
 AIR REGULATIONS, 1920

Approved by the Governor in Council on the 31st day of December, 1919, pursuant to the Air Board Act, 9-10 Geo. V, Chap. 11, and taking effect on the 17th day of January, 1920, being the date of their publication in the *Canada Gazette*, with amendments to 31st day of December, 1927.

PART I

SHORT TITLE AND INTERPRETATION

1. These regulations may be cited as The Air Regulations, 1920.

2. In these regulations, unless the context otherwise requires:— 10
- (a) "Aircraft" includes airships, flying machines, balloons (whether fixed or free) and kites. *See I.C., Annex D.**
 - (b) "Airship" means an aircraft designed to be lighter than air and having means of propulsion. *See I.C., Annex D.*
 - (c) "Balloon" means an aircraft designed to be lighter than air and having no means of propulsion. *See I.C., Annex D.*
 - (d) "Flying machine" means an aircraft designed to be heavier than air and having means of propulsion. *See I.C., Annex D.*
 - (e) "Flying" or "in flight" in relation to an aircraft means that the aircraft is off every supporting surface. *New.*
 - (f) "Under way" in relation to an airship means that the aircraft is not made fast to any object on land or water. *See I.C., Annex D.* 20
 - (g) "Taking off" in relation to a flying machine means and includes the act of abandoning the support of a surface capable of supporting it and the immediately preceding and following acts; in relation to an airship or free balloon it means and includes the act of freeing the airship or free balloon from restraint, and the immediately preceding and following acts. *New.*

*References are to the Convention relating to International Air Navigation.

(h) "Alighting" in relation to a flying machine means and includes the act of coming in contact with a surface capable of supporting flying machines, and the immediately preceding and following acts; in relation to an airship or free balloon it means and includes the act of bringing the airship or free balloon under restraint, and the immediately preceding and following acts. *New.*

No.5
Air
Regulations,
1920.
—Continued

(i) "Airharbour" means and includes:—

10 (i) any building or other work, whether floating or fixed, used or purposely adapted for the construction, repair, handling, protection, refueling or storage of aircraft designed to alight on water when such building or other work is adjacent to water upon which aircraft constructed, repaired, handled, protected, refueled or stored in, at, or by such building or work alight or from which they take off, together with the adjacent area of water;

(ii) any area of supporting surface other than water used or purposely adapted for the alighting or taking off of aircraft, together with any buildings or other works connected therewith;

excepting, however, any such building, work or area used as aforesaid:—

20 (i) only owing to stress of weather or other emergency, or
(ii) only for the domestic or household purposes of the owner of the building, work or area, and not used or intended to be used for commercial purposes or for the alighting or taking off of commercial aircraft. *New.*

(j) "Seaplane station" means an airharbour for flying machines, the supporting surface at which is water. *New.*

(k) "Aerodrome" means an airharbour for flying machines, the supporting surface at which is not water. *New.*

(l) "Airship harbour" means an airharbour for airships or balloons. *New.*

30 (m) "Customs airharbour" means an airharbour appointed by the Air Board with the concurrence of the Ministers of Customs and Immigration as an airharbour at which aircraft from abroad may alight, and from which aircraft bound abroad may take off. *See I.C., Art. 15; Annex H, 1.*

(n) (1) "State" in relation to aircraft, means that the aircraft belongs to and is exclusively employed in the service of the Dominion of Canada, of one of the Provinces of Canada, or of some other of His Majesty's dominions. *New.*

40 Add: (2) All state aircraft other than military, customs and police aircraft shall be treated as "commercial" aircraft, and as such shall be subject to all the provisions of the present regulations. (I.C. Art. 30.) (Amendment dated April 12, 1924.)

No. 5
—
Air
Regulations,
1920.
—Continued

- (o) All references to "passenger" in relation to an aircraft in these regulations shall be included in the term "commercial". (Amendment dated April 12, 1924.)
- (p) All references to "freight" in relation to an aircraft in these regulations shall be included in the term "commercial". (Amendment dated April 12, 1924.)
- (q) Commercial aircraft means an aircraft operated or available for operation for remuneration or reward or for the purpose of any profession, trade, business or industry. (Amendment dated April 12, 1924.)
- (r) "Pilot" in relation to an aircraft includes the person in charge thereof. *New.*
- (s) "Air engineer" means a person who is the holder of a certificate issued by the Air Board certifying that he is competent to inspect and overhaul aircraft. *New.*
- (t) "Night" means between half an hour after sunset and half an hour before sunrise, except in flights beyond Canada when it means between sunset and sunrise. *See I.C., Annex D. 1.*
- (u) "Visible" in relation to lights means visible on a dark night with a clear atmosphere. *See I.C., Annex D.I.*
- (v) "Contracting state" means any state which is, for the time being, a party to the International Convention relating to Air Navigation, and these Regulations shall apply to aircraft possessing the nationality of a state in respect of which state a derogation to His Majesty in the right of the Dominion of Canada has been granted under the protocol, as they apply to Aircraft possessing the nationality of a contracting state. (Amendment dated Jan. 15, 1924.)

(2) The Interpretation Act (R.S.C. (1906), c. 1) shall apply to the interpretation of these regulations. *New.*

PART II

REGISTRATION AND MARKING

30

3. (1) Except aircraft flown only for the purpose of experiment or test within three miles of an airharbour, kites and fixed balloons, no aircraft shall fly unless it has been registered as herein provided. *See I.C., Art. 5.*

(2) This paragraph does not apply to aircraft duly registered in some other state or a foreign country with which Canada has made a Convention relating to interstate flying. (Amendment dated Jan. 15, 1924.)

4. Subject as hereinafter provided, the Air Board may define the conditions under which, and the mode in which aircraft may be primarily registered in Canada.. *New.*

No. 5
—
Air
Regulations,
1920.
—Continued

5. No aircraft shall be primarily registered in Canada unless it belongs wholly to a British subject or British subjects, or to a company which has been incorporated in His Majesty's Dominions, and of which the president or chairman and at least two-thirds of the directors are British subjects. *See I.C., Art. 7.*

6. No aircraft shall be primarily registered in Canada while it is so registered in any other of His Majesty's dominions, or in any foreign country, but it may be primarily registered in Canada upon cancellation of an earlier registration in such other dominion or foreign country. *See I.C., Art. 8.*

7. No aircraft shall be primarily registered in Canada unless either it has been built or made in Canada or any customs duties which are or would become payable upon the importation of the aircraft into Canada have been paid. *New.*

8. (1) Upon every registration in Canada the Minister of National Defence shall assign to the registered aircraft a registration mark and shall grant a certificate of registration for which there shall be payable a fee of \$5.

(2) In the event of any change in the ownership of an aircraft registered in Canada, then

- 20 (a) The registered owner shall forthwith notify the Department of National Defence, and
- (b) The registration and certificate thereof shall lapse as from the date of such change of ownership. (Amendment dated Jan. 15, 1924.)

9. When a registered aircraft has been destroyed or permanently withdrawn from use, the registered owner shall as soon as possible notify the Department of National Defence accordingly, and the registration and the certificate thereof shall lapse as from the date of such notification.

(2) Certificates of registration shall not remain valid unless endorsed by the Minister of National Defence at intervals not exceeding twelve calendar months.
30 (Amendment dated January 15, 1924.)

10. It shall be a condition of the primary registration in Canada of any aircraft that, upon the Governor in Council declaring that a national emergency exists or is immediately apprehended, every such aircraft shall be subject to requisition in the name of His Majesty by the Air Board or any officer of the Canadian Air

No. 5 Force, and upon being so requisitioned shall become the property of His Majesty
 Air — subject to its return or to the payment of compensation or to both as may be
 Regulations, provided by law. *New.*
 1920.
 —Continued

(2) The registration in Canada of any aircraft primarily registered in any of His Majesty's dominions other than Canada shall be subject to the like condition unless, under the law of that one of His Majesty's dominions in which the aircraft was primarily registered, it is subject to a paramount right to be requisitioned on His Majesty's behalf. *New.*

11. Any certificate of registration of an aircraft may be suspended or cancelled at any time by the Air Board for cause. *New.* 10

12. (1) No aircraft registered in Canada shall fly beyond Canada unless it has been certified as airworthy by the Department of National Defence.

(2) Except private aircraft flying wholly within Canada, all aircraft registered in Canada shall be certified as airworthy by the Department of National Defence.

(3) Every aircraft entering Canada from abroad shall be in possession of a certificate of airworthiness issued by the proper authority of the foreign country or of the Dominion, Colony or Possession of His Majesty in which it is registered. (Amendment dated January 15, 1924.)

13. Certificates of airworthiness may be issued by the Air Board, and may be limited to flying in specified areas, on specified routes, for specified periods, and 20 upon compliance with specified conditions. *New.*

(2) Certificates of airworthiness shall not remain valid unless endorsed by the Minister of National Defence at intervals not exceeding twelve months.

(3) Aircraft in respect of which a certificate of airworthiness has been issued, under these regulations, may be inspected at any time by an authorized representative of the Minister of National Defence, and the Minister of National Defence may, as a result of such inspection, cancel or suspend the certificate of airworthiness of any aircraft deemed to be unsafe.

(4) Any certificate relating to the airworthiness of an aircraft may be cancelled or suspended at any time by the Minister of National Defence for cause. 30 (Amendment dated January 15, 1924.)

14. A fee of five dollars shall be payable for a certificate of airworthiness of an aircraft conforming to a type an example of which has been certified as airworthy in any of His Majesty's dominions or in any foreign country with which

Canada has made a convention providing for the reciprocal acceptance of certificates of airworthiness. A fee of twenty-five dollars shall be payable for a certificate of airworthiness to any other aircraft. *New.*

No. 5
Air
Regulations,
1920.
—Continued

15. No aircraft required to be registered shall fly unless it bears the prescribed nationality and registration marks. *See I.C., Art. 10.*

16. In the case of an aircraft primarily registered in Canada the nationality mark shall be the letter "G" and the registration mark the assigned combination of four capital letters commencing with the letter "C." The marks shall be painted in black on a white ground in the following manner:—

- 10 (a) On flying machines the marks shall be painted once on the lower surface of the lower main planes and once on the upper surface of the top main planes, the top of the letters to be towards the leading edge. They shall also be painted along each side of the fuselage between the main planes and the tail planes. In case the machine is not provided with a fuselage the marks shall be painted on the nacelle.
- (b) On airships the marks shall be painted near the maximum cross section on both sides so as to be visible both from the sides and from the ground and on the upper surface equidistant from the letters on the sides.
- 20 (c) On balloons the marks shall be painted on two sides near the maximum cross section so as to be visible both from the sides and ground, and on the upper surface equidistant from the marks on the sides.
- (d) On flying machines and airships the nationality mark shall also be painted on the right and left sides of the lower surface of the lowest tail planes or elevators and also on the upper surface of the top tail planes or elevators, whichever are the larger. It shall also be painted on both sides of the rudder or on the outer sides of the outer rudders if more than one rudder is fitted.
- (e) On balloons the nationality mark shall also be painted on the basket.
- (f) The nationality and registration marks need in no case exceed eight feet
30 in height, but subject to this provision they shall be as hereafter specified.
- (g) On flying machines the the height of the marks on the main planes and tail planes respectively shall be equal to four-fifths of the chord, and in the case of the rudder shall be as large as possible. The height of the marks on the fuselage or nacelle shall be four-fifths of the depth of the narrowest part of that portion of the fuselage or nacelle on which the marks are painted.

- (h) On airships the nationality marks painted on the tail plane shall be equal in height to four-fifths of the chord of the tail plane and on the rudder the marks shall be as large as possible. The height of the other marks shall be equal at least to one-twelfth of the circumference at the maximum transverse cross section of the airship. On balloons the height of the nationality mark on the basket shall be four-fifths of the height of the basket, and the height of the other marks shall be equal to at least one-twelfth of the circumference of the balloon.
- (i) The width of the letters shall be two-thirds of their height and the thickness shall be one-sixth of their height. The letters shall be painted in plain block type and shall be uniform in shape and size. A space equal to half the width of the letters shall be left between the letters. 10
- (j) Except on state and commercial aircraft, the nationality and registration marks shall be underlined with a black line. The thickness of the line shall be equal to the thickness of the letter and the space between the bottom of the letters and the line shall be equal to the thickness of the line.
- (k) Where the nationality and registration marks appear together, a hyphen of a length equal to the width of one of the letters shall be painted between the nationality mark and registration mark. 20
- (l) The nationality and registration marks shall be displayed to the best possible advantage, taking into consideration the constructional features of the aircraft. The marks must be kept clean and visible. *See I.C., Annex A.*

17. All aircraft, except kites, shall carry affixed to the car or to the fuselage in a prominent position a metal plate inscribed with the names and residences of the owners and the nationality and registration marks of the aircraft. *See I.C., Annex A, I (d).*

PART III

AIRHARBOURS

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18. No place, building, or work shall be used as an airharbour unless it has been licensed as herein provided. *New.*

19. Licenses to airharbours may be issued by the Air Board and may be made subject to such conditions respecting the aircraft which may make use of the airharbour, the maintenance thereof, the marking of obstacles in the vicinity which may be dangerous to flying and otherwise, as the Air Board may direct. *New.*

20. A fee of ten dollars shall be payable for a license for an airharbour. *New.* No. 5

21. The license of an airharbour may be suspended or cancelled by the Air Board at any time for cause and shall cease to be valid two weeks after any change in the ownership of the airharbour, unless sooner renewed to the new owner. *New.* ^{Air Regulations, 1920.}—*Continued*

22. Every licensed airharbour shall be marked by day and by night as may be from time to time directed by the Air Board. *See I.C., Annex F, II.*

23. The owner of any licensed airharbour shall be permitted to charge for the use of the harbour or for any services performed only such fees as have been approved by the Air Board for such airharbour. The tariff shall be prominently posted up at the airharbour. *New.*

24. (1) No person shall without authority of the Air Board—

- (a) mark any unlicensed surface or place with any mark or display any signal calculated or likely to induce any person to believe that such surface or place is an airharbour or emergency alighting ground;
- (b) knowingly use or permit the use as an airharbour of any unlicensed place;
- (c) knowingly use or permit the use of an airharbour for any purposes other than those for which it has been licensed.

(2) The onus of proving the existence of any authority or license shall be upon the person charged. *New.*

20 **25.** No water-craft shall cross or go upon that part of the water area forming part of any seaplane station which it is necessary to keep clear of obstruction in order that flying machines may take off and alight in safety, having regard to the wind and weather conditions at the time, and every person in charge of a water-craft is guilty of a breach of these regulations if such craft crosses or goes upon such area after reasonable warning by signal or otherwise. *New.*

26. There shall be kept at every licensed airharbour a register in which there shall be entered immediately after the alighting or taking off of an aircraft a record showing the nationality and registration marks of such aircraft, the name of the pilot and the hour of such alighting or taking off. *New.*

30 **27.** (1) Every licensed airharbour, and all aircraft and the goods therein shall be open to the inspection of any customs or immigration officer or any officer of or other person authorized by the Air Board, but no building used exclusively for purposes relating to the construction of aircraft or aircraft equipment shall be subject to inspection except upon the special written order of the Chairman or Vice-Chairman of the Air Board. *New.*

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(2) All state aircraft shall have at all reasonable times, the right of access to any licensed airharbour, subject to the conditions of the license.

(Amendment dated Jan. 15, 1924).

28. It shall be a condition of every license to any airharbour that in case the Governor-in-Council declares that a national emergency exists or is immediately apprehended, the owner of such airharbour shall comply with such directions, if any, with respect to the use of the airharbour as may be given by the Air Board or an officer of the Canadian Air Force, subject only to the payment of such compensation as may be provided by law. *New.*

29. At every licensed airharbour the direction of the wind shall be clearly indicated by one or more of the recognized methods, e.g., alighting tee, conical streamer, smudge fire, etc. *See I.C., Annex D, 40.*

30. At every licensed aerodrome and seaplane station, if an aircraft about to land or leave finds it necessary to make a circuit or partial circuit, such circuit or partial circuit shall, except in case of distress, be left-handed (anti-clockwise).

(Amendment dated Jan. 15, 1924).

31. At every aerodrome and seaplane station licensed for use by the public at night there shall at night be exhibited a red light to indicate a left-hand circuit or a green light to indicate a right-hand circuit. *See I.C., Annex D., 46 (a).*

32. Every licensed aerodrome shall be considered to consist of three zones when looking up-wind. The right-hand zone shall be the taking-off zone and the left-hand shall be the alighting zone. Between these two there shall be a neutral zone. If the centre of the aerodrome is marked, the taking-off and alighting zones shall commence fifty yards to the right and left respectively of the centre of such mark. *I.C., Annex D, 44.*

PART IV

PERSONNEL

33. No person shall act as pilot of any aircraft or as navigator, engineer or inspector of any commercial aircraft, or of any aircraft primarily registered in Canada when flying outside Canada unless such person holds a certificate issued by the Air Board authorizing him to so act. *See I.C., Art. 12.*

(2) This paragraph shall not apply,—

(a) to persons under instruction flying over water or, with the consent of the owner or owners, over an airharbour and such additional surrounding area as is approved by the Air Board, or

- (b) to pilots, navigators and engineers of aircraft registered in another contracting state, or a foreign country with which Canada has made a convention relating to interstate flying, who hold licenses authorizing them to act as such, issued by the proper authority in the contracting state or foreign country in which the aircraft is registered.

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(Amendment dated Jan. 15, 1924.)

34. (1) Certificates to pilots, navigators and engineers may be issued by the Air Board and may be limited in time and to flying only under specified conditions, for specified purposes, in specified types of aircraft, on specified routes or otherwise. *New.*

(2) Licenses issued by a duly competent authority within His Majesty's Dominions, Colonies or Possessions, to a pilot, navigator, or engineer shall for the purpose of these regulations have the same validity and effect as if they had been issued under these Regulations. (Amendment dated Jan. 15, 1924.)

35. Certificates to inspectors may be issued by the Air Board and may be limited in time, to specified types of aircraft, or otherwise. *New.*

36. A fee not exceeding \$5 may be charged for any certificate issued under this Part IV. *New.*

37. No person who is not a British subject or a subject of a foreign country which grants reciprocal aeronautical privileges to Canadians on equal terms and conditions with subjects of such foreign country shall be issued with a certificate authorizing him to act as pilot, navigator, engineer or inspector of commercial or state aircraft.

38. A certificate issued to any pilot, navigator, engineer or inspector may be suspended or cancelled at any time by the Air Board for cause, including the failure to comply beyond Canada with the provisions of Parts V, VI, VII and VIII of these regulations. *New.*

PART V

LIGHTS

39. The angular limits laid down in the following regulations shall be determined when the aircraft is in its normal attitude on a straight horizontal course. *See I.C., Annex D, 1.*

40. The rules concerning lights shall be complied with in all weathers at night, and during the night no other lights which might be mistaken for the prescribed lights shall be exhibited. The prescribed lights must not be dazzling. *See I.C., Annex D, 1.*

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41. A flying machine when in flight or manoeuvring on land or water under its own power, shall carry the following lights:—

- (a) Forward, a white light, visible in a dihedral angle of two hundred and twenty degrees bisected by a vertical plane through the line of flight, and of such a character as to be visible at a distance of at least five miles;
- (b) On the right side, a green light, so constructed and fixed as to show an unbroken light between two vertical planes, whose dihedral angle is one hundred and ten degrees when measured to the right from dead ahead, and of such a character as to be visible at a distance of at least three miles;
- (c) On the left side, a red light, so constructed and fixed as to show an unbroken light between two vertical planes whose dihedral angle is one hundred and ten degrees when measured to the left from dead ahead, and of such a character as to be visible at a distance of at least three miles;
- (d) The said green and red sidelights shall be fitted so that the green light shall not be seen from the left side, nor the red light from the right side;
- (e) At the rear, and as far aft as possible, a white light shining rearwards, and visible in dihedral angle of one hundred and forty degrees bisected by a vertical plane through the line of flight and of such a character as to be visible at a distance of three miles. 20
- (f) In the case where, in order to fulfil the above conditions the single light has to be replaced by several lights, the field of visibility of each of these lights should be so limited that in no case can more than one be seen at a time. *See I.C., Annex D, 2.*

42. The rules as to the lighting of flying machines shall apply to airships, subject to the following modifications:—

- (a) All lights shall be doubled, the forward and aft lights vertically, and the side lights horizontally in a fore and aft direction.
- (b) Both lights of each pair forward and aft shall be visible at the same time.
- (2) The distance between the lights comprising a pair shall not be less than 30 seven feet. *See I.C., Annex D, 3.*

43. An airship when being towed shall carry the lights required to be carried by an airship in flight and in addition those required to be carried by airships not under control. *See I.C., Annex D, 4.*

44. A flying machine or airship when on the surface of the water and not under control, that is to say, not able to manoeuvre as required by the Regulations for Preventing Collisions at Sea, shall not carry its navigation lights but

shall carry two red lights not less than seven feet apart in a vertical line one over the other, and of such a character as to be visible all round the horizon at a distance of at least two miles. *See I.C., Annex D, 5.*

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45. In order to prevent collision with surface craft,—

- 10 (a) A flying machine when at anchor or moored on the water shall carry forward where it can best be seen a white light so constructed as to show an unbroken light visible all round the horizon at a distance of at least one and one half miles.
- (b) A flying machine of fifty yards or upwards in length, when at anchor or moored on the water, shall in the forward part of the flying machine carry one such light, and at or near the stern of the flying machine, and at such a height that it shall be not less than five yards lower than the forward light, another such light. The length of a flying machine shall be deemed to be the overall length.
- (c) Flying machines of fifty yards or upwards in span, when at anchor or moored on the water, shall carry in addition at each lower wing tip one such light as specified in clause (a) of this rule. The span of a flying machine shall be deemed to be the maximum lateral dimension. *See I.C., Annex D, 11.*

20 **46.** An airship, which from any cause is not under control, or which has voluntarily stopped her engines, shall, in addition to the other specified lights, display conspicuously two red lights, one over the other approximately in a vertical line, not less than seven feet apart and constructed to show a light in all directions and of such a character as to be visible at a distance of at least two miles.

(2) By day an airship, when being towed, or which from any cause is not under control, shall display conspicuously two black balls or shapes, each twenty-four inches in diameter, placed one over the other not less than seven feet apart.

30 (3) An airship moored, or underway, but having voluntarily stopped its engines, shall display conspicuously by day a black ball or shape twenty-four inches in diameter, and shall be treated by other aircraft as being not under control. *See I.C., Annex D, 6.*

47. A free balloon shall carry one bright white light below the car at a distance of not less than twenty feet and so constructed as to show an unbroken light in all directions and of such a character as to be visible at a distance of at least two miles. *See I.C., Annex D, 7.*

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48. A fixed balloon shall carry in the same position as the white light mentioned in the preceding paragraph, and in lieu of that light, three lights in a vertical line one over the other, not less than seven feet apart. The highest and lowest of these lights shall be red, and the middle light shall be white, and they shall be of such a character as to be visible in all directions at a distance of at least two miles.

(2) In addition the mooring cable shall have attached to it at intervals of one thousand feet, measured from the basket, groups of three lights similar to those mentioned in the preceding paragraph. In addition, the object to which the balloon is moored on the ground shall have a similar group of lights to mark 10 its position.

(3) By day the mooring cable shall carry in the same positions as the groups of lights mentioned in the preceding paragraph, and in lieu thereof, tubular streamers, not less than eight inches in diameter and seven feet long, and marked with alternate bands of white and red twenty inches in width. *See I.C., Annex D, 8.*

49. An airship, when moored near the ground shall carry the forward and after white lights required to be carried while the airship is under way. In addition, if moored but not near the ground, the airship, and mooring cable, and the object to which moored, shall be marked by day or by night with the streamers 20 or lights required in the case of a fixed balloon.

(2) Sea anchors or drogues used by airships for mooring purposes at sea are exempt from this rule. *See I.C., Annex D, 9.*

50. A flying machine stationary on land but not anchored or moored, shall carry the lights required when in flight. *See I.C., Annex D, 10.*

51. In the event of the failure of any of the lights specified under these rules to be carried by aircraft flying at night, such aircraft shall alight at the first reasonably safe opportunity. *See I.C., Annex D, 12.*

PART VI

SIGNALS

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52. The call sign of an aircraft shall be the complete group of five letters constituting its nationality and registration marks. *See I.C., Annex A, 1, (a).*

53. Aircraft proposing to alight at night at airharbours licensed for use by the public at night shall before alighting fire a green Very's light or flash a green lamp, and in addition shall make by international Morse code the letter group

forming its call sign. Permission to alight will be given by the repetition of the same call sign from the ground, followed by the firing of a green Very's light, or the flashing of a green lamp.

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(2) Pending such an increase in the amount of night traffic by air as to render it necessary to name that one of several flying machines which is to alight first, it shall not be necessary in Canada to make the call sign either from the air or from the ground. *See I.C., Annex D, 14 (a).*

54. The firing of a red Very's light or the display of a red flare from the ground shall be taken as an instruction that aircraft are not to alight. *I.C., Annex 10 D, 15.*

55. An aircraft compelled to alight at night shall, before alighting, fire a red Very's light, or make a series of short flashes with the navigation lights. *I.C., Annex D, 16.*

56. When an aircraft is in distress and requires assistance, the following signals shall be used or displayed, either together or separately,—

- (a) The international signal, SOS, by means of visual or wireless signals;
- (b) The international code flag signal of distress, indicated by NC;
- (c) The distant signal, consisting of a square flag, having either above or below it a ball, or anything resembling a ball;
- 20 (d) A continuous sounding with any sound apparatus;
- (e) A signal consisting of a succession of white Very's lights, fired at short intervals. *I.C., Annex D, 17.*

57. To warn an aircraft that it is in the vicinity of a prohibited zone and should change its course, the following signals shall be used:—

- (a) By day, three discharges at intervals of 10 seconds of a projectile showing, on bursting, white smoke, the location of the burst indicating the direction the aircraft should follow;
- (b) By night, three discharges at intervals of 10 seconds of a projectile showing, on bursting, white stars, the location of the burst indicating the direction the aircraft should follow. *I.C., Annex D, 18.*

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58. (1) To require an aircraft to alight, the following signals shall be used:—

- (a) By day, three discharges at intervals of 10 seconds of a projectile showing on bursting black or yellow smoke.
- (b) By night, three discharges, at intervals of 10 seconds of a projectile showing on bursting red stars or lights.

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(2) In addition, when necessary to prevent the alighting of aircraft other than the one ordered, a searchlight which shall be flashed intermittently shall be directed towards the aircraft whose alighting is required. *I.C., Annex D, 19.*

59. An airship to which is made a signal to alight, and which is unable to do so by stress of weather or other unavoidable cause shall make the following signals:—

(a) By day, show from the place where they can be most clearly seen from below, a red triangular flag, and two black balls arranged vertically.

(b) By night, wave a white light, at the same time extinguishing the side lights. *New.*

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60. In the event of fog or mist rendering an airharbour invisible, its position may be indicated by a balloon acting as an aerial buoy or by other means approved by the Air Board. *See I.C., Annex D, 20 (a).*

61. In fog, mist, falling snow or heavy rainstorm, whether by day or night, an aircraft on the water shall make the following sound signals with a sound apparatus:—

(a) If not anchored or moored, a sound at intervals of not more than two minutes, consisting of two blasts of about five seconds duration with an interval of about one second between them, or

(b) If anchored or moored, the rapid ringing of an efficient bell or gong for 20 about five seconds at intervals of not more than one minute. *See I.C., Annex D, 20 (b).*

62. Except as provided in Part V and in this part, no lights or signals shall be shown or markings displayed unless the same have been approved by the Air Board. *See I.C., Annex D, 13, 51.*

PART VII

RULES OF THE AIR

63. Flying machines shall always give way to balloons, fixed or free, and to airships. Airships shall always give way to balloons, whether fixed or free. *I.C., Annex D, 21.*

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64. An airship when not under its own control, shall be classed as a free balloon. *I.C., Annex D, 22.*

65. Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing and angle of elevation of an approaching aircraft. If neither the bearing nor the angle of elevation appreciably change, such risk shall be deemed to exist. *I.C., Annex D, 23.*

66. The term "risk of collision" shall include risk of injury due to undue proximity of other aircraft. Every aircraft that is required by these rules to give way to another to avoid collision shall keep a safe distance, having regard to the circumstances of the case. *I.C., Annex D, 24.*

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67. While observing the rules regarding risk of collision contained in the last preceding paragraph, a motor-driven aircraft must always manoeuvre according to the rules contained in the following paragraphs as soon as it is apparent that, if it pursued its course, it would pass at a distance of less than 200 yards from any part of another aircraft. *See I.C., Annex D, 25.*

10 **68.** When two motor-driven aircraft are meeting end on, or nearly end on, each shall alter its course to the right. *I.C., Annex D, 26.*

69. When the two motor-driven aircraft are on courses which cross, the aircraft which has the other on its own right side shall keep out of the way of the other. *I.C., Annex D, 27.*

70. (1) An aircraft overtaking any other, shall keep out of the way of the overtaken aircraft by altering its own course to the right, and not in the vertical plane.

(2) Every aircraft coming up with another aircraft from any direction more than one hundred and ten degrees from ahead of the latter, *i.e.*, in such a position with reference to the aircraft which it is overtaking, that at night it would be unable to see either of that aircraft's sidelights, shall be deemed to be an overtaking aircraft; and no subsequent alteration of the bearing between the two aircraft shall make the overtaking aircraft a crossing aircraft within the meaning of these rules, or relieve it of the duty of keeping clear of the overtaken aircraft until it is finally past and clear.

(3) As by day the overtaking aircraft cannot always know with certainty whether it is forward or abaft this direction from the other aircraft, it should, if in doubt, assume that it is an overtaking aircraft and keep out of the way. *See I.C., Annex D, 28.*

30 **71.** Where by any of these rules one of the two aircraft is to keep out of the way, the other shall keep its course and speed. When in consequence of thick weather or other causes, the aircraft having the right of way finds itself so close that collision cannot be avoided by the action of the giving-way aircraft alone, it shall take such action as will best aid to avert collision. *I.C., Annex D, 29.*

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72. Every aircraft which is directed by these rules to keep out of the way of another aircraft shall, if the circumstances of the case admit, avoid crossing ahead of the other. *I.C., Annex D, 30.*

73. In following an officially recognized air route every aircraft, when it is safe and practicable, shall keep to the right side of such route. *I.C., Annex D, 31.*

74. Aircraft on land or water about to take off shall not attempt to take off until there is no risk of collision with alighting aircraft. *See I.C., Annex D, 32.*

75. Every aircraft manoeuvring under its own power on the water shall conform to the Regulations for Preventing Collisions at Sea, and for the purpose of those regulations shall be deemed to be a steam vessel, but shall carry the lights 10 specified in these rules, and not those specified for steam vessels in those regulations and shall not use, except when in distress, fog, mist, falling snow or heavy rain-storm or be deemed to hear, the sound signals specified therein. *I.C., Annex D, 49.*

76. Every aircraft in a cloud, fog, mist, or other conditions of bad visibility, shall proceed with caution, having careful regard to the existing circumstances and conditions. *I.C., Annex D, 33.*

PART VIII

TRAFFIC IN THE VICINITY OF LICENSED AERODROMES AND SEAPLANE STATIONS

77. A flying machine alighting or taking off at a licensed aerodrome shall conform to the circuit indicated by the flag or light shown. *See I.C., Annex D, 36.* 20

78. When a flying machine takes off from a licensed aerodrome it shall not turn until 550 yards distant from the nearest point of the aerodrome, and the turning then made must conform with the circuit Regulation. *See I.C., Annex D, 37.*

79. A flying machine alighting at a licensed aerodrome shall, from a distance of at least 550 yards from the leeward side of alighting zone, maintain a course directly towards such zone. *New.*

80. All flying machines flying within twelve hundred yards horizontal distance from the nearest point of a licensed aerodrome shall conform to the circuit law, unless such flying machines are flying at a greater height than six thousand 30 feet. *I.C., Annex D. 38.*

81. Acrobatic alightings are prohibited at licensed aerodromes. Flying machines are prohibited from indulging in aerial acrobatics within a distance in any direction of at least six thousand feet from the nearest point of the aerodrome. *See I.C., Annex D. 39.* No. 5
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82. Every flying machine when taking off or alighting at a licensed aerodrome shall do so up-wind, except when the natural conditions of the aerodrome do not permit. *See I.C., Annex D. 41.*

83. At a licensed aerodrome every flying machine shall commence to take off from the extreme leeward point of the taking-off zone. *New.*

10 **84.** In the case of flying machines approaching a licensed aerodrome for the purpose of alighting, the flying machine flying at the greater height shall be responsible for avoiding the flying machine at the lower height, and shall, as regards alighting, observe the rules governing overtaking aircraft. *See I.C., Annex D. 42.*

85. Flying machines showing signals of distress shall be given free way in attempting to alight at a licensed aerodrome. *See I.C., Annex D. 43.*

20 **86.** A flying machine when alighting at a licensed aerodrome should alight as near as possible to the neutral zone, but in any case on the left of any flying machines which have already alighted. After slowing up or coming to a stop at the end of its alighting run a flying machine will immediately taxi into the neutral zone. Similarly a flying machine taking off shall keep as far as possible towards the right of the taking off zone, but shall keep clear to the left of any flying machines which are taking off or about to take off. *See I.C., Annex D. 44.*

87. No flying machine shall be allowed to remain in the alighting or the taking off zone longer than is necessary for the purpose of alighting or taking off. *New.*

88. No flying machine shall commence to take off until the preceding flying machine is clear of the aerodrome. *See I.C., Annex D. 45.*

30 **89.** No balloon, kite or airship shall be elevated in the vicinity of a licensed aerodrome except when authorized by regulation or with the permission of the Air Board. *See I.C., Annex D. 47.*

90. The rules governing traffic on and in the vicinity of licensed aerodromes shall apply to traffic in the vicinity of licensed seaplane stations with the following modifications and addition

- (a) The following rules governing traffic in the vicinity of licensed aerodromes shall not apply:—Paragraphs 78 (flying machines not turning until 550 yards distant); (flying machines alighting to maintain a direct

course from 550 yards distance); 82 (flying machines within certain limits conforming to circuit law); 86 (flying machines landing near neutral zone and moving in to such zone); 88 (flying machines not commencing to take off till preceding flying machine is clear).

- (b) A flying machine taxiing up-wind at a licensed seaplane station shall give way to a seaplane taxiing down-wind. *New.*

91. A copy of this part shall be posted at every licensed aerodrome and seaplane station.

PART IX

DANGEROUS FLYING

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92. No aircraft shall fly over any city or town except at such an altitude as will enable the aircraft to alight outside the city or town should the means of propulsion fail through mechanical breakdown or other cause.

93. No person in any aircraft shall—

- (a) carry out any trick flying over any city or town area or populous district; or
- (b) carry out any trick flying or exhibition flying over any regatta, race meeting, or meeting for public games or sports, except when especially arranged for in writing by the promoters of such regatta or meeting; or
- (c) carry out any flying which, by reason of low altitude or proximity to persons or dwellings, is dangerous to public safety; or
- (d) drop or cause to permit to be dropped from an aircraft any article capable of causing injury or damage, or any ballast except water or fine sand. *New. See I.C., Annex D. 35.*
- (e) No pilot of any flying machine shall unless he is alone therein, permit or cause such flying machine to roll, spin, loop or execute any other evolution involving unnecessary risk.
- (f) No person shall enter or attempt to enter any aircraft in flight or leave or attempt to leave any aircraft in flight except for the purpose of making a parachute descent; or give upon any aircraft in flight, any gymnastic or other like exhibition.

PART X

INTERSTATE FLYING

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94. Except the sections set out in the first schedule hereto, the provisions of the Customs Act, and especially the provisions relating to vessels, their captains or masters, shall apply to aircraft and their pilots, and the sections specified in the second schedule hereto shall be read as extending and applying to aircraft entering or departing from Canada, or to goods imported into or exported from Canada by air, as the context may require. *New.*

95. The expression "port of entry" in the Customs Act shall, in relation to air navigation, mean customs airharbour. *New.*

96. Every aircraft upon entering Canada from abroad shall make its first alighting at a customs airharbour, and every aircraft proceeding abroad from Canada shall take off from a customs airharbour and shall not again alight in Canada without first completing its journey abroad. *See I.C., Art. 15, Annex H.*

97. Customs airharbours shall be notified in *The Canada Gazette* and to such of His Majesty's dominions and such foreign states as may request such notification. *New.*

98. (1) No foreign aircraft flying between two points within Canada and no aircraft proceeding from or entering Canada shall carry any explosives or any arms or munitions of war.

(2) No aircraft shall enter or leave Canada having any secret or disguised place adapted for concealing goods. (Amendment dated Jan. 15, 1924).

99. (1) No goods shall be unladen from any aircraft arriving in Canada from any place out of Canada until due entry has been made of such goods and warrant granted for the unloading of the same.

(2) No goods shall be so unladen except between sunrise and sunset and on some day not being a Sunday or statutory holiday and at some hour and place at which an officer of the customs is appointed to attend the unloading of goods, or at some place for which a sufferance has been granted by the collector or other proper officer for the unloading of such goods. *See Customs Act, s. 13.*

100. If any goods are brought in any aircraft from any place out of Canada to any customs airharbour therein and not unladen, but it is intended to convey such goods to some other customs airharbour in Canada in the same aircraft there to be unladen, the duty shall not be paid or the entry completed at the first air-

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harbour but at the airharbour where the goods are to be unladen and to which they shall be conveyed accordingly under such conditions and with such security or precautions for compliance with the Customs Act as the Minister of Customs from time to time directs. *See Customs Act, s. 20.*

101. Upon the arrival at any customs airharbour in Canada from any place out of Canada of any aircraft not primarily registered in Canada which it is intended shall proceed to another airharbour in Canada, or beyond Canada, due entry shall be made of such aircraft or such security given for the departure of such aircraft from Canada as may be required under any special or general direction given by the Minister of Customs. *See Customs Act, s. 23.* 10

102. Every importer of goods by air from any place out of Canada shall within three days after arrival of the importing aircraft make due entry inwards of such goods and land the same. *See Customs Act, s. 24.*

103. Equipment purchased or supplied for any aircraft primarily registered in Canada or the expenses of repairs made out of Canada to any such aircraft shall, on the arrival in Canada of the aircraft within one year after the repairs have been made or the equipment purchased or supplied, be liable to entry and the payment of duty on the cost thereof out of Canada at the following rates:—

- (a) on the expenses of repairs twenty-five per cent *ad valorem* less two per cent for each month since the repairs were made. 20
- (b) on equipment the same rate of duty as if the articles were imported into Canada in the ordinary course.

(2) If the owner or pilot of the aircraft wilfully and knowingly neglects or fails to report, make entry and pay duties as by this paragraph required, the aircraft with her tackle, apparel and furniture shall be seized and forfeited.

(3) If, however, the owner or pilot of the aircraft furnishes satisfactory evidence that the aircraft was compelled by stress of weather or casualty to land out of Canada to make the said repairs in order to secure the safety of the aircraft or to enable her to reach her port of destination, the Minister of Customs may authorize a refund of the duty on the repairs and the aircraft shall not be liable to 30 forfeiture under this paragraph. *See Customs Act, s. 70; I.C., Art. 19.*

104. The pilot of every aircraft bound outwards from any customs airharbour in Canada to any place out of Canada shall deliver to the collector or other proper officer a report outwards under his hand of the destination of such aircraft stating her name or nationality and registration mark, the name of the pilot and such other particulars of the aircraft and her cargo, passengers and crew as may be required.

(2) The pilot shall also before the aircraft takes off bring and deliver to the collector or other proper officer a list of the passengers and a content in writing under his hand of the goods laden and the names of the respective shippers and consignees of the goods with the marks and numbers of the packages or parcels on the same and shall make and subscribe a declaration to the truth of such content as far as any of the particulars can be known to him. *See Customs Act, s. 96, I.C., Art. 19.*

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105. No aircraft shall depart from any customs airharbour to any place out of Canada until the collector or other proper officer has made out and given to the pilot a certificate of the clearance of such aircraft for her intended voyage. *See Customs Act, s. 98.*

106. The Minister of Customs may define and limit the kind, quantity and class of goods which may be delivered out of warehouse as aircraft stores, and also the kind, quantity and class of goods arriving in Canada as stores of aircraft which may be used free of duty on board such aircraft in Canada, or which may be treated as surplus stores of aircraft, and any such goods within the definition or limitation so established may be delivered out of warehouse as aircraft stores for any aircraft bound on a voyage to any place out of Canada upon proof being made by affidavit of the owner or pilot or his agent to the satisfaction of the proper officer that the stores are necessary and intended for the purposes aforesaid. *See Customs Act, s. 105.*

107. For the purpose of the levying of any duty or of any law relating to the customs,

- (a) the importation of any goods by air shall be deemed to have been completed from the time the aircraft alighted in Canada;
- (b) the exportation of any goods from Canada by air shall be deemed to have commenced from the time of the legal shipment of such goods for exportation after due entry outwards;
- (c) the date of exportation of goods in an aircraft to Canada from any place out of Canada shall be deemed to be the date at which the aircraft carrying such goods took off from such place out of Canada for its destination in Canada, which date may be established by the production of the clearance of the aircraft from such place out of Canada or the oath of the pilot as to the date of taking off if such taking off was subsequent to the date of the clearance.
- (d) The time of the arrival of any aircraft at a Canadian airharbour shall be deemed to be the time at which report of such aircraft was, is or ought to have been made;

- (e) The time of the departure of any aircraft from a Canadian airharbour shall be deemed to be the time of the last clearance of such aircraft on the voyage on which she departed. *See Customs Act, s. 106.*

108. If any aircraft entering Canada is forced by accident or stress of weather or other unavoidable cause to alight elsewhere than at a customs airharbour, the pilot shall forthwith report the fact to the person in charge of the airharbour, if the alighting is made at an airharbour, or in any other case to a peace officer, and it shall be the duty of the person in charge of the airharbour or of the peace officer as the case may be,—

- (a) to satisfy himself, so far as may be possible, that no goods or persons have **10** been moved from or have left the immediate vicinity;
- (b) to prevent the removal of any goods which or the departure of any persons who, have arrived in any such aircraft, and
- (c) to report the arrival of the aircraft to the nearest officer of customs.

Provided, however, that the pilot of the aircraft forced to alight may report directly to an officer of customs, if he can do so forthwith after alighting. *See Customs Act, s. 122.*

109. The officer of customs to whom the alighting elsewhere than at a customs airharbour of an aircraft entering Canada from abroad is reported shall give such directions as may be required with regard to the departure of the persons or the **20** removal of the goods arriving therein and such directions shall be complied with by the persons concerned. He, or some other person authorized by him shall, before the departure of the aircraft, verify by his signature the entry of the alighting made in the journey log book. *See Customs Act, ss. 122, 123.*

110. Fresh fish or other perishable goods, coin or bullion may be unladen without entry or warrant, as may also goods in any wrecked aircraft, provided that they are duly reported to a customs officer, unladen with his permission and in his presence, and checked by him. *See Customs Act, s. 135.*

PART XI

GENERAL PROVISIONS

30

111. No passenger aircraft shall carry any explosives. No aircraft shall carry any mails without the written authority of the Postmaster-General and no aircraft primarily registered in Canada shall carry any radio-telegraph or telephone apparatus without the written authority of the Air Board. *See I.C., Art. 14, 26.*

112. No person shall install or work a radiotelegraph or telephone apparatus in any aircraft primarily registered in Canada except in accordance with the terms of a license granted by the Minister of the Naval Service, and no person shall work any radio-telegraph apparatus on any aircraft except in accordance with the provisions of the International Radio-Telegraph Convention and the Service Regulations annexed thereto. *Sec. 3-4 Geo. V, c. 43.*

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113. (1) No aircraft shall fly over any area defined by Order in Council as a prohibited area under these regulations or so near thereto that the angle between the perpendicular and a line from the aircraft to the nearest point of such prohibited area is less than fifty degrees. *See I.C., Art. 3.*

(2) No photographic apparatus shall be installed in, nor shall any photographs be taken from, any aircraft while operating in or over Canadian territory, unless such aircraft is registered in Canada or in another of His Majesty's Dominions, Colonies or Possessions. (Amendment dated June 25, 1926.)

(3) No aircraft shall be used for the purpose of obtaining any information whatsoever in regard to any fortress, arsenal, factory, dockyard, camp, ship, office or other like place in Canada belonging to His Majesty, or for the making of any photographs, sketches or plans of any such place without permission of the Minister of National Defence. (Amendment dated June 25, 1926.)

20 **114.** (1) No commercial aircraft shall fly on any day unless it has previously been inspected by an Air Engineer on that day, or, in the case of a flight commencing not later than eight o'clock in the morning at some time between noon of the previous day, or the termination of the last flight made by the aircraft on the previous day, whichever is the later, and the commencement of the flight in question, and until such Air Engineer has signed certificates of the fitness of the flying machine to fly and the certificates have been countersigned by the pilot. A certificate shall be entered in the log-book of the aircraft and the log-book of each engine and duplicates thereof may be delivered to the owner of the aircraft. (Amendment dated January 15, 1924.)

30 (2) If the Minister of National Defence has reason to believe, on complaint or otherwise, that a commercial aircraft within Canada is intended or is about to proceed on any flight in contravention to these regulations or while in a condition unfit for flight, he may give such directions and take such steps, by way of provisional detention of the aircraft, or otherwise in relation thereto as may be necessary for the purpose of causing the circumstances relating to the flight to be investigated, or the aircraft to be inspected by authorized representatives of the Minister of National Defence, and may, upon the result of such investigation or

No. 5 inspection, cause the aircraft to be detained until he is satisfied that the regulations are being complied with, or until such alterations or repairs as he may consider necessary to render the aircraft fit for flight have been made. (Amendment dated January 15, 1924.)

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(3) No person acting as, or carried in an aircraft for the purpose of acting as pilot, navigator, engineer or operating member of the crew thereof, shall, while so acting or carried, be in a state of intoxication, or in a state in which, by reason of his having taken or used any sedative, narcotic, stimulant, drug or preparation, his capacity to so act is impaired. (Amendment dated January 15, 1924.)

115. The pilot of every passenger, freight or commercial aircraft shall before 10 taking off after every alighting enter in the aircraft log book the weight of the load carried. He shall be responsible that the load does not exceed that specified in the certificate of registration and that it is properly secured. *New.*

116. Every aircraft carrying five persons or more and bound on a flight by night, or on a continuous flight overland between two points more than 300 miles apart, or on a flight over sea between two points more than 125 miles apart, shall have on board a person holding a navigator's certificate. *See I.C., Annex E, IV.*

117. An aircraft may be required to alight by any officer of or other person authorized by the Air Board or by any officer of customs or immigration or by any officer of the Canadian Air Force on duty as such, and every aircraft to which a 20 signal to alight is made shall forthwith do so at the nearest practicable place to that from which the signal to alight is made, unless the signal is made from within a prohibited area in which case the aircraft shall alight as near as practicable to, but not within, such area. *See I.C., Art. 15.*

(2) Any person not within one of the classes described in this paragraph who, without good and sufficient cause, makes any signal to alight shall be guilty of a breach of these regulations, and the onus shall be upon such person to establish that he had such good and sufficient cause. *New.*

118. Every aircraft in flight shall have on board its certificate of registration, the certificate of airworthiness, if any, the licenses of all the members of the 30 crew requiring licenses, the authority and license for the equipment and working of the wireless installation, if any, and a journey log book containing the following particulars:—

- (a) The category to which the aircraft belongs; its nationality and registration marks; the full name, nationality and residence of the owner; the name of the maker, the description and the carrying capacity of the aircraft.

(b) In addition for each journey:—

- (i) A record of all signals and wireless communications and observations concerning navigation;
- (ii) The names, nationality and residence of the pilot and of each of the members of the crew;
- (iii) The place, date and hour of departure, the route followed, and all incidents of the journey, including alightings. (Amendments dated January 15, 1924.)

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119. There shall also be kept for every commercial aircraft:—(Amendment
10 dated January 15, 1924.)

(a) An aircraft log book which shall contain the following particulars:

- (i) Category to which the aircraft belongs; its nationality and registration marks; full name, nationality and residence of the owner; name of maker; carrying capacity of the aircraft;
- (ii) Type and series number of engine; type of propeller showing number, pitch, diameter and maker's name;
- (iii) Type of wireless apparatus fitted;
- (iv) Table showing the necessary rigging data for the information of persons in charge of the aircraft and of its maintenance;
- 20 (v) A fully detailed engineering record of the life of the aircraft, including all acceptance tests, overhauls, replacements, repairs and all works of a like nature.

(b) An engine log book for each engine, which shall contain the following particulars:

- (i) Type of engine, series number, maker's name, power, normal and maximum revolutions of engine, date of production and first date put into service;
- (ii) Registration mark and type of aircraft in which the engine has been installed;
- 30 (iii) A fully detailed engineering record of the life of the engine, including all acceptance tests, hours run, overhauls, replacements, repairs, and all work of a like nature.

(c) A signal log book which shall contain the following particulars:—

- (i) Category to which the aircraft belongs; its nationality and registration marks; the full name, nationality and residence of the owner.
- (ii) Place, date, and time of the transmission or reception of any signal.
- (iii) Name or other indication of the person or station to whom a signal is sent or from whom a signal is received.

(2) Entries in log books shall be made in ink as soon as possible after the events they record. Entries to be made in the journey and signal log books may be first made in a rough note book, but shall be permanently entered within 24 hours after the events recorded. The first entries in the aircraft and engine log books shall be made by the constructor; subsequent entries in these log books and all entries in other log books shall be made by the pilot or other competent person. All entries shall be signed by the person by whom they are made. No erasures shall be made in, nor any leaf torn from any log book.

(3) A copy of the certificate of registration shall be kept in the pocket at the end of the aircraft log book. *See I.C., Art. 19.* 10

(4) Log books shall be preserved for two years after the last entry. *See I.C., Art. 20.*

120. A copy of the two last preceding paragraphs shall be inserted in every log book. *See I.C., Annex C, IV.*

121. The owner of every passenger freight or commercial aircraft shall annually, on or before the 31st day of January in each year, make a return to the Secretary of the Air Board, giving such particulars with regard to the operation of the aircraft as the Air Board may prescribe. *New.*

122. Every person required to hold a certificate under these regulations, and the owner or pilot of any aircraft, or the owner of any airharbour, shall produce 20 his certificate or the certificate or license issued in respect of such aircraft or airharbour at any time on demand by any peace officer or any officer of customs or immigration or any officer of or other person authorized by the Air Board. The owner or pilot of an aircraft shall produce, upon the like demand, all log books (including any rough note books) and other papers kept in relation to such aircraft. *New.*

123. Any cancelled or expired certificate or license shall be forthwith delivered up by the person to whom it was issued. *New.*

124. (1) No aircraft of a state with which Canada has not concluded a convention relating to interstate flying and no foreign military aircraft shall fly over or alight in Canada except with the express written permission of the Minister of National Defence. (Amendment dated Jan. 15, 1924.) 30

(2) No aircraft shall engage in the carriage of persons or goods for hire between points in Canada unless it is registered as a commercial aircraft in Canada or in some other of His Majesty's Dominions, Colonies or Possessions, nor shall any aircraft carry out any operation for remuneration or reward wholly within

Canada unless it is registered as a commercial aircraft in Canada, in some other of His Majesty's Dominions, Colonies or Possessions, or in a contracting State to the International Convention for Air Navigation. (Amendment dated April 12, 1924).

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(3) In these Regulations references to passengers carried for hire or reward include references to persons carried in aircraft for the purposes of instruction in flying for which payment is made. (Amendment dated Jan. 15, 1924).

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125. If any aircraft flies in breach of these regulations the owner of the aircraft, as well as the pilot thereof and any other member of the crew who has been a party to the breach, shall be liable therefor. If a breach of these regulations relates to the use of an airharbour, the owner, as well as the person in charge thereof, shall be liable, if such owner permitted or could reasonably have prevented the breach. *New.*

126. The owner of an aircraft or the owner of an airharbour, as the case may be, shall be liable for any damages for which the pilot or any member of the crew of such aircraft or the person in charge of such airharbour becomes liable by reason of any act or omission in connection with the navigation of such aircraft or the management of such airharbour or by reason of any breach of the regulations relating to such aircraft or airharbour. *New.*

127. Any person who obstructs or impedes any person in the exercise of his powers and duties under these regulations shall be guilty of a breach thereof. *New.*

128. Failure to observe or comply with the conditions upon which any certificate or license is issued shall be deemed to be a breach of these regulations. *New.*

The owner of every aircraft shall upon notice by mail to his registered address from any officer or other person authorized by the Air Board advise such officer or other person of the then condition and station of the aircraft. *New.*

129. (1) If any person is killed or injured because of or on board of any aircraft, it shall be the duty of the pilot and of the owner thereof forthwith to report the date and place of the accident by telegram and full particulars thereof by mail to the Secretary of the Air Board, but the performance of these obligations by either the pilot or the owner shall absolve the other of them. *New.*

(2) In the case of an aircraft registered in Canada being damaged to such an extent that repairs other than ordinary running repairs or replacements are necessary, the owner or pilot thereof shall notify the Department of National Defence forthwith, giving particulars of such damage. (Amendment dated Jan. 15, 1924).

130. (1) The Minister of National Defence may constitute or authorize the constitution of Boards of Inquiry of one or more members for the purpose in investigating the circumstances of any accident or of any alleged breach of these Regula-

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tions on the part of any person holding any certificate or license thereunder, and any Board of Inquiry so constituted shall have power to take evidence upon oath or otherwise.

(2) An officer of the Non-Permanent Active or Reserve Air Force serving on such Board of Inquiry shall, if not in Air Force pay, and if such Board assembles at the place where such officer resides, be paid at the rates of pay, excluding allowances, payable in respect of the rank which he holds in the Non-Permanent Active or Reserve Air Force when on ordinary service as laid down in the Pay and Allowance Regulations for the Royal Canadian Air Force.

(3) If such Board assembles at a place other than the officer's place of residence, 10 the officer, if not in Air Force pay, shall, in addition to pay hereinbefore provided, receive transportation at the public expense and the travelling allowances payable in respect of his rank in the Non-Permanent Active or Reserve Air Force when on ordinary service, but if in Air Force pay, such officer shall only receive transportation and travelling allowances.

(4) Civilian members of such Boards of Inquiry shall receive remuneration on the above basis at the rates prescribed for a Flying Officer on the General List of the Non-Permanent Active Air Force, or, in the alternative, shall receive such other remuneration as may be approved by the Minister, and if required to proceed to any place not their usual place of residence, they shall be paid, in addition, their 20 actual travelling and living expenses. (Amendment dated June 25, 1926.)

(5) Notwithstanding the provisions of clause 133 (a) of these Regulations, the provisions of this clause shall apply to all military aircraft of His Majesty employed in the carrying out of duties of a non-military nature.

131. Nothing in these regulations shall exonerate any aircraft, or the owner or any member of the crew thereof, from liability for any neglect to carry lights or signals, to keep a proper look-out or to take any other reasonable precaution. *See I.C., Annex D. 50.*

132. In construing these regulations due regard shall be had to all dangers of navigation and collision, and to any special circumstances which render a depart- 30 ure therefrom necessary in order to avoid immediate danger, and it shall be a good defence to any proceedings for a breach of these regulations if it is proved to have been due to stress of weather or other unavoidable cause. *See I.C., Annex D. 34.*

133. The regulations do not apply:—

(a) to military aircraft of His Majesty when manoeuvring as directed by an officer of any British Air Force in the course of his duty as such officer;

- (b) to foreign military aircraft flying over or alighting in Canada in accordance with the terms of the prescribed special permission, or
 (c) to other aircraft or to airharbours to the extent to which they have been relieved by the Air Board from compliance therewith. *New.*

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134. These regulations shall come into force forthwith upon their publication in *The Canada Gazette*, but no proceeding shall be commenced against any person founded upon any breach thereof committed within four months after the date of such publication except with the written consent of the Air Board. *New.*

135. The regulations approved by Order in Council dated the 7th day of 10 July, 1919 (P.C. 1379) are hereby cancelled. *New.*

FIRST SCHEDULE

Sections of the Customs Act, R.S.C. (1906), c. 48, as amended by the 6-7 Ed. VII, c. 10 and 7-8 Ed. VII, c. 19, not applicable to aircraft or to goods imported into or exported from Canada by air.

Section	Subject	Refer to Air Regulations Paragraph
13	Unloading only after entry, etc.....	99
17	Report of vessel arriving by inland navigation.....	Nil.
20	Goods not to be landed at first port.....	100
22	Importation in vehicles prohibited at certain times.....	Nil.
23	Importation in vehicles or by foot passengers—procedure....	101
24	Duty of importers.....	102
38	Vessels entering Gulf of Annapolis.....	Nil.
39	“ “ Great Bras d’Or or Little Bras d’Or.....	Nil.
70	Duty on repairs and equipment.....	103
73	Damage to goods in transit in vehicles.....	Nil.
96	Entry outwards.....	104
98	Clearance.....	105
103	Goods as stores.....	106
116	Time of importation and exportation.....	107
122	Procedure in case of unloading due to damage.....	108, 109
123	“ “ “ “.....	“ 109
125	Goods which may be landed without entry.....	110
192	Importation in vehicles at prohibited hours.....	Nil.

SECOND SCHEDULE

Sections of the Customs Act applicable to aircraft entering or departing from Canada or to goods imported into or exported from Canada by air, as the context requires.

Section	Subject
72	Damage in transit.
100	Entry outwards.
101	Obligations incurred by entry for export.
102	Upon what evidence obligations cancelled.
237	Entering goods outward and not exporting.
239	Carrying goods out of limits of port of outward entry before entry.
241	Failure to make report and entry of goods shipped in Canada.

No. 6

Convention Relating to the Regulation of Aerial Navigation,
Dated 13th October, 1919

Corrected text (1)

No. 6
Convention
relating
to the
Regulation
of Aerial
Navigation,
13th Oct.,
1919.

CHAPTER I

GENERAL PRINCIPLES

ARTICLE 1.—The High contracting Parties recognize that every Power has complete and exclusive sovereignty over the air space above its territory.

For the purpose of the present Convention the territory of a State shall be
10 understood as including the national territory, both that of the mother country
and of the colonies, and the territorial waters adjacent thereto.

ART. 2.—Each contracting State undertakes in time of peace to accord freedom of innocent passage above its territory to the aircraft of the other contracting States, provided that the conditions laid down in the present Convention are observed.

Regulations made by a contracting State as to the admission over its territory of the aircraft of the other contracting States shall be applied without distinction of nationality.

ART. 3.—Each contracting State is entitled for military reasons or in the interest of public safety to prohibit the aircraft of the other contracting States, under the
20 penalties *provided* by its legislation and subject to no distinction being made in this
respect between its private aircraft and those of the other contracting States, from flying over certain areas of its territory.

In that case the locality and the extent of the prohibited areas shall be published and notified beforehand to the other contracting States.

ART. 4.—Every aircraft which finds itself above a prohibited area shall, as soon as aware of the fact, give the signal of distress provided in Paragraph 17 of Annex D and land as soon as possible outside the prohibited area at one of the nearest aerodromes of the State unlawfully flown over.

(1) Note by the General Secretary.—This text contains all the modifications made by the International Commission for Air Navigation in the original text of the 13th October, 1919, including those adopted at the Twelfth Session (London, April, 1927), which came into force on the 10th February, 1928.

CHAPTER II

NATIONALITY OF AIRCRAFT

ART. 5.—No contracting State shall, except by a special and temporary authorization, permit the flight above its territory of an aircraft which does not possess the nationality of a contracting State *unless it has concluded a special convention with the State in which the aircraft is registered. The stipulations of such special convention must not infringe the rights of the contracting Parties to the present Convention and must conform to the rules laid down by the said Convention and its Annexes. Such special convention shall be communicated to the International Commission for Air Navigation which will bring it to the knowledge of the other* 10 *contracting States.*

ART. 6.—Aircraft possess the nationality of the State on the register of which they are entered, in accordance with the provisions of Section I (c) of Annex A.

ART. 7.—No aircraft shall be entered on the register of one of the contracting States unless it belongs wholly to nationals of such State.

No incorporated company can be registered as the owner of an aircraft unless it possess the nationality of the State in which the aircraft is registered, unless the President or chairman of the company and at least two-thirds of the directors possess such nationality, and unless the company fulfils all other conditions which may be prescribed by the laws of the said State. 20

ART. 8.—An aircraft cannot be validly registered in more than one State.

ART. 9.—The contracting States shall exchange every month among themselves and transmit to the International Commission for Air Navigation referred to in article 34 copies of registrations and of cancellations of registrations which shall have been entered on their official registers during the preceding month.

ART. 10.—All aircraft engaged in international navigation shall bear their nationality and registration marks as well as the name and residence of the owner in accordance with Annex A.

CHAPTER III

CERTIFICATES OF AIRWORTHINESS AND COMPETENCY

30

ART. 11.—Every aircraft engaged in international navigation shall, in accordance with the conditions laid down in Annex B, be provided with a certificate of airworthiness issued or rendered valid by the State whose nationality it possesses.

ART. 12.—The commanding officer, pilots, engineers and other members of the operating crew of every aircraft shall, in accordance with the conditions laid down in Annex E, be provided with certificates of competency and licenses issued or rendered valid by the State whose nationality the aircraft possesses.

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ART. 13.—Certificates of airworthiness and of competency and licenses issued or rendered valid by the State whose nationality the aircraft possesses, in accordance with the regulations established by Annex B and Annex E and hereafter by the International Commission for Air Navigation, shall be recognized as valid by the other States.

10 Each State has the right to refuse to recognize for the purpose of flights within the limits of and above its own territory certificates of competency and licenses granted to one of its nationals by another contracting State.

ART. 14.—No wireless apparatus shall be carried without a special license issued by the State whose nationality the aircraft possesses. Such apparatus shall not be used except by members of the crew provided with a special license for the *purpose*.

Every aircraft used in public transport and capable of carrying ten or more persons shall be equipped with sending and receiving wireless apparatus when the methods of employing such apparatus shall have been determined by the International Commission for Air Navigation.

20 This Commission may later extend the obligation of carrying wireless apparatus to all other classes of aircraft in the conditions and according to the methods which it may determine.

CHAPTER IV

ADMISSION TO AIR NAVIGATION ABOVE FOREIGN TERRITORY

ART. 15.—Every aircraft of a contracting State has the right to cross the air space of another State without landing. In this case it shall follow the route fixed by the State over which the flight takes place. However, for reasons of general security it will be obliged to land if ordered to do so by means of the signals provided in Annex D.

30 Every aircraft which passes from one State into another shall, if the regulations of the latter State require it, land in one of the aerodromes fixed by the latter. Notification of these aerodromes shall be given by the contracting States to the International Commission for Air Navigation and by it transmitted to all the contracting States.

The establishment of international airways shall be subject to the consent of the States flown over.

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ART. 16.—Each contracting State shall have the right to establish reservations and restrictions in favour of its *national* aircraft in connection with the carriage of persons and goods for hire between two points on its territory.

Such reservations and restrictions shall be immediately published, and shall be communicated to the International Commission for Air Navigation, which shall notify them to the other contracting States.

ART. 17.—The aircraft of a contracting State which establishes reservations and restrictions in accordance with Article 16, may be subjected to the same reservations and restrictions in any other contracting State, even though the latter State does not itself impose the reservations and restrictions on other foreign aircraft. 10

ART. 18.—Every aircraft passing through the territory of a contracting State, including landing and stoppages reasonably necessary for the purpose of such transit, shall be exempt from any seizure on the ground of infringement of patent, design or model, subject to the deposit of security the amount of which in default of amicable agreement shall be fixed with the least possible delay by the competent authority of the place of seizure.

CHAPTER V

RULES TO BE OBSERVED ON DEPARTURE WHEN UNDER WAY AND ON LANDING

ART. 19.—Every aircraft engaged in international navigation shall be provided with: 20

- (a) A certificate of registration in accordance with Annex A;
- (b) A certificate of airworthiness in accordance with Annex B;
- (c) Certificates and licenses of the commanding officer, pilots and crew in accordance with Annex E;
- (d) If it carries passengers, a list of their names;
- (e) If it carries freight, bills of lading and manifest;
- (f) Log books in accordance with Annex C;
- (g) If equipped with wireless, the special license prescribed by Article 14.

ART. 20.—The log books shall be kept for two years after the last entry.

ART. 21.—Upon the departure or landing of an aircraft, the authorities of the 30 country shall have, in all cases, the right to visit the aircraft and to verify all the documents with which it must be provided.

ART. 22.—Aircraft of the contracting States shall be *entitled* to the same measures of assistance for landing, particularly in case of distress, as national aircraft.

ART. 23.—With regard to the salvage of aircraft wrecked at sea the principles of maritime law will apply, in the absence of any agreement to the contrary.

ART. 24.—Every aerodrome in a contracting State, which upon payment of charges is open to public use by its national aircraft, shall likewise be open to the aircraft of all the other contracting States.

In every such aerodrome there shall be a single tariff of charges for landing and length of stay applicable alike to national and foreign aircraft.

ART. 25.—Each contracting State undertakes to adopt measures to ensure that every aircraft flying above the limits of *its* territory and that every aircraft
10 wherever it may be, carrying its nationality mark, shall comply with the regulations contained in Annex D.

Each of the contracting States undertakes to ensure the prosecution and punishment of all persons contravening these regulations.

CHAPTER VI

PROHIBITED TRANSPORT

ART. 26.—The carriage by aircraft of explosives and of arms and munitions of war is forbidden in international navigation. No foreign aircraft shall be permitted to carry such articles between any two points in the same contracting State.

ART. 27.—Each State may, in aerial navigation, prohibit or regulate the
20 carriage or use of photographic apparatus. Any such regulations shall be at once notified to the International Commission for Air Navigation, which shall communicate this information to the other contracting States.

ART. 28.—As a measure of public safety, the carriage of objects other than those mentioned in articles 26 and 27 may be subjected to restrictions by any contracting State. Any such regulations shall be at once notified to the International Commission for Air Navigation, which shall communicate this information to the other contracting States.

ART. 29.—All restrictions mentioned in Article 28 shall be applied equally to national and foreign aircraft.

CHAPTER VII

STATE AIRCRAFT

ART. 30.—The following shall be deemed to be State aircraft:—

- (a) Military aircraft.
- (b) Aircraft exclusively employed in State service, such as posts, customs, police.

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Every other aircraft shall be deemed to be a private aircraft.

All State aircraft other than military, customs and police aircraft shall be treated as private aircraft and as such shall be subject to all the provisions of the present Convention.

ART. 31.—Every aircraft commanded by a person in military service detailed for the purpose shall be deemed to be a military aircraft.

ART. 32.—No military aircraft of a contracting State shall fly over the territory of another contracting State nor land thereon without special authorization. In case of such *authorization* the military aircraft shall enjoy, in principle, in the absence of special stipulation the privileges which are customarily accorded to 10 foreign ships of war.

A military aircraft which is forced to land or which is requested or summoned to land shall by reason thereof acquire no right to the privileges referred to in the above paragraph.

ART. 33.—Special arrangements between the States concerned will determine in what cases police and customs aircraft may be authorized to cross the frontier. They shall in no case be entitled to the privileges referred to in Article 32.

CHAPTER VIII

INTERNATIONAL COMMISSION FOR AIR NAVIGATION

ART. 34.—There shall be instituted, under the name of the International Com- 20 mission for Air Navigation, a permanent Commission placed under the direction of the League of Nations and composed of:

Two representatives of each of the following States: The United States of America, France, Italy and Japan;

One representative of Great Britain and one of each of the British Dominions and of India;

One representative of each of the other contracting States.

Each State represented on the Commission (Great Britain, the British Dominions and India counting for this purpose as one State) shall have one vote.

The International Commission for Air Navigation shall determine the rules of 30 its own procedure and the place of its permanent seat, but it shall be free to meet in such places as it may deem convenient. Its first meeting shall take place at Paris. This meeting shall be convened by the French Government, as soon as a majority of the signatory States shall have notified to it their ratification of the present Convention.

The duties of this Commission shall be:

- (a) To receive proposals from or to make proposals to any of the contracting States for the modification or amendment of the provisions of the present Convention, and to notify changes adopted;
- (b) To carry out the duties imposed upon it by the present Article and by Articles 9, 13, 14, 15, 16, 27, 28, 36, and 37 of the present Convention;
- (c) To amend the provisions of the Annexes A-G;
- (d) To collect and communicate to the contracting State information of every kind concerning international air navigation;
- 10 (e) To collect and communicate to the contracting States all information relating to wireless telegraphy, meteorology and medical science which may be of interest to air navigation;
- (f) To ensure the publication of maps for air navigation in accordance with the provisions of Annex F;
- (g) To give its opinion on questions which the States may submit for examination.

Any modification of the provisions of any one of the Annexes may be made by the International Commission for Air Navigation when such modification shall have been approved by three fourths of the total possible votes which could be cast if all the States were represented: *this majority must, moreover, include at least* 20 *three of the five following States: the United States of America, the British Empire, France, Italy, Japan. Such modification shall become effective from the time when it shall have been notified by the International Commission for Air Navigation to all the contracting States.*

Any proposed modification of the Articles of the present Convention shall be examined by the International Commission for Air Navigation, whether it originates with one of the contracting States or with the Commission itself. No such modification shall be proposed for adoption by the contracting States, unless it shall have been approved by at least two-thirds of the total possible votes.

30 All such modifications of the Articles of the Convention (but not of the provisions of the Annexes) must be formally adopted by the contracting States before they become effective.

The expenses of organization and operation of the International Commission for Air Navigation shall be borne by the contracting States, *the total shall be allocated in the proportion of two shares each for the United States of America, the British Empire, France, Italy and Japan and one share each for all the other States.*

The expenses occasioned by the sending of technical delegations will be borne by their respective States.

CHAPTER IX

FINAL PROVISIONS

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ART. 35.—The High Contracting Parties undertake as far as they are respectively concerned to co-operate as far as possible in international measures concerning:

(a) The collection and dissemination of statistical, current, and special meteorological information, in accordance with the provisions of Annex G;

(b) The publication of standard aeronautical maps, and the establishment of a uniform system of ground marks for flying, in accordance with the provisions of Annex F;

(c) The use of wireless telegraphy in air navigation, the establishment of the necessary wireless stations, and the observance of international wireless regulations;

10

ART. 36.—General provisions relative to customs in connection with international air navigation are the subject of a special agreement contained in Annex H to the present Convention.

Nothing in the present Convention shall be construed as preventing the contracting States from concluding, in conformity with its principles, special protocols as between State and State in respect of customs, police, posts and other matters of common interest in connection with air navigation. Any such protocols shall be at once notified to the International Commission for Air Navigation which shall communicate this information to the other contracting States.

ART. 37.—In the case of a disagreement between two or more States relating to the interpretation of the present Convention, the question in dispute shall be determined by the Permanent Court of International Justice to be established by the League of Nations, and until its establishment by arbitration.

If the parties do not agree on the choice of the arbitrators, they shall proceed as follows:

Each of the parties shall name an arbitrator, and the arbitrators shall meet to name an umpire. If the arbitrators cannot agree, the parties shall each name a third State, and the third State so named shall proceed to designate the umpire, by agreement or by each proposing a name and then determining the choice by lot.

Disagreement relating to the technical regulations annexed to the present Convention, shall be settled by the decision of the International Commission for Air Navigation by a majority of votes.

In case the difference involves the question whether the interpretation of the Convention or that of a regulation is concerned, final decision shall be made by arbitration as provided in the first paragraph of this Article.

ART. 38.—In case of war, the provisions of the present Convention shall not affect the freedom of action of the contracting States either as belligerents or as neutrals.

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ART. 39.—The provisions of the present Convention are completed by the Annexes A to H which, subject to Article 34 (c), shall have the same effect and shall come into force at the same time as the Convention itself.

10 ART. 40.—The British Dominions and India shall be deemed to be States for the purposes of the present Convention.

The territories and nationals of Protectorates or of territories administered in the name of the League of Nations, shall, for the purposes of the present Convention, be assimilated to the territory and nationals of the Protecting or Mandatory States.

ART. 41.—States which have not taken part in the war of 1914-1919 shall be permitted to adhere to the present Convention.

This adhesion shall be notified through the diplomatic channel to the Government of the French Republic, and by it to all the signatory or adhering States.

20 ART. 42.—A State which took part in the war of 1914-1919 but which is not a signatory of the present Convention, may adhere only if it is a member of the League of Nations or, until January 1, 1923, if its adhesion is approved by the Allied and Associated Powers signatories of the Treaty of Peace concluded with the said State. After January 1, 1923, this adhesion may be admitted if it is agreed to by at least three-fourths of the signatory and adhering States voting under the conditions provided by Article 34 of the present Convention.

30 Applications for adhesions shall be addressed to the Government of the French Republic, which will communicate them to the other contracting Powers. Unless the State applying is admitted *ipso facto* as a Member of the League of Nations, the French Government will receive the votes of the said Powers and will announce to them the result of the voting.

ART. 43.—The present Convention may not be denounced before January 1, 1922. In case of denunciation, notification thereof shall be made to the Government of the French Republic, which shall communicate it to the other contracting Parties. Such denunciation shall not take effect until at least one year after the giving of notice, and shall take effect only with respect to the Power which has given notice.

No. 6

THE PRESENT CONVENTION shall be ratified.

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Each Power will address its ratification to the French Government, which will inform the other signatory Powers.

The ratifications will remain deposited in the archives of the French Government.

The present Convention will come into force for each signatory Power, in respect of other Powers which have already ratified, forty days from the date of the deposit of its ratification.

On the coming into force of the present Convention, the French Government will transmit a certified copy to the Powers which under the Treaties of Peace have undertaken to enforce rules of aerial navigation in conformity with those contained in it.

DONE at Paris, the thirteenth day of October nineteen hundred and nineteen in a single copy which shall remain deposited in the archives of the French Government, and of which duly authorized copies shall be sent to the contracting States.

The said copy, dated as above, may be signed until the twelfth day of April nineteen hundred and twenty inclusively.

In FAITH WHEREOF the hereinafter-named Plenipotentiaries whose powers have been found in good and due form have signed the present Convention in the French, English and Italian languages, which are equally authentic.

ANNEXES

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ANNEX A

THE MARKING OF AIRCRAFT

SECTION I

GENERAL

(a) The nationality mark shall be represented by a capital letter in Roman characters, e.g.:

France F

The registration mark shall be represented by a group of four capital letters.

- 10 The complete group of five letters shall be used as a call sign of the aircraft in making or receiving signals by wireless telegraphy or other methods of communication except by visual signals when the Morse Code is not being used.

The radiotelephonic call sign will be formed by the whole or part of the name of the owner of the aircraft (Air Navigation Company or Private owner) followed by the last two letters of the registration mark.

An abridged call sign may be used during the course of a communication (the complete call sign being compulsory at the beginning and at the end of the communication).

The abridged radiotelegraphic call sign will be composed of two letters:

- 20 (i) The nationality letter of the aircraft.
 (ii) The last letter of the registration mark of the aircraft.

When opening up communication by means of visual signals, when the Morse code is not used, the usual methods will be employed.

The above provisions relating to the call sign do not affect the special rules relating to the signals laid down in Section II of Annex D.

The nationality and registration marks are assigned in accordance with the table contained in section VIII of this Annex.

- 30 However, any aircraft, manufactured in a contracting State, shall for delivery by air to a national of a non-contracting State, of which the nationality and registration marks shall not have been notified by the International Commission for Air Navigation to the contracting States, be provisionally registered in the State in which it was manufactured. The nationality mark shall be that of the latter State. The registration mark shall consist of a W followed by three figures.

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(b) On aircraft other than State and commercial, the registration mark shall be underlined with a black line.

(c) The entry in the register and the certificate of registration shall contain a description of the aircraft and shall indicate the number or other identification mark given to it by the maker; the nationality and registration marks mentioned above; the usual station of the aircraft; the full name, nationality and residence of the owner and the date of registration.

The Certificate of Registration will be drawn up in accordance with the following form:

STATE MINISTRY DEPARTMENT OR SERVICE

10

CERTIFICATE OF REGISTRATION

No.

Nationality and Registration Marks.

(1) Type and Description.

(2) Name and address of Constructor.

(3) Constructor's Serial Number.

(4) Name of Owner.

(5) Address of Owner.

. 20

(6) Nationality of Owner.

(7) Usual station of Aircraft.

Whereas it has been declared that the above mentioned aircraft is not registered in any other state, it is hereby certified that the said aircraft has been duly entered on the register ofon the. . . .day of. . .19. . . in accordance with the Convention for the Regulation of Aerial Navigation, dated 13th October 1919, Annex A, and with.

.and has been allocated the Nationality and Registration Marks. 30

.and is of.nationality.

Given at.this. . . .day of. . .19. . .

(Signature).

(d) All aircraft shall carry affixed to the car (or basket) or to the fuselage in a prominent position a metal plate, inscribed with the names and residence of the owner and the marks of nationality and registration.

SECTION II

LOCATION OF MARKS

The nationality and registration marks shall be painted in black on a white ground in the following manner:—

(a) *FLYING MACHINES.*—The marks shall be painted once on the lower surface of the lower main planes and once on the upper surface of the top main planes, the top of the letters to be towards the leading edge. They shall also be painted along each side of the fuselage between the main planes and the tail planes. In cases where the machine is not provided with a fuselage the marks shall be painted
10 on the nacelle instead.

(b) *AIRSHIPS AND BALLOONS.*—In the case of airships the marks shall be painted near the maximum cross section on both sides and on the upper surface equidistant from the letters on the sides.

In the case of balloons the marks shall be painted twice near the maximum horizontal circumference, as far as possible from one another.

In the case both of airships and balloons the side marks shall be visible both from the sides and ground.

SECTION III

ADDITIONAL LOCATIONS OF NATIONALITY MARKS

20 (a) *Flying Machines and Airships.*—The nationality mark shall also be painted on the left and right sides of the lower surface of the lowest tail planes or elevators and also on the upper surface of the top tail planes or elevators, whichever is the larger. It shall also be painted on both sides of the rudder, or on the outer sides of the outer rudders if more than one rudder is fitted.

(b) *Balloons.*—The nationality mark shall be painted on the basket.

SECTION IV

MEASUREMENTS OF NATIONALITY AND REGISTRATION MARKS

30 (a) *Flying Machines.*—The height of the marks on the main planes and tail planes respectively shall be equal to four-fifths of the chord, and in the case of the rudder shall be as large as possible. The height of the marks on the fuselage or nacelle shall be four-fifths of the greatest depth of the narrowest part of that portion of the fuselage or nacelle on which the marks are painted.

(b) *Airships and Balloons.*—In the case of airships, the nationality marks painted on the tail plane shall be equal in height to four-fifths of the chord of the

No. 6 tail plane and in the case of the rudder the marks shall be as large as possible. The height of the other marks shall be equal to at least one-twelfth of the circumference at the maximum transverse cross section of the airship.

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In the case of balloons the height of the nationality mark shall be four-fifths of the height of the basket, and the height of the other marks shall be equal to at least one-twelfth of the circumference of the balloon.

(c) *General.*—In the case of all aircraft the letters of the nationality and registration marks need not exceed 2·5 metres in height.

SECTION V

MEASUREMENT, TYPE OF LETTERS, ETC.

10

(a) The width of the letters shall be two-thirds of their height and the thickness shall be one-sixth of their height. The letters shall be painted in plain block type and shall be uniform in shape and size. A space equal to half the width of the letters shall be left between the letters.

(b) In the case of underlined letters the thickness of the line shall be equal to the thickness of the letter and the space between the bottom of the letters and the line shall be equal to the thickness of the line.

SECTION VI

SPACING BETWEEN NATIONALITY AND REGISTRATION MARKS

20

Where the nationality and registration marks appear together, a hyphen of a length equal to the width of one of the letters shall be painted between the nationality mark and registration mark.

SECTION VII

MAINTENANCE

The nationality and registration marks shall be displayed to the best possible advantage, taking into consideration the constructional features of the aircraft. The marks must always be kept clean and visible.

SECTION VIII

TABLE OF MARKS

The nationality mark of each State named below applies to the aircraft of its 30 Dominions, Colonies, Protectorates, dependencies or of countries over which it is the Mandatory State.

(See the table which appears hereinafter).

ANNEX B

CERTIFICATES OF AIRWORTHINESS

The following main conditions govern the issue of certificates of airworthiness:—

1. The design of the aircraft in regard to safety shall conform to certain minimum requirements.

2. A satisfactory demonstration must be made in flying trials of the actual flying qualities of the type of aircraft examined, provided that machines subsequently manufactured which conform to the approved type need not be subject to 10 such trials. The trials shall conform to certain minimum requirements.

3. The construction of every aircraft with regard to workmanship and materials must be approved. The control of the construction and of the tests shall be in accordance with certain minimum requirements.

4. Every aircraft must be equipped with suitable instruments for safe navigation.

5. The minimum requirements of paragraphs 1 to 3 inclusive shall be fixed by the International Commission for Air Navigation. Until they have been so fixed each contracting State shall determine the detailed regulations under which certificates of airworthiness shall be granted or remain valid.

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20

ANNEX C

LOG BOOKS

SECTION I

JOURNEY LOG

This shall be kept for every aircraft and shall contain the following particulars:

(a) Classification of the aircraft: its nationality and registration marks; the full name, nationality and residence of the owner; name of maker and the maximum total load authorized for the aircraft.

(b) In addition for each journey—

30 (i) The names, nationality and residence of the pilot and of each of the members of the crew.

TABLEAU DES MARQUES

A PORTER SUR LES AÉRONEFS

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(Annexe A de la Convention portant réglementation de la navigation aérienne, en date à Paris du 13 octobre 1919, complétée par les décisions de la C.I.N.A. en date des 13 juillet 1922, 25 octobre 1922, 28 février 1923, 26 juin 1923, 3 mars 1924, 14 octobre 1924, 6 avril 1925, 6 octobre 1925, 3 novembre 1926 et 25 avril 1927.

—Continued

PAYS	MARQUE DE NATIONALITÉ	MARQUES D'IMMATRICULATION
Etats-Unis d'Amérique.....	N	} Toutes les combinaisons de quatre lettres majuscules faites au moyen des vingt-six lettres de l'alphabet.
Empire Britannique.....	G	
France.....	F	
Italie.....	I	
Japon.....	J	
Ethiopie.....	A	Toutes les combinaisons faites avec B comme première lettre.
Hedjaz.....	A	Toutes les combinaisons faites avec H comme première lettre.
Nicaragua.....	A	Toutes les combinaisons faites avec N comme première lettre.
Albanie.....	B	Toutes les combinaisons faites avec A comme première lettre.
Bulgarie.....	B	Toutes les combinaisons faites avec B comme première lettre.
Chili.....	B	Toutes les combinaisons faites avec C comme première lettre.
Lettonie.....	B	Toutes les combinaisons faites avec L comme première lettre.
Bolivie.....	C	Toutes les combinaisons faites avec B comme première lettre.
Cuba.....	C	Toutes les combinaisons faites avec C comme première lettre.
Suisse.....	C	Toutes les combinaisons faites avec H comme première lettre.
Portugal.....	C	Toutes les combinaisons faites avec P comme première lettre.
Roumanie.....	C	Toutes les combinaisons faites avec R comme première lettre.
Uruguay.....	C	Toutes les combinaisons faites avec U comme première lettre.
Esthonie.....	E	Toutes les combinaisons faites avec A comme première lettre.
Equateur.....	E	Toutes les combinaisons faites avec E comme première lettre.
Haïti.....	H	Toutes les combinaisons faites avec H comme première lettre.
Hongrie.....	H	Toutes les combinaisons faites avec M comme première lettre.
Pays-Bas.....	H	Toutes les combinaisons faites avec N comme première lettre.

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A PORTER SUR LES AÉRONEFS—*Suite*

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PAYS	MARQUE DE NATIONALITÉ	MARQUES D'IMMATRICULATION
Siam.....	H	Toutes les combinaisons faites avec S comme première lettre.
Costa-Rica.....	K	Toutes les combinaisons faites avec C comme première lettre.
Finlande.....	K	Toutes les combinaisons faites avec S comme première lettre.
Tchécoslovaquie...	L	Toutes les combinaisons faites avec B comme première lettre.
Guatemala.....	L	Toutes les combinaisons faites avec G comme première lettre.
Liberia.....	L	Toutes les combinaisons faites avec L comme première lettre.
Luxembourg.....	L	Toutes les combinaisons faites avec U comme première lettre.
Espagne.....	M	Toutes les combinaisons faites avec A, B, C, D, E, F, G, H, I, J, K, L, M ou N comme première lettre.
Monaco.....	M	Toutes les combinaisons faites avec O comme première lettre.
Belgique.....	O	Toutes les combinaisons faites avec B comme première lettre.
Pérou.....	O	Toutes les combinaisons faites avec P comme première lettre.
Brésil.....	P	Toutes les combinaisons faites avec B comme première lettre.
Perse.....	P	Toutes les combinaisons faites avec I comme première lettre.
Pologne.....	P	Toutes les combinaisons faites avec P comme première lettre.
République Argentine.....	R	Toutes les combinaisons faites avec A comme première lettre.
Suède.....	S	Toutes les combinaisons faites avec A comme première lettre.
Grèce.....	S	Toutes les combinaisons faites avec G comme première lettre.
Panama.....	S	Toutes les combinaisons faites avec P comme première lettre.
Danemark.....	T	Toutes les combinaisons faites avec D comme première lettre.
Chine.....	X	Toutes les combinaisons faites avec C comme première lettre.
Honduras.....	X	Toutes les combinaisons faites avec H comme première lettre.
Royaume Serbes-Croates et Slo- vènes.....	X	Toutes les combinaisons faites avec S comme première lettre.
Afghanistan.....	Y	Toutes les combinaisons faites avec A comme première lettre.

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TABLEAU DES MARQUES—*fin*A PORTER SUR LES AÉRONEFS—*fin*

PAYS	MARQUE DE NATIONALITÉ	MARQUES D'IMMATRICULATION
Ville libre de Dantzig.....	Y	Toutes les combinaisons faites avec M comme première lettre.
République du Salvador.....	Y	Toutes les combinaisons faites avec S comme première lettre.
République Dominicaine....	Z	Toutes les combinaisons faites avec D comme première lettre.
Lithuanie.....	Z	Toutes les combinaisons faites avec L comme première lettre.

(ii) The place, date, and hour of departure, the route followed, and all incidents en route including landings.

SECTION II

AIRCRAFT LOG

This is obligatory only in the case of aircraft carrying passengers or goods for hire and shall contain the following particulars:—

(a) Classification of the aircraft; its nationality and registration marks; the full name, nationality and residence of the owner; name of maker and the maximum total load authorized for the aircraft;

(b) Type and series number of engine; type of airscrew showing number, 10 pitch, diameter and maker's name;

(c) Type of wireless apparatus fitted.

(d) Table giving the persons in charge of the aircraft and of its maintenance all necessary information as to the adjustment of the main plane structure (flying machines) or of the rigging (airships);

(e) A fully detailed engineering record of the life of the aircraft, including all acceptance tests, overhauls, replacements, repairs and all work of a like nature.

SECTION III

ENGINE LOG

This is obligatory only in the case of engines installed in aircraft carrying passengers or goods for hire, and in such cases a separate log book shall be kept for each engine and shall always accompany the engine. It shall contain the following particulars:

- (a) Type of engine, series number, maker's name, international (or special) power and international (or special) number of revolutions of engine, date of production and first date put into service.
- 10 (b) Registration mark and type of aircraft in which the engine has been installed.
- (c) A fully detailed engineering record of the life of the engine, including all acceptance tests, hours run, overhauls, replacements, repairs, and all work of a like nature.

SECTION IV

SIGNAL LOG

This is obligatory only in the case of aircraft carrying passengers or goods for hire, and shall contain the following particulars:

- (a) Classification of the aircraft; its nationality and registration marks; the 20 full name, nationality and residence of the owner.
- (b) Place, date, and time of the transmission or reception of any signal.
- (c) Name or other indication of the person or station to whom a signal is sent or from whom a signal is received.

SECTION V

FORM, ARRANGEMENT AND METHOD OF KEEPING LOG BOOKS

The various log books prescribed by the Convention may be combined in a single book. The model of the said log book or books, the rules governing their arrangement and the method of keeping them shall be fixed or modified by the International Commission for Air Navigation by the majority provided for in article 34 30 for the modification of the Annexes.

ANNEX D

RULES AS TO LIGHTS AND SIGNALS. RULES FOR AIR TRAFFIC

DEFINITIONS

The word "aircraft" comprises all balloons, whether fixed or free, kites, airships, and flying machines.

The word "balloon," shall mean an aircraft, either fixed or free, using gas lighter than air as a means of support, and having no means of propulsion.

The word "airship" shall mean an aircraft using gas lighter than air as a means of support, and having means of propulsion.

The words "flying machine" shall mean all aeroplanes, seaplanes, flying boats, 10 or other aircraft heavier than air, and having means of propulsion.

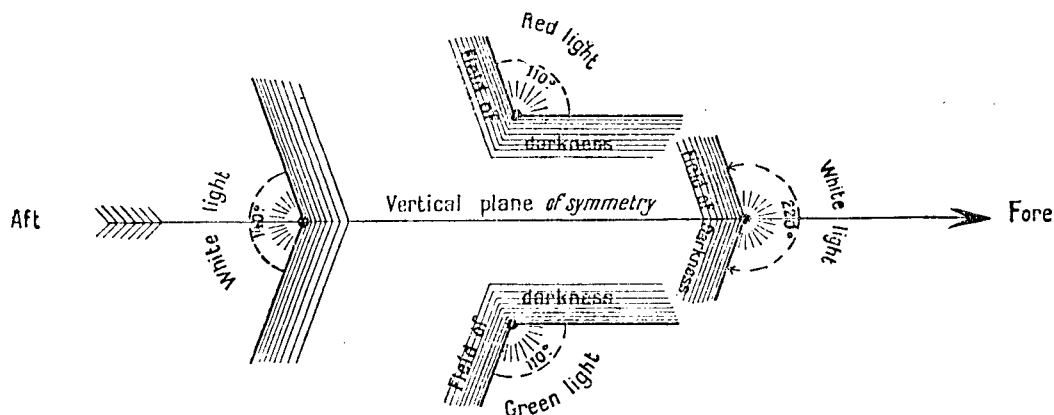
An airship is deemed to be "under way" within the meaning of these rules when it is not made fast to the ground or any object on land or water.

SECTION I

RULES AS TO LIGHTS

The word "visible" in these rules when applied to lights shall mean visible on a dark night with a clear atmosphere. The angular limits laid down in these

SKETCH PLAN OF LIGHTS ON THE AIRCRAFT



rules as shewn in the sketch (attached) shall be determined when the aircraft is in its normal attitude for flying on a rectilinear horizontal course. 20

1. The rules concerning lights shall be complied with in all weathers from sunset to sunrise, and during such time no other lights may be exhibited which may be mistaken for the navigation lights prescribed hereafter. The latter must not be dazzling.

2. A flying machine, when in the air or manoeuvring on land or water under its own power, shall carry the following lights:—

(a) Forward, a white light visible in a dihedral angle of 220 degrees bisected by a vertical plane through the line of flight, and visible at a distance of at least eight kilometres.

(b) On the right side, a green light so constructed and fixed as to show an unbroken light between two vertical planes whose dihedral angle is 110 degrees when measured to the right from dead ahead, and visible at a distance of at least five kilometres.

10 (c) On the left side, a red light so constructed and fixed as to show an unbroken light between two vertical planes whose dihedral angle is 110 degrees when measured to the left from dead ahead, and visible at a distance of at least five kilometres.

(d) The said green and red side lights shall be fitted so that the green light shall not be seen from the left side nor the red light from the right side.

(e) At the rear, and as far aft as possible, a white light shining rearwards and visible in a dihedral of 140 degrees bisected by a vertical plane through the line of flight and of such a character as to be visible at a distance of at least five kilometres.

20 (f) In the case where, in order to fulfil the above conditions, the single light has to be replaced by several lights, the field of visibility of each of these lights should be so limited that only one can be seen at a time.

3. The Rules determined for the lighting of flying machines shall apply to airships subject to the following modifications:—

(a) All lights shall be doubled; the forward and aft lights vertically, and the side lights horizontally in a fore and aft direction.

(b) Both lights of each pair forward and aft shall be visible at the same time.

The distance between the lights comprising a pair shall not be less than two metres.

30 4. An airship, when towed, shall carry the lights specified in paragraph 3, and, in addition, those specified in paragraph 6 for airships not under control.

5. (a) A flying machine, or airship, when on the surface of the water, and when not under control, that is to say, not able to manoeuvre as required by the Regulations for the Prevention of Collisions at Sea, shall carry two red lights not less than two metres apart one over the other and visible in all directions at a distance of at least three kilometres.

(b) The aircraft referred to in this paragraph, when not making way through the water, shall not carry the side lights, but when making way shall carry them.

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6. An airship which from any cause is not under control, or which has voluntarily stopped her engines shall, in addition to the other specified lights, display conspicuously two red lights, one over the other, not less than two metres apart, and visible in all directions at a distance of at least three kilometres.

By day an airship, when being towed, which from any cause is not under control, shall display conspicuously two black balls or shapes, each 60 cms. in diameter, placed one over the other not less than two metres apart.

An airship moored, or under way but having voluntarily stopped its engines, shall display conspicuously by day a black ball or shape, 60 cms. in diameter, and shall be treated by other aircraft as being not under control. 10

7. A free balloon shall carry one bright white light below the basket at a distance of not less than five metres, and visible in all directions at a distance of at least three kilometres.

8. A fixed balloon shall carry in the same position as the white light mentioned in paragraph 7, and in lieu of that light, three lights in a vertical line one over the other, not less than four metres apart. The highest and lowest of these lights shall be red, and the middle light shall be white, and they shall be visible in all directions at a distance of at least three kilometres.

In addition, the mooring cable shall have attached to it at intervals of three hundred metres, measured from the basket, groups of three lights similar to those 20 mentioned in the preceding paragraph. In addition, the object to which the balloon is moored on the ground shall have a similar group of lights to mark its position.

By day the mooring cable shall have attached to it at intervals of not more than one hundred metres measured from the basket, tubular streamers not less than 20 cm. in diameter and two metres long, and marked with alternate bands of white and red, 50 cm. in width.

9. An airship when moored near the ground shall carry the lights specified in paragraphs 2 (a) and (e) and 3.

In addition, if moored but not near the ground, the airship, the mooring cable, 30 and the object to which moored, shall be marked in accordance with the provisions of paragraph 8, whether by day or by night.

Sea anchors or drogues used by airships for mooring purposes on the water are exempt from this regulation.

10. A flying machine stationary upon the land or water but not anchored or moored shall carry the lights specified in paragraph 2.

11. In order to prevent collisions with surface craft:—

No. 6

(a) A flying machine when at anchor or moored on the water shall carry forward, where it can best be seen, a white light, visible in all directions at a distance of at least two kilometres.

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(b) A flying machine of fifty metres or upwards in length, when at anchor or moored on the water, shall in the forward part of the flying machine carry one such light, and at or near the stern of the flying machine, and at a height that it shall not be less than five metres lower than the forward light, another such light.

The length of a flying machine shall be deemed to be the overall length.

10 (c) Flying machines of fifty metres or upwards in span, when at anchor or moored in the water, shall in addition carry at each lower wing tip one light as specified in (a) of this paragraph.

The span of a flying machine shall be deemed to be the maximum lateral dimension.

12. In the event of the failure at night of any of the lights specified under these rules to be carried by aircraft flying at night, such aircraft shall land as soon as it can do so without danger.

13. Nothing in these rules shall interfere with the operation of any special rules made by any State with respect to the additional station or signal lights 20 for military aircraft, or for aircraft in formation, or with the exhibition of recognition signals adopted by owners of aircraft which have been authorized by their respective Governments and duly registered and published.

SECTION II

RULES AS TO SIGNALS

14. (a) An aircraft wishing to land at night, without being compelled to do so, on an aerodrome having a ground control shall before landing, make intermittent signals either with a lamp or a projector other than the navigation lights or with any sound apparatus. In addition, it shall make by international Morse code by means of phonetic or luminous signals, the two-letter group constituted by its 30 nationality letter and the last letter of its registration mark.

(b) Permission to land will be given by the same two-letter sign from the ground, made with a green light and followed by intermittent signals of the same colour.

15. The firing of a red pyrotechnical light or the display of a red flare from the ground shall be taken as an instruction that aircraft are not to land.

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16. An aircraft compelled to land at night shall before landing fire a red pyrotechnical light or make a series of short and intermittent flashes with its navigation lights.

17. When an aircraft is in distress and requires assistance, the following shall be the signals of distress to be used or displayed, either together or separately:

- (a) The international signal, SOS, by means of visual or radio-telegraphic signals.
- (b) The international code flag signal of distress, indicated by NC.
- (c) The distant signal, consisting of a square flag having either above or below it a ball, or anything resembling a ball. 10
- (d) A continuous sounding with any sound apparatus.
- (e) A signal, consisting of a succession of white pyrotechnical lights fired at short intervals.

When an aircraft desires to signal that it is in difficulties or about to land or alight compulsorily or has momentarily interrupted its flight but does not consider it necessary to ask for immediate assistance by using the signal SOS, it shall use the international alert signal PAN by means of radio-telegraphy or radio-telephony.

18. To warn an aircraft that it is in the vicinity of a prohibited area and should change its course, the following signals shall be used:— 20

(a) By day: three projectiles discharged at intervals of ten seconds, each showing on bursting white smoke, the location of the burst indicating the direction the aircraft should follow.

(b) By night: three projectiles discharged at intervals of ten seconds showing on bursting white lights or stars, the location of the burst indicating the direction the aircraft should follow.

19. To require an aircraft to land, the following signals shall be used:

(a) By day: three projectiles discharged at intervals of ten seconds, each showing on bursting black or yellow smoke.

(b) By night: three projectiles discharged at intervals of ten seconds showing on bursting green lights or stars. 30

In addition, when necessary to prevent the landing of aircraft other than the one ordered, a searchlight which shall be flashed intermittently shall be directed towards the aircraft whose landing is required.

20. (a) In the event of fog or mist rendering aerodromes invisible, their presence may be indicated by a balloon acting as an aerial buoy and/or other approved means.

(b) In fog, mist, falling snow or heavy rainstorm, whether by day or night, an aircraft on the water shall make the following sound signals:—

1. If not anchored or moored, a sound at intervals of not more than two minutes, consisting of two blasts of about five seconds duration with an interval of about one second between them;

2. If at anchor or moored, the rapid ringing of an efficient bell or gong for about five seconds, at intervals of not more than one minute.

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SECTION III

GENERAL RULES FOR AIR TRAFFIC

10 21. Subject to the provisions of paragraph 43 below, flying machines shall always give way to balloons fixed or free and to airships, and airships shall always give way to balloons, whether fixed or free.

22. An airship when not under its own control shall be classed as a free balloon.

23. Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing and angle of elevation of an approaching aircraft. If neither the bearing nor the angle of elevation appreciably change, such risk shall be deemed to exist.

24. The term "risk of collision" shall include all risk of accident due to undue proximity of other aircraft. Every aircraft that is required by these rules to give
20 way to another to avoid collision, shall keep a safe distance, having regard to the circumstances of the case.

25. While observing the rules regarding risk of collision contained in paragraph 24, a motor-driven aircraft must always manoeuvre according to the rules contained in the following paragraphs, as soon as it is apparent that, if it pursued its course, it would pass at a distance of less than 200 metres from any part of another aircraft.

26. When two motor-driven aircraft are meeting end on or nearly end on each shall alter its course to the right.

27. When two motor-driven aircraft are on courses which cross, the aircraft
30 which has the other on its own right side shall keep out of the way of the other.

28. An aircraft overtaking any other shall keep out of the way of the overtaken aircraft by altering its own course to the right, and must not pass by diving.

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Every aircraft coming up with another aircraft from any direction more than 110 degrees from ahead of the latter, i.e., in such a position with reference to the aircraft which it is overtaking that at night it would be unable to see either of that aircraft's side lights, shall be deemed to be an overtaking aircraft, and no subsequent alteration of the bearing between the two aircraft shall make the overtaking aircraft a crossing aircraft within the meaning of these rules, or relieve it of the duty of keeping clear of the overtaking aircraft until it is finally past and clear.

As by day the overtaking aircraft cannot always know with certainty whether it is forward or abaft the direction mentioned above from the other aircraft, it should, if in doubt, assume that it is an overtaking aircraft and keep out of the way.

29. Where by any of these rules one of the two aircraft is to keep out of the way, the other shall keep its course and speed. When, in consequence of thick weather or other causes, the aircraft having the right of way finds itself so close that collision cannot be avoided by the action of the giving-way aircraft alone, it shall take such action as will best aid to avert collision.

30. Every aircraft which is directed by these rules to keep out of the way of another aircraft shall, if the circumstances of the case admit, avoid crossing ahead of the other.

31. In order to obviate the increased risk of collision which exists on air traffic routes, the following rules shall, so far as it is safe and practicable, be observed when flying on or in the vicinity of such routes:

(a) Every aircraft when flying by compass along the straight line (rhumb line) joining two points on an air traffic route in common use, shall keep such line at least 500 metres on its left.

(b) Every aircraft following an air traffic route, which has been officially recognized, shall keep such route at least 300 metres on its left.

(c) Every aircraft which, in the vicinity of a route frequented by aircraft, is following a line of landmarks such as a road, railway, river, canal or coastline, etc., shall keep such line of landmarks at least 300 metres on its left.

30

(d) An aircraft shall not fly keeping any of the lines or routes above referred to on its right, except at a distance therefrom sufficient to avoid aircraft following such lines or routes in accordance with these rules.

(e) When crossing one of these lines or routes above referred to, an aircraft shall cross it at right angles as rapidly as possible and as high as reasonably practicable.

32. All aircraft on land or sea about to ascend shall not attempt to "take off" until there is no risk of collision with alighting aircraft.

No. 6

33. Every aircraft in a cloud, fog, mist or other conditions of bad visibility shall proceed with caution, having careful regard to the existing circumstances.

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Every aircraft when flying beneath clouds shall always do so, so far as it is safe and practicable, at such a distance below the clouds as will enable it readily to see and be seen.

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34. In conforming with these rules due regard shall be had to all dangers of navigation and collision and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger.

SECTION IV

BALLAST

35. The dropping of ballast other than fine sand or water from aircraft in the air is prohibited.

SECTION V

SPECIAL RULES FOR AIR TRAFFIC ON AND IN THE VICINITY OF AERODROMES

36. At every aerodrome if a flying machine about to land or leave finds it necessary to make a circuit or partial circuit, such circuit or partial circuit shall, except in case of distress, be left-handed (anti-clockwise). (The remainder of the paragraph is cancelled).

37. When a flying machine starts from an aerodrome it shall not turn until 500 metres distance from the nearest point of the aerodrome, and the turning then must conform with the regulations provided in the preceding paragraph.

38. Every flying machine flying at a distance of between 500 and 3,500 metres from the nearest point of the perimeter of an aerodrome shall conform to the flying rules laid down in paragraphs 36 and 37 above, unless it is flying at a greater height than 2,000 metres.

39. Acrobatic landings are prohibited at aerodromes of contracting States used for international aerial traffic. Flying machines are prohibited from engaging in aerial acrobatics in the vicinity of these aerodromes, at a distance of less than 4,000 metres from the nearest point of the perimeter of the aerodrome, unless they are flying at a greater height than 2,000 metres.

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40. At every aerodrome the direction of the wind shall be clearly indicated by one or more of the recognized methods, e.g., landing T, conical streamer, smudge fire, etc. In the event of there being no wind, a ball, easily visible, shall be hoisted on a mast and if there is a landing T it shall be fixed.

41. Every flying machine when taking off or alighting on an aerodrome used for international air traffic shall do so up-wind, except when the natural conditions of the aerodrome do not permit or in the event of there being no wind. In the latter case, every flying machine, when taking off or landing, shall do so in the direction indicated by an appropriate signal, or, if there is a landing T, in the direction indicated by this T. 10

42. In the case of two flying machines approaching an aerodrome for the purpose of landing, the flying machine flying at the greater height shall be responsible for avoiding the flying machine at the lower height, and shall as regards landing observe the rules of paragraph 28 for passing.

43. Aircraft about to land on an aerodrome shall be given free way.

44. At every aerodrome, along the perimeter and at the approaches to the hangars, a neutral zone shall be set apart for flying machines manoeuvring on the ground.

The part reserved for departures and landings shall be as large as possible.

Every flying machine when landing or taking off, shall do so in conformity with the provisions of paragraph 41, and leaving clear on its left any flying machine which has already landed or which is taking off or about to take off.

Every flying machine when running along the ground in the zone reserved for departures and landings, shall do so in the direction of landing. Nevertheless, on certain aerodromes, flying machines running along the ground may be authorized to cross the part reserved for departures and landings subject to certain reservations destined to ensure safety.

45. By way of exception to the general rule laid down in the third sub-paragraph of paragraph 44 above, at certain aerodromes the part reserved for departures and landings may be virtually divided into two approximately equal zones, by a vertical plane bearing in the direction of landing defined in paragraph 41. For an observer facing up-wind, the zone on the right will be the one reserved for landings and the zone on the left the one reserved for departures. This special arrangement must be indicated by a full white star of five points (constituted by inscribing a regular non-convex pentagon in a circle of not less than fifteen metres diameter), placed on the ground in the centre of the part of the ground reserved for departures and landings.

A flying machine when landing shall do so in conformity with paragraph 41, in the left part of the zone reserved for that purpose, but leaving clear on its left any other flying machine which has already landed.

A flying machine when taking off shall do so, in conformity with paragraph 41, in the left part of the zone reserved for that purpose, but leaving clear on its left any other flying machines which are taking off or about to take off.

46. The rules of the present Section shall apply equally at night on aerodromes, when the aerodrome shall be defined as accurately as possible by red lights placed on its perimeter and on its obstacles. The direction for landing shall as far
10 as possible be indicated by a luminous T, or failing this, by three white lights forming an isocetes triangle whose base shall be about two hundred metres long and whose height shall be at least twice the base; the lights shall be so placed that the flying machine must land in the direction leading from the centre of the base to the light at the apex, the base indicating the place where it should come into contact with the ground, and the apex, the place which it is best not to overrun.

47. No fixed balloon, kite, or moored airship shall be elevated in the vicinity of any aerodrome without a special authorization, except in the cases provided for in paragraph 20.

48. Suitable signals shall be placed on all obstacles on aerodromes and, as far
20 as possible, on fixed obstacles dangerous to flying within a zone of 500 metres of all aerodromes.

SECTION VI

GENERAL

49. Every aircraft manœuvring under its own power on the water shall conform to the Regulations for Preventing Collisions at Sea, and for the purposes of these regulations shall be deemed to be a steam-vessel, but shall only carry the lights specified in the preceding rules, and not those specified for steam-vessels in the Regulations for Preventing Collisions at Sea, and shall not use, except
30 as specified in paragraphs 17 and 20 above, or be deemed to hear the sound signals specified in the above mentioned Regulations.

50. Nothing in the above rules shall exonerate any aircraft, or the owner, pilot or crew thereof, from the consequences of any neglect in the use of lights or signals, or of any neglect to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of the air, or by the special circumstances of the case.

51. Nothing in the above provisions shall interfere with the operation of any special rule or rules duly made and published relative to navigation of aircraft in the immediate vicinity of any aerodrome or other place, and it shall be obligatory on all owners, pilots, or crews of aircraft to obey such rules.

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ANNEX E

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MINIMUM QUALIFICATIONS NECESSARY FOR OBTAINING CERTIFICATES AND LICENSES
 AS PILOTS AND NAVIGATORS

SECTION I

GENERAL

The conditions set forth in the present Annex are the minimum conditions required for the issue of certificates and licenses valid for international traffic.

Nevertheless, each contracting State will be entitled to issue certificates and licenses, not valid for international traffic, subject to such less stringent conditions as it may deem adequate to ensure the safety of air traffic. 10

The said certificates and licenses will not, however, be valid for flight over the territory of another State.

They must be in a form which will prevent any confusion with certificates and licenses issued in accordance with the decisions made by the International Commission for Air Navigation in pursuance of Article 13 of the Convention and valid for international traffic.

On the other hand, each of the contracting States may, if it deems expedient so to do and without prejudice to the provisions of Article 13 of the Convention, require for certificates and licences issued by it conditions more stringent than those fixed by the present Annex. 20

SECTION II

CERTIFICATES FOR PILOTS OF FLYING MACHINES

(A) Private Pilot's Flying Certificate

(not valid for purposes of public transport or aerial work).

1. Practical Tests

In each practical test the candidate must be alone in the flying machine.

(a) *Test for Altitude and Gliding Flight.* A flight without landing during which the pilot shall attain a minimum altitude of 2,000 metres above the point of departure. The descent shall finish with a glide, the engines cut off at 1,500 metres above the landing ground. The landing shall be made without restarting the engine 30 and within 150 metres or less of a point fixed before hand by the official examiners of the test.

(b) *Tests of Skill.* A flight without landing around two posts (or buoys) situated 500 metres apart making a series of five figure-of-eight turns each turn reaching one of the two posts (or buoys). This flight shall be made at an altitude of not more than 200 metres above the ground (or water) without touching the ground (or water). The landing shall be effected by:

(i) Finally shutting off the engine or engines at latest when the aircraft touches the ground (or water).

(ii) Finally stopping the flying machine within a distance of 50 metres from a point fixed by the candidate before starting.

2. *Special Requirements*

Knowledge of rules as to Lights and Signals, and General rules for Air traffic. Special rules for Air traffic on and in the vicinity of aerodromes. A practical knowledge of international air legislation.

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10 B. *Pilot's Flying Certificate for Flying Machines Used for Purposes of Public Transport or Aerial Work*

1. *Practical Tests*

In each practical test the candidate must be alone in the flying machine.

(a) Test for altitude. A flight without landing during which the pilot shall remain for at least an hour at a minimum altitude of 2,000 metres above the point of departure.

(b) The tests for gliding flight and for skill are the same as those required for a private pilot's flying certificate. Candidates already in possession of the latter certificate are not required to pass these tests again.

(c) Test of endurance consisting of a cross-country or oversea flight of at least 20 300 kilometres, after which the final landing shall be made at the point of departure. This flight shall be made in the same flying machine within eight hours. It shall include two obligatory landings (during which the machine must come to rest), which shall not be at the point of departure, but which shall be fixed beforehand by the examiners.

At the time of departure the candidate shall be informed of his course and furnished with the appropriate map. The examiners will decide whether the course has been correctly followed.

(d) Night Flight: A thirty minutes flight made between two hours after sunset and two hours before sunrise, at a height of at least 500 metres.

302. *Technical Examination*

After satisfactory practical tests have been passed, candidates will, when summoned, submit themselves to examination on—

(a) *Flying Machines:*

Theoretical knowledge of the laws of the resistance of the air especially as concerns its effects on wings and tail planes, rudders, elevators, and airscrews: functions of the different parts of the machine and of their controls.

Assembling of flying machines and their different parts.

Practical tests on rigging.

No. 6 (b) *Engines*

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General knowledge of internal combustion engines, including functions of the various parts; a general knowledge of the construction, assembling, adjustment, and characteristics of aero-engines.

Causes of the faulty running of engines and of breakdown.

Practical tests in running repairs.

(c) *Special Requirements*

Knowledge of Rules as to Lights and Signals and General rules for Air traffic, and Special rules for Air traffic on and in the vicinity of aerodromes.

Practical knowledge of the special conditions of air traffic and of international air legislation. 10

Map reading, orientation, location of position, elementary meteorology.

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The practical tests shall be carried out within a maximum period of one month. They may be carried out in any order, and each may be attempted twice. They shall be witnessed by properly accredited examiners, who will forward the official reports to the proper authorities.

The official reports will give the different incidents, especially those of landings. The candidates shall furnish before each test proper identity forms.

A barograph shall be carried on all practical tests, and the graph, signed by the examiners, shall be attached to their report. 20

Pilots who hold the military pilot's certificate shall be entitled to the private pilot's flying certificate, but, in order to obtain the pilot's flying certificate for purposes of public transport or aerial work it will be necessary to pass the technical conditions for navigation as required by B (2) (c).

SECTION III

CERTIFICATES FOR PILOTS OF FREE BALLOONS

1. *Practical Tests:*

The candidate must have completed the following certified ascents—

1. By day:

Three ascents under instruction. 30

One ascent in control under supervision.

One ascent alone in the balloon.

2. By night:

One ascent alone in the balloon.

Each ascent shall be of at least two hours' duration.

2. *Theoretical Tests:*

Elementary aerostatics and meteorology.

3. *Special Requirements*

General knowledge of a balloon and its accessories; inflation; rigging; management of an ascent; instruments; precautions against cold and high altitudes.

Knowledge of Rules as to Lights and Signals and General rules for Air Traffic; Special rules for Air Traffic on and in the vicinity of aerodromes.

Practical knowledge of international air legislation. Map reading and orientation.

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SECTION IV

CERTIFICATES FOR AIRSHIP PILOTS

Every airship pilot shall have qualified as pilot of a free balloon.

There shall be three classes of airship pilots.

The holder of a first-class certificate is qualified to command any airship.

The holder of a second-class certificate is qualified to command airships under 20,000 cubic metres capacity.

The holder of a third-class certificate is qualified to command airships under 6,000 cubic metres capacity.

All military and naval airship officer pilots are entitled to a third-class certificate.

All military and naval airship officer pilots who have commanded airships over 6,000 cubic metres capacity are entitled to a first-class certificate.

QUALIFICATIONS FOR THIRD-CLASS CERTIFICATE

1. *Practical Tests*

(a) Twenty certified flights (three of which shall be by night) in an airship, each flight being of at least one hour's duration. In at least four of these flights the candidate must have handled the airship himself, under the supervision of the commanding officer of the airship, including ascent and landing, during the whole flight if the duration thereof does not exceed four hours, and during at least four 30 hours, if the flight is of longer duration.

(b) One flight on a predetermined course of at least 100 kilometres, terminating with a night landing, and made with a duly authorized inspector on board.

2. *Theoretical Examination:*

Aerostatics and meteorology. (Density of gases, laws of Mariotte and of Gay-Lussac; barometric pressure, Archimedes principle; confinement of gases; interpretation and use of meteorological information and of weather charts.)

Physical and chemical properties of light gases, and of materials used in the construction of airships.

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- General theory of airships.
Dynamic properties of moving bodies in air.
3. *General Knowledge*
Elementary knowledge of internal combustion engines.
Elementary navigation; use of the compass; location of position.
Inflation; stowage; rigging; handling; controls and instruments.

QUALIFICATIONS FOR SECOND-CLASS CERTIFICATE

1. *Practical Tests*

To be eligible for a second-class certificate a candidate must be holder of a third-class certificate and have at least four months' service as a third-class pilot on an airship; and also have completed at least ten flights as third-class pilot on an airship of capacity above 6,000 cubic metres, in which he has handled the airship himself, including ascent and landing, under the supervision of the commanding officer of the airship, during the whole flight if the duration thereof does not exceed four hours, and during at least four hours, if the flight is of longer duration.

2. *Theoretical Examination*

Advanced knowledge of the subjects required for the third-class certificate.

QUALIFICATIONS FOR FIRST-CLASS CERTIFICATE

1. *Practical Tests*

20

To be eligible for a first-class certificate a candidate must be holder of a second-class certificate, have at least two months' active service as a second-class pilot on an airship, and also have completed at least five flights as second-class pilot of an airship of capacity above 20,000 cubic metres, in which he has handled the airship himself, including ascent and landing, under the supervision of the commanding officer of the airship, during the whole flight if the duration thereof does not exceed four hours, and during at least four hours, if the flight is of longer duration. Each flight must be at least of one hours' duration with a minimum of fifteen hours for the five flights.

2. *Theoretical Examination*

30

As required for a second-class certificate.

SECTION V

CERTIFICATE FOR NAVIGATORS

Aircraft used for public transport carrying more than ten passengers and having to make a continuous flight between two points more than 500 kilometres apart overland, or a night flight, or a flight between two points more than 200

kilometres apart over sea, must have on board a navigator who has been granted a certificate as such after passing a theoretical and practical examination in the following:—

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1. *Practical Astronomy:*

True and apparent movements of the celestial bodies. Different aspects of the celestial sphere.

Hour angles, mean, true, and astronomical time.

Shape and dimensions of the earth.

Star globes and maps.

10 Method of determining latitude, longitude, time, and azimuth.

2. *Navigation:*

Maps and charts—how to read them.

Compass; magnetic meridian; variation, deviation.

Courses, bearings, and their corrections.

Compensation of compasses (theoretical and practical).

Calculations of azimuth.

Flight by dead reckoning, measure of the relative speed, drift, traverse table.

Chronometer, chronometer rate, comparisons.

Sextants, adjustments.

20 Nautical almanac.

Determination of positions by means of bearing and altitude of stars.

Knowledge of great circle navigation.

Aeronautical navigational instruments.

3 *General Knowledge*

International rules for air and maritime navigation.

International air legislation.

Practical knowledge of meteorology and use of weather charts.

SECTION VI

MEDICAL CERTIFICATES

30 INTERNATIONAL MEDICAL REQUIREMENTS FOR AIR NAVIGATION

A. Private Pilots (Flying Machines)

1. Every candidate before obtaining a private pilot's licence (flying machines) will present himself for an examination by qualified medical men specially designated for that purpose by the contracting State issuing the licence.

No. 6 2. This medical examination shall be based upon the following requirements
 Convention relating of mental and physical fitness:

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(a) Good family and personal history, with particular reference to nervous stability, as to which information shall be given in a statement made and signed by the candidate and satisfactory to the examining officer.

(b) Candidates for private license (flying machines) may not apply for a licence before the age of seventeen.

(c) General Surgical Examination. The candidate must neither suffer from any wound or injury, nor have undergone any operation, nor possess any abnormality, congenital or acquired, which might interfere with the safe handling of air-10 craft under ordinary conditions.

Palpation of the abdomen and abdominal viscera, particularly the pyloric, vesicular, duodenal and appendicular regions, whenever it reveals any swelling or distinct pain, must be completed by a radioscopic and radiographic examination.

Any surgical intervention in the biliary passages or the digestive tube, except appendicitis, involving a total or partial excision or a diversion of one of these organs, any anatomical lesion in the walls of any part whatever of the digestive tube, any stricture of its calibre, any calculus or foreign body, any peritoneal lesion, established by clinical or laboratory examinations, will entail rejection. Exception may be made for spasmodic strictures not accompanied by other troubles and for 20 ptoses compensated by a good abdominal musculature.

Diseases of the liver (including those of the biliary passages) and of the pancreas will in cases where it is deemed necessary be verified by laboratory examination, particularly by radiography as well as by an examination of the blood and of the urine, and will entail rejection only if they afford indication of the existence of a calculus, tumour or lesion involving a persistent impairment of function of these organs.

(d) General Medical Examination. The candidate must not suffer from any disease or disability which renders him liable suddenly to become incompetent in the management of aircraft. He must possess heart, lungs and nervous system in 30 a state to withstand the effects of altitude. He must be free from kidney disease, and must not present any clinical sign of syphilis nor have any cardiac lesion.

(e) Eye Examination. The candidate must possess a degree of visual acuity equal to 6/9 for both eyes with correction by glasses if necessary, the visual acuity being measured by means of a powerful illumination not shining directly into the eyes of the examinee. Ocular poise, the field of vision of each eye and colour perception must be normal.

(f) Ear Examination. The middle ear must be healthy. The candidate must possess an auditory acuity not less than that corresponding with the perception of the whispered voice at one metre. The vestibular mechanism must be intact and not hypersensitive. It must be equal on both sides.

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(g) Nose, Throat and Mouth Examination. The candidate must possess free tubal air entry on both sides.

3. Each Contracting State shall provisionally fix its own methods of examination, until the details and the minimal conditions of the tests shall have been settled by a decision of the International Commission for Air Navigation adopted by the majority provided for in Article 34 for modifications of the provisions of the Annexes. Such details and minimal conditions may be modified by the International Commission for Air Navigation by the same majority.

4. The successful candidate will receive a medical certificate of acceptance, which must be produced before the licence can be issued. This medical certificate must, as far as possible, be in accordance with the following form:

Valid until.....

MEDICAL CERTIFICATE

20 *I, the undersigned
certify that (1)
born at..... the
domiciled at has undergone an
examination as to physical fitness and that he has been found (2).....
to serve as a private pilot (flying machines).*

*Given atthe.....day of
..... (Signature).*

(1) Name, Christian names and sex.

(2) Fit, unfit, or temporarily unfit.

5. Any aircraft pilot certificated before the 28th of June, 1925, will be considered as having fulfilled the requirements mentioned above for the granting of a certificate of physical fitness unless he should be found to have a pathological defect capable of causing a sudden accident.

B. Operating Crew of Aircraft Engaged in Public Transport of Aerial Work

1. Every candidate before obtaining a licence as a pilot, navigator, engineer, or member of the operating crew of aircraft engaged in public transport or aerial work will present himself for examination by medical men specially designated by the contracting State issuing the licence.

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2. The candidate, before undergoing the examination referred to in paragraph 1 above, must have successfully undergone a preliminary medical examination at which he must have satisfied the minimal requirements as to physical fitness indicated below:

This examination will be made, at the option of the State issuing the licence, either by the medical men referred to in paragraph 1, or by any other medical man.

The candidate must have the complete use of his four limbs, must not be completely deprived of the use of either eye, must be free from any active or latent, acute or chronic, medical or surgical disability or infection. He must be free from any injury or wound which would entail any degree of functional incapacity which might interfere with the safe handling of aircraft at any altitude even in the case of prolonged or difficult flight. He must be completely free from hernia, must not suffer from any detectable sensory lesion, and must be free from a history of morbid mental or nervous trouble.

3. Medical supervision, both for the selection and the maintenance of efficiency of the personnel specified in paragraph 1, shall be based upon the following requirements of mental and physical fitness:

(a) The candidate will be questioned at the first examination concerning his family and personal history.

(b) Examination of the nervous system. At the first examination the examination of the nervous system of the candidate shall comprise a full inquiry into family and personal history. The information obtained shall be given in a statement made and signed by the candidate and accompanied, if possible, by a certificate in regard especially to losses of consciousness, fits and convulsions of all kinds, from the candidate's ordinary medical adviser or a responsible person who has known him for a long time. This statement and this certificate must be deemed satisfactory by the examining medical officer.

The candidate must not present any mental or trophic impairment, pathological tremor, or presumptive evidence of latent epilepsy. Motility, sensibility, tendinous, cutaneous and pupillary reflexes, coordination of movements and cerebellar functions, must be normal. An exception may be made for local peripheral trouble due to accidental section of a nerve branch.

Fractures of the cranium involving the internal table of the cranial box, even without apparent impairment, will entail temporary unfitness during a period of two years from the date of the fracture.

Any presumed nervous syphilis will entail rejection, unless the non-existence of such an impairment is proved by an examination of the blood and an examination of the cerebro-spinal fluid, made with the consent of the candidate.

(c) Pilots and navigators of aircraft engaged in public transport may not enter upon their duties before 19 or after 45 years of age.

(d) General Surgical Examination. The candidate must neither suffer from any wound or injury, nor have undergone any operation, nor possess any abnormality, congenital or acquired, which might interfere with the safe handling of aircraft at any altitude even in the case of prolonged or difficult flight.

Palpation of the abdomen and abdominal viscera, particularly the pyloric, vesicular, duodenal and appendicular regions, whenever it reveals any swelling or distinct pain, must be completed by a radiosopic and radiographic examination.

Any surgical intervention in the biliary passages or the digestive tube, except appendicitis, involving a total or partial excision or a diversion of one of these organs, any anatomical lesion in the walls of any part whatever of the digestive tube, any stricture of its calibre, any calculus or foreign body, any peritoneal lesion, established by clinical or laboratory examinations, will entail rejection. Exception may be made for spasmodic strictures not accompanied by other troubles and for ptoses compensated by a good abdominal musculature.

Diseases of the liver (including those of the biliary passages) and of the pancreas will in cases where it is deemed necessary be verified by laboratory examination, particularly by radiography as well as by an examination of the blood and of the urine, and will entail rejection only if they afford indication of the existence of a calculus, tumour or lesion involving a persistent impairment of function of these organs.

(e) General Medical Examination. The candidate must not suffer from any disease or disability which renders him liable suddenly to become incompetent in the management of aircraft. His muscular power must be adequate for the handling of the types of aircraft he will have to pilot or the apparatus he is to use.

He must not have any signs of aneurism of the large arterial trunks, nor have any cardiac lesion, even if well compensated; the heart must be normal, with normal function, and only respiratory arrhythmia, increase of pulse rate from excitement or exercise and a general slow pulse not associated with auriculo-ventricular dissociation will be allowed.

The candidate must not suffer from any acute disability of the lungs, nor possess any cicatricial lesion of the lungs, and must be free from tuberculosis capable of being diagnosed by the usual clinical methods, from tracheo-bronchial disease of the glands and from pulmonary emphysema, even if slight. However, with regard to the maintenance of efficiency of the personnel specified in paragraph I, pulmonary emphysema will entail rejection only when the pulmonary capacity

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No. 6 falls below three and half litres at rest after a full exhalation and inhalation and when the duration of the breath holding falls at rest below fifty seconds, or only forty seconds if the candidate is less than one metre sixty-five centimetres in height or is of the female sex. In addition, each examination shall include a radioscopy record in doubtful clinical cases.

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The candidate must not present any signs of organic disease of the kidneys; these latter must be insensitive to palpation and of normal size. Renal ptosis will entail rejection; this rule, however, will not apply as regards the maintenance of efficiency if no functional trouble is involved. The urine must not contain any pathological element. Affections of the urinary passages and of the genital 10 organs, even blennorrhoea, may entail temporary or definitive unfitness, an exception being allowable as regards the maintenance of efficiency in the case of tuberculous orchio-epididymitis in its mild and localised form.

Candidates of the female sex must present a normal uterus and appendages. Cases in which surgical intervention has taken place will be considered individually. Any presumed pregnancy will entail rejection. Following confinement or miscarriage, the holder of a license will be allowed to resume her air duties only after having undergone a new medical examination.

The candidate must not present any clinical signs of syphilis.

(f) Eye Examination. The candidate must possess a degree of visual acuity 20 compatible with the efficient performance of his duties. Pilots and navigators must possess visual acuity equal to 100 per cent for each eye taken separately and without correction by glasses, the visual acuity being measured by means of a powerful illumination not shining directly into the eyes of the examinee. Binocular vision, ocular poise, the field of vision of each eye and colour perception must be normal.

(g) Ear Examination. The middle ear must be healthy. The candidate must possess an auditory acuity not less than that corresponding with the normal perception of the tuning forks C (1) 64 vibrations per second, C (3) 256 vibrations per second, and C (7) 4096 vibrations per second, the forks being held perpendicularly to the ground one centimetre from the auditory tube. The vestibular mechanism must be intact and not hypersensitive; it must be equal on both sides.

(h) Nose, Throat and Mouth Examination. The candidate must possess free nasal and tubal air entry on both sides and must not suffer from serious, acute or chronic affections of the buccal cavity or upper respiratory tract.

4. Each Contracting State shall provisionally fix its own methods of examination, until the details and the minimal conditions of the tests shall have been settled by a decision of the International Commission for Air Navigation adopted

by the majority provided for in article 34 for modifications of the provisions of the Annexes. Such details and minimal conditions may be modified by the International Commission for Air Navigation by the same majority.

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5. The successful candidate will receive a medical certificate of acceptance, which must be produced before the licence can be issued or renewed and which must, as far as possible, be in accordance with the following form:

Valid until.....

MEDICAL CERTIFICATE

10 *I, the undersigned*
certify that (1)
born at the
domiciled at has undergone an
examination as to physical fitness and that he has been found (2).....
to serve in the operating crew as (3).....

Given at the day of 19....

(Signature)

(1) Name and Christian names.

(2) Fit, unfit, or temporarily unfit.

20 *(3) Indication of the capacity in which to be employed in the operating crew.*

6. In order to ensure the maintenance of efficiency, every member of the personnel specified in paragraph 1, who holds a licence, shall be re-examined periodically, at least every six months, if of the male sex, and every three months, if of the female sex, by medical men specially designated by the contracting State issuing the licence, and the findings shall be attached to his original record. In case of illness or accident also he shall be re-examined and pronounced fit before resuming air duties. The date and result of such re-examination shall be recorded on the licence of the person examined.

7. Any member of the operating crew of an aircraft, certificated before the 1st 30 of January, 1919, and serving on the 1st of July, 1922, in a public transport company, may be retained in the navigating personnel so long as his physical capabilities as ascertained at his last medical examination are maintained, unless there be detected a pathological defect capable of causing a sudden accident.

ANNEX F

INTERNATIONAL AERONAUTICAL MAPS AND GROUND MARKINGS

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International maps shall be made and ground marks established in accordance with the following general principles:—

SECTION I

MAPS

1. Two types of aeronautical maps shall be used. They are hereafter mentioned as general maps and local maps.

2. The index scheme for the aeronautical maps, both general and local, shall be based on the index scheme adopted for the "International 1 : 1,000,000 scale map" by the official International Congress convened for the purpose in London in 1909 and in Paris in 1913.

NOTE.—Extract from the resolutions adopted by the Conferences at London and Paris.

The sheets of the international 1 : 1,000,000 scale map shall include 6 degrees of longitude and 4 degrees of latitude. The limiting meridians of the sheets shall be at successive intervals, reckoning from Greenwich, of 6 degrees; and the limiting parallels, reckoning from the Equator, shall be at successive intervals of 4 degrees.

The longitudinal sectors, from longitude 180° E. or W. of Greenwich, are given numbers from 1 to 60, increasing in an easterly direction. 20

The 22 zones, of 4 degrees in depth, extending from the Equator on each side to 88° latitude, are given letters from A to V.

The polar areas, extending for 2 degrees, are lettered Z.

In the northern hemisphere, each sheet shall bear a descriptive symbol composed of the letter N—followed by the zone letter and sector number corresponding to its position, thus: N.K.—12.

In the southern hemisphere, the letter S shall replace the letter N. Example: S.L.—28.

3. The metre shall be used as the standard of measurement for lengths, distances, heights and depths, reserving for each nation the right to add figures expressing these quantities in its own units. 30

4. The colours, symbols and arrangements for production adopted for the International 1 : 1,000,000 scale map shall be used as far as practicable on the aeronautical maps.

5. The general maps shall be drawn on Mercator's projection and shall be to a scale of one degree of longitude equals three centimetres. The limiting meridians of the sheets shall be reckoned from Greenwich; the limiting parallels shall be reckoned from the Equator. The meridians and parallels of each degree shall be marked in fine lines; those limiting the unit sections of the 1/1,000,000 map of the world shall be accentuated. The same designation of unit sections shall be used as for the 1/1,000,000 map. An overlap, with adjoining sheets, of one degree of latitude and two degrees of longitude shall be provided.

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6. Each sheet of the general (Mercator) Map shall bear the French heading 10 "Carte Générale Aéronautique Internationale" (see Plate I annexed), and under it a translation of this heading in the language of the country publishing the sheet. It shall be designated by an appropriate geographical name and by new co-ordinates (described in paragraph 10) of the Southwest corner of the sheet, excluding the overlap.

Each sheet shall show at least the following: general physical features, represented by a system of hypsometric tints and conventional signs; geographical names; wireless stations; aerial and marine lighthouses (candlepower, colour and character of the light); national frontiers; prohibited areas; lines of equal magnetic declination; a border scale graduated to minutes; latitude and South Polar 20 distance; old and new notation of longitude (see paragraph 10); with an outer margin containing letters and numbers referring to the Index of the 1/1,000,000 Map; the R.F. at the middle latitude of the sheet; scales in kilometres and in the national unit of the country publishing the sheet; index diagram showing the eight surrounding sheets by name and by abridged numbers (vide paragraph 10), with, if necessary, the scales and sheet lines of the corresponding local sheets; key map showing the frontiers and the names of the countries embraced by the sheet, together with the names of seas, districts, etc...; scale of hypsometric tints; list of official air routes with their control points; legend of conventional signs in French or English and in the language of the country publishing the sheets; the 30 projection on which the map is constructed; publisher's name and date of publication and of successive editions; a list of the principal sources from which the sheet is constructed; the official price.

7. The scale of the International Local Aeronautical Map is 1/200,000. Each sheet shall comprise one degree of longitude and one degree of latitude. However, States which at present have a map on a scale approximating to 1/200,000 or with sheet lines differing little from those laid down above may utilise such map, provided always, with a view to obtaining the unification of the signs used, that they follow as closely as possible the conventional signs given in Plate I and that they necessarily conform to the signs for aeronautical information.

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NOTE.—For local aeronautical maps of sparsely inhabited countries, the scale of 1 : 500,000 or 1 : 1,000,000, as appropriate, may be used.

(One paragraph deleted).

8. Each unit sheet of the local aeronautical maps shall bear the French heading “CARTE NORMALE AÉRONAUTIQUE INTERNATIONALE” (see Plate 2 annexed) and under it a translation of this heading in the language of the country publishing the map. Each sheet shall be designated by an appropriate locality name and, where the series consists of degree sheets, by the new co-ordinates (described in paragraph 10) of the Southwest corner of the sheet.

(Two sub-paragraphs deleted).

10

9. The local aeronautical unit sheets shall show, as far as the data are known, the following:

(a) Within the limiting meridians and parallels.—Twenty minutes projection grid; roads; railways of all kinds; cities and towns in outline and the plan of the principal public roads crossing them; villages similarly if practicable, otherwise their positions indicated by a small solid circle; principal features of the surface water system; woodlands and other areas unsuitable for landing; aerodromes; and seaplane stations, with an indication of the permanent facilities for housing, supplies, etc.; emergency landing grounds; aeronautical ground marks; aerial and marine lighthouses (candle power), colour and character of the light); 20 wireless stations; meteorological stations; overhead electric power lines; remarkable objects; national frontiers with the frontier crossings for customs purposes prescribed by Annex H (paragraph 2); prohibited areas; principal air routes; names of important bodies of water; towns and important villages; the topographical relief by shading. Heights will be given in hundreds of metres to the nearest hundred metres above the actual height; the culminating point will be shown by a point placed after the figure giving the thousands of metres (e.g.: 3.5). In the event of the height indicated being under a thousand metres a cipher will not be placed on the left of the point (e.g.: .3).

(b) In the margin: a border scale graduated to minutes; latitude, South 30 Polar distance; old and new notation of longitude (see paragraph 10).

(c) Outside the margin; the name of the locality chosen to designate the sheet and the abridged numbers when the latter are employed; scales in kilometres and in the national unit of the country publishing the sheet; legend of conventional signs in French or English and in the language of the country publishing the sheet; magnetic declination diagrams and the annual variation; index diagram showing the surrounding sheets by name and by abridged numbers, when the latter are employed; key map giving frontiers and names of countries and seas,

parts of which are embraced by the Index diagram; the projection on which the sheet is constructed; publisher's name and date of publication; a list of the principal sources from which the sheet is constructed; the official price.

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10. In addition to the customary latitude and longitude notations, the sheets of the general and local aeronautical maps shall bear numbers, enclosed in rectangles, corresponding to a new system of geographical co-ordinates which, with regard to latitude, shall commence with the South Pole as origin, increasing northward to 180° at the North Pole, and, with regard to longitude, shall commence with the antimeridian of Greenwich as origin, running eastward to 360° . In designating sheets by these new co-ordinates, the co-ordinates of the Southwest corner of the sheet shall be taken, the figures referring to the South Polar distance being invariably written first, and the unit digits being accentuated.

Examples: The sheet whose southern boundary is 49° N. (i.e. 139° South Polar distance) and western boundary 2° E. (i.e. 182° from the antimeridian of Greenwich) will be numbered 139-182. Or, the sheet whose southern boundary is 36° S. (i.e. 54° South Polar distance) and western boundary 7° W. i.e. 173° from the antimeridian of Greenwich) will be numbered 54-173.

11. The general arrangement of the sheets of the general and local maps, titles, marginal notations, diagrams and legends, shall conform with the accompanying models (Plate 1 and Plate 2).

12. The general and local aeronautical maps and guide books of the areas traversed by the most important routes which may be established by international agreement shall be prepared first.

NOTE.—On account of the inadequacy of the usual methods of topographic mapping for making aeronautical maps, it is strongly recommended that steps be taken to survey from the air the areas along the most important international routes. Such surveys would furnish indispensable information regarding the features necessary to be shown on the maps the aviator is to use.

SECTION II

30

UNIVERSAL SYSTEM OF GROUND MARKS

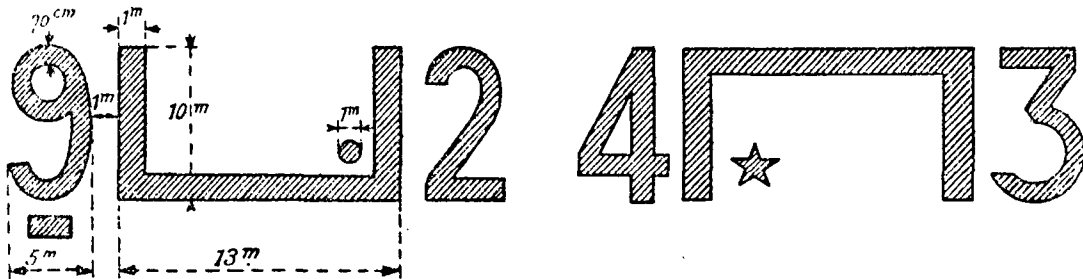
1. Aeronautical ground marks on the ground and on the roofs of buildings shall refer numerically and graphically to the sheets of the local international aeronautical maps.

For this purpose each mark shall shew (see the diagrams):—

(a) The abridged number which designates the sheet within which it lies.

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- (b) A half rectangle, whose short sides shall be oriented north-south and which shall be open towards the opposite half of the unit sheet;
- (c) A dot indicating the approximate position of the mark on the north or south half of the corresponding unit sheet.



Mark situated in the lower half of unit sheet 92. The short sides of the frame shall be oriented true north-south.

Mark situated in the upper half of unit sheet 43.

The numbers forming the abridged number of the sheet shall be placed close to the frame at the top, bottom or sides, but not inside.

Where marks are placed so close to each other as to admit of possible confusion, 10 the round dot may be replaced by a square, triangular or star-shaped dot.

The rectangular frame and the numbers shall have the minimum dimensions indicated in the sketches.

2. The establishment of aeronautical ground marks along international routes is especially recommended.

NOTE.—Steps to establish suitable marks for landing at night shall be eventually taken, in accordance with the decision of the International Commission for Air Navigation.

3. In addition to the ground marks specified above, the names of aerodromes open to public use shall be marked on the ground by letters (in Roman characters) 20 in white of the following dimensions:

Length of each letter.....	6 metres (20 feet)
Width of each letter.....	4 m. 80 (16 feet)
Space between each letter and at each end of name..	4 m. 80 (16 feet)
Width of trench forming stroke of each letter.....	0 m. 90 (3 feet)

4. In the case of hydro-aerodromes open to public use, if it is impossible to carry out the provisions of paragraph 3 above, their names shall be marked by letters (in Roman characters) in white as conspicuously as the circumstances will permit.

APPENDIX

No. 6

1. *Projections and Scales*

A. *General Maps*.—Between 68° North Latitude and 68° South Latitude the General Map shall be drawn on Mercator's Projection, and shall be to a scale of one degree of longitude equals three centimetres.

B. *Local Maps*.—No definite projection is laid down in respect of the Local Maps.

C. *Route Maps*.—As regards those parts of the World for which sheets of the General Map will not be provided (e.g., trans-ocean routes, etc.) route maps, on Mercator's projection and on an appropriate scale, shall be prepared by the countries interested.

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2. *Areas of Sheets of the International General Aeronautical Map*

A. Between 60° North Latitude and 60° South Latitude each sheet of the map shall cover an area 12 degrees in latitude by 18 degrees in longitude (excluding the overlap) and shall contain 9 unit sections of the 1/1,000,000 Map.

B. Between 60° and 68° North Latitude and between 60° and 68° South Latitude each sheet of the Map shall cover an area 8 degrees in latitude by 18 degrees in longitude (excluding the overlap) and shall contain 6 unit sections of the 1/1,000,000 map.

3. *Conventional Signs and Colours*

20 The adopted conventional signs and colours will be used on all the maps mentioned in paragraph 1 of this Appendix. Details will only be shown on the General Maps in so far as it may be considered desirable to do so.

A. *Hydrographic Features* shall be in blue. Open water shall be shown by a uniform tint. Water-lining may be used only when the open water on a sheet is very limited.

A distinction shall be made between:

- i. Rivers, perennial and surveyed.
- ii. Rivers, perennial and unsurveyed.
- 30 iii. Rivers, non-perennial and surveyed.
- iv. Rivers, non-perennial and unsurveyed.

Falls and Rapids shall be indicated by lettering in black.

Bridges, viaducts, locks, dams and weirs shall be indicated by conventional signs, as set forth in the Table of Conventional Signs for Aerial Information.

Land liable to inundation, and marsh, shall be indicated by distinguishing conventional signs. Where areas liable to inundation afford good landing grounds at certain seasons of the year, this information shall be given in black lettering.

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When sea-bed contours are of value to the airman, they shall be shown by dotted blue lines, the depths of such sea-bed contours being indicated by figures in black in metres and, if desired, in the national unit of the country publishing the map. The direction of sea currents may, if deemed useful, be shown by blue arrows, the rate being given in kilometres per hour in black figures.

B. Ground Tints may be used where the information so given is of value to the airman, a light buff being employed for arid ground, a light green for ground covered with vegetation.

C. So far as concerns Topographical Relief the General Map shall be a hypsometric map, i.e. the successive altitudes shall be indicated by a system of tints, 10 differentiating clearly between successive steps. Contours shall be drawn corresponding to the altitudes of 500, 1,000, 2,000, and 3,000 metres reckoning from mean sea-level. The scale of tints shall comprise three tints (500-1000, 1000-2000 and 2000-3000 metres), no hypsometric tint being employed for regions below 500 metres and above 3,000 metres. Features of importance, which would not be shown by the contours, will be represented conventionally.

D. Railways shall be in maroon.

On the general Maps a single line shall be used irrespective of the number of tracks;

On the local Maps a single track shall be indicated by a thin line; two or 20 more tracks shall be indicated by a thicker line, the actual number of tracks being shown by Roman Numerals in black.

A distinction shall be made between:

- i. Railways in use.
- ii. Railways under construction.
- iii. Railways abandoned.

E. Light Railways shall be shown, in so far as the scale of the map allows, by a thin maroon line, with, if desired, the letter L in black at intervals; the number of tracks shall not be given. When light railways run along roads, the letter L only may be given, departures from the road being clearly shown. 30

F. Railway Stations shall be in maroon, and shall be indicated on the general Map only when of special importance to the airman. On the local Maps all stations shall be shown, a differentiation being made between stations with a single platform, and stations with two or more platforms.

G. Tramways shall be shown, in so far as the scale of the map allows, by a thin maroon line with, if desired, the letter T in black. The number of tracks shall not be shown. When tramways run along roads, the letter T only may be given, departures from the road being clearly shown.

H. Telegraph Lines, when shown, shall be dotted in maroon. The existence of telegraph lines along railways shall be assumed. Overhead Power Lines not following railways or tramways, may be indicated as far as the scale permits by the conventional sign for telegraph lines, with the addition of the letter P in black at intervals.

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I. Roads shall be of a colour based on yellow. They shall not be divided into classes, but roads of special value as guides to the airman may be accentuated either by strengthening the colour or by increasing the width.

—Continued

Tracks shall be in broken line.

10 *J. Towns, Villages and Buildings* shall be in scarlet; in so far as the scale permits, the true outline and main arteries of a town or village shall be shown.

K. Forests, Orchards, Woods, Hop Fields, Vineyards, Plantations, etc. when shown, shall be in green; thick forests and woods shall be shown solid, a green stipple being employed, and varied, to show areas less thickly covered with trees. Where solid green will detract from the value of the hypsometric tints stipple shall be used.

L. Sandy Desert, Drifted Sand, Sand Dunes and Sand Banks shall be shown conventionally.

M. Cliffs, Rocks, and Quarries shall be shown conventionally.

20 *N. All Lettering* shall be in black or a dark colour.

All aerial information shall be shown in black, in a lettering quite distinct from that employed for any other information.

4. *Aerial Conventional Signs*

All aerial information shall be shown in black.

5. *Abbreviations to be used in the description of Aerial and Marine Lights*

The abbreviations to be employed are shown on the Table of Conventional Signs.

6. *Spelling and Transliteration of Names*

30 As regards the spelling and transliteration of names the rules in use on the International 1/1,000,000 Map shall be adopted. The inscription of topographical names in the national language only will be sufficient when the information given has no importance from the point of view of international air navigation.

7. *Miscellaneous*

Compass Roses shall be shown on maps on Mercator's projection, where the indication of such Roses does not result in the obliteration of detail.

True and Magnetic Marginal Protractors may be shown if desired.

ANNEX G
 COLLECTION AND DISSEMINATION OF METEOROLOGICAL INFORMATION

SECTION I

CLASSIFICATION OF INFORMATION

The meteorological information necessary to aerial navigation referred to in Article 35 (a) of the Convention, may be divided, in a general way, into three categories, viz.:

(a) Climatological information ⁽¹⁾ which is based upon past meteorological records analysed and summarised to show the weather which is experienced in the long run at a given place or in a given area. 10

(b) Current information ⁽²⁾ which is based upon reports of observations transmitted to a central station by wireless, or ordinary telegraphy or telephony, and upon observations made at the centre itself. Such information gives a survey of the existing conditions at the observing stations. Current information may be divided into two categories, viz.:

1. Information necessary for the preparation of synoptic charts.
2. Information necessary for the working of airways.

(c) Forecasts ⁽³⁾ which are statements of the meteorological conditions anticipated during a period of time or for an epoch of time subsequent to the time of their issue. There are two kinds of forecasts of importance for air navigation, 20 viz.:

1. General forecasts relating to an extensive area and usually for a period of 24 to 36 hours.
2. Detailed short period forecasts relating to airways.

-
1. Climatological information is required:
 - (a) in connection with the selection of airways.
 - (b) for indicating the variation of the meteorological conditions affecting flight during the day and the year and with the place and altitude.
 - (c) for indicating the places at which stations should be established or furnishing current information.
 2. Current information is required:
 - (a) for the guidance of aviation companies and for the pilots or navigators.
 - (b) for the meteorologists responsible for the preparation of forecasts.
 3. Forecasts are required for the guidance of aviation companies and for the pilots and navigators.

SECTION II

EXCHANGE OF INFORMATION

No. 6

Convention
relating
to the
Regulation
of Aerial
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13th Oct.,
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A. Climatological information.

1. The fundamental information as regards pressure, temperature, wind and weather, is furnished by the published monthly and annual summaries issued by the various meteorological services as far as possible in the form recommended by the International Meteorological Committee.

2. The following summaries, of great importance for aerial navigation, should be prepared for each month of the year by each Contracting State, from the observations made at a selection of meteorological stations. These summaries will show:

(a) The frequency of occurrence at each station of the different degrees of horizontal visibility for at least three different times a day, one in the morning, one near midday and one in the late afternoon.

(b) The frequency of occurrence at each station of the different heights of base of cloud for the same times as those selected for visibility.

(c) The frequency of occurrence at each station of winds of different directions and speeds at the surface and at heights of 500, 1,000, 2,000 and 3,000 metres.

These summaries should be prepared in the forms and for the heights and limits shown in Appendix G1 and should be exchanged through the International Commission for Air Navigation.

It is particularly important that these summaries should be prepared in those countries where no airway has yet been established, in order that concise climatological information may be available for the establishment of airways over these countries as the need for them arises.

3. Further, each Contracting State is recommended to publish a "guide" conceived on lines which are essentially practical for use by airmen, presenting in a very convenient form a synthesis of climatological information useful for air navigation. The guide should also contain a table giving a list of meteorological information at the disposal of airmen at different times in the different countries.

B. Current Information.

1. The observations should be made at hours fixed by international agreement and should be collected at regional or national centres. The reports to be exchanged in connection with the preparation of synoptic charts should be issued by wireless telegraphy at times fixed by international agreement. The reports for use on airways should be issued by wireless telegraphy at times fixed mutually by the States concerned. The issues should be made in such a way that the reports may be available to the personnel of the aviation and meteorological services with the least possible delay, duplication or interference.

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2. The reports should be drawn up, as far as possible, in the form and according to the codes specified by the International Meteorological Committee. The codes recommended at present are given in Appendix G2. The form and codes indicate the nature of the information required.

3. Current information specially supplied to aircraft in flight should be either in clear or in the abbreviated code given in Appendix G3. If coded information is required by a meteorologist or a navigator on board an aircraft, it should be furnished, as far as possible, in one of the codes of Appendix G2.

4. The exhibition of current information at aerodromes is dealt with in Section III below.

10

C. Forecasts.

The code for international exchange of short period forecasts on an airway, and the arrangements for their utilisation, will be determined hereafter. The period covered by such forecasts will depend upon the length of the flights to be made and upon the precision with which the meteorological services can foretell the weather.

SECTION III

EXHIBITION OF CURRENT INFORMATION AT AERODROMES

The exhibition of current information will be effected in three ways:

1. A synoptic chart showing the general meteorological distribution over a 20 wide area for the last epoch of general reports (Appendix G4).

2. One or more skeleton maps covering the area to the aerodromes to which flights are made without landing. The maps should give the visibility, clouds, weather, wind on the ground and upper wind. The information should be shown by suitable symbols (Appendix G5).

3. Current reports in clear and in tabular form according to the scheme shown in Appendix G6. (A knowledge of the wind at different heights is of great importance to airmen).

SECTION IV

METEOROLOGICAL ORGANISATION ON INTERNATIONAL AIRWAYS

30

1. In order to give adequate information of existing weather, meteorological reporting stations should be established along and in proximity to an airway and particularly at places having special conditions of visibility and low cloud.

When an airway over a Contracting State passes close to another Contracting State without crossing it, the latter State shall co-operate, as far as possible, in the

protection of such airway by furnishing special meteorological information relating to the region extending in principle to a distance from the airway equal to three quarters of the distance normally flown without landing, on the portion in question of the airway.

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2. Exchange of information should be made promptly and as frequently as necessary having regard to the climate of the airway concerned and, as far as possible, in the codes indicated in the Appendices. International exchange will normally be effected by wireless telegraphy, though the national centralisation of reports may be made by wireless, or ordinary, telegraphy or telephony or by a
10 combination of these methods.

—Continued

3. Meteorologists should be stationed at aerodromes at reasonable intervals along an airway to supply in clear to the aviation personnel current information and forecasts of conditions along the airway to the next aerodromes of the same class.

4. To assist the aviation personnel in the ready interpretation of the reports, provision should be made for the exhibition of the information in clear in a uniform manner in accordance with the provisions of Appendices G4, G5, G6.

5. The most important current information for aviation on an international airway is information relative to the state of the weather (past and present) the
20 visibility, the cloud and its height, and the wind at the surface and at different heights.

6. Reports of violent and sudden phenomena which threaten the safety of air navigation, such as thunderstorms, squalls, fogs, and reports of improvements of weather when the conditions have been such as to threaten the safety of air navigation, should be transmitted immediately to the aerodromes concerned and to aircraft in flight; these reports should be made not only from stations situated along an airway, but also from stations covering it at a distance equal in principle to three quarters of the distance normally flown without landing. The transmission to aerodromes will be effected as far as possible in the Code which appears
30 in Appendix G7. The transmission to aircraft will be made in clear.

7. Arrangements should also be made for the exhibition, where necessary, of ground signals to indicate the meteorological conditions existing at other places along the airway. The code of Appendix G8 and, as far as possible, the system of panels referred to in that Appendix, should be used.

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8. Stations situated on or in proximity to mountains should make special observations of cloud and visibility. These observations should be transmitted immediately after the groups of Appendix G2 in a group of figures preceded by a code word "Mont". They should contain information about the cloud on or near the summits of the mountains and of the cloud or fog below the station of observation. They should also indicate the changes in the cloud which have been observed during the period immediately preceding the hour of observation.

NOTE.—The meteorological information furnished under the provisions of this Annex should be given in units of the C.G.S. system or derived units.

APPENDIX G1

FORM 1

SUMMARY OF OBSERVATIONS OF HORIZONTAL VISIBILITY

Observations made at (13) h. G.M.T.—(February) 192(4)
 Frequency table

Station	Lat.	Long.	Height metres	NUMBER OF OBSERVATIONS BETWEEN THE FOLLOWING LIMITS									
				less than 50 m.	50 to 200 m.	200 to 500 m.	500 to 1000 m.	1000 to 2000 m.	2000 to 4000 m.	4000 to 10000 m.	10000 to 20000 m.	20000 to 50000 m.	more than 50 km.

All observations should be utilized in preparing the above table, i.e., for each hour of observation selected 28 or 29 observations for February and 30 or 31 for other months.

FORM 2

SUMMARY OF OBSERVATIONS OF HEIGHT OF BASE OF LOW CLOUD ABOVE GROUND LEVEL

Observations made at (18) h. G.M.T.—(February) 192(4)
 February table

Station	Lat.	Long.	Height metres	NUMBER OF OBSERVATIONS BETWEEN THE FOLLOWING LIMITS									
				less than 50 m.	50 to 100 m.	100 to 200 m.	200 to 300 m.	300 to 600 m.	600 to 1000 m.	1000 to 1500 m.	1500 to 2000 m.	2000 to 2500 m.	No low cloud

All observations should be utilized in preparing the above table, i.e., for each hour of observation selected, 28 or 29 observations for February, and 30 or 31 for other months.

It is desirable that arrangements should also be made for a second frequency table to be prepared, in the same form, of observations of height of low cloud for those occasions when the total amount of low cloud is greater than $\frac{3}{4}$, i.e., is 8, 9 or 10 tenths.

FORM 3

SUMMARY OF OBSERVATIONS OF WIND (SURFACE AND UPPER)

Frequency table of observations at or near (13) h. G.M.T.—February 192(4)
Surface observations (anemometer height..)

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Station	Lat.	Long.	Height	Speed Limits K/hr	NUMBER OF OBSERVATIONS								5 km. per hour or less	
					N	NE	E	SE	S	SW	W	NW		
					From 337½° to 22½°	From 22½° to 67½°	From 67½° to 112½°	From 112½° to 157½°	From 157½° to 202½°	From 202½° to 247½°	From 247½° to 292½°	From 292½° to 337½°		
Le Bourget	48° 56' N	2° 23' E.	28 m.	6-25 26-50 51-75 > 75										
Tours	47° 24' N	0° 42' E.	11 m.	6-25 26-50 51-75 > 75										
etc.														

Observations at 500 m. above surface

Station	Lat.	Long.	Height	Speed Limits K/hr	NUMBER OF OBSERVATIONS									
					N	NE	E	SE	S	SW	W	NW	5 km. per hour or less	
Le Bourget	48° 56' N	2° 23' E.	28 m.	6-25 26-50 51-75 > 75										
etc.														

Observations at 1,000 m., 2,000 m. and 3,000 m. above surface

Same tabular forms as for surface and 500 m.

Note.—Only one observation daily should be used in these tables, preferably made about midday. All the observations for 500 metres should be used in preparing the table for 500 metres altitude; similarly all observations for 1000 m. should be used for the table for 1000 m. altitude; similarly for 2000 m., etc..

APPENDIX G2

No. 6

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relating
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INTERNATIONAL CODE FOR METEOROLOGICAL MESSAGES

The International Commission for Weather Telegraphy has adopted ⁽¹⁾ International Codes for the transmission of reports of the following kinds:

1. Reports from land stations.
2. Reports from ships at sea.
3. Hourly and other frequent reports for aviation and other special purposes.
4. Abbreviated reports for use in the issue of collective messages giving a synopsis of the meteorological situation over a whole continent by means of data for selected stations. 10

In order to abbreviate the nomenclature of the codes, each element is denoted by a standard symbol. These symbols are set out in alphabetical order, with their meanings, in No. I below. In No. II below the symbolic form of complete reports is given, and in No. III the full specification of the scales for each element.

I. THE SYMBOLS AND THEIR MEANINGS

A=Form of predominating cloud lowest in the scale of cloud forms (See Code VI below) ⁽²⁾.

a=Form of predominating cloud highest in the scale of cloud forms when more than one type of cloud exists (See Code VI below) ⁽³⁾.

BBB=Pressure in millibars and tenths (initial 9 or 10 omitted) or millimetres and 20 tenths (initial 7 omitted).

The values refer to sea-level ⁽⁴⁾ and include all corrections for index error, temperature and gravity.

BB=Pressure in whole millibars or whole millimetres (initial 9, 10 or 7 omitted).
(For upper air reports of pressure, temperature and humidity, BB is in whole millibars with the hundreds figure omitted, whether this is, 9, 8, 7, 6 or 5).

B₁B₁B₁=Pressure in whole millibars at an "inversion of temperature" in upper air reports.

(1) Meetings at London (November, 1920, and September, 1921) and at Utrecht (September, 1923).

(2) "A" is to be used for low cloud (Nos. 6-10) whenever there is low cloud present among the predominating types. If there is no low cloud present, but medium or high cloud is present "A" is to be used for one of the forms of medium or high cloud Nos. 1-5).

(3) "a" is to be used for medium or high cloud (Nos. 1-5) whenever medium or high cloud is present among the predominating types. If there is no medium or high cloud present but there is low cloud present "a" is to be used for one of the forms of low cloud (Nos. 6-10).

(4) For mountain stations the values refer to the level of the station. In such cases, the initial figure omitted is not that mentioned above, but depends on the height of the station.

- b=Amount of barometric tendency during the three hours preceding the time of observation expressed in half-millibars or half-millimetres. For tendencies 10-19 the second figure only is reported and 33 is added to the wind direction number (DD).
 For tendencies 20-29 the second figure only is reported and 67 is added to the wind direction number. Tendencies greater than 29 are reported as 29.
- C=Form of predominating cloud, according to the scale of cloud forms, when only one form is reported, as from ships at sea (See Code VI below).
- 10 C₁=Form of cloud observed by nephoscope; usually one of the two highest layers present (See Code VI below).
- Ca=Form of low cloud observed by nephoscope in reports for aviation. (See Code VI below).
- c=Characteristic of barometric tendency during the period of 3 hours preceding the time of observation (See Code II below).
- D=Direction from which the phenomenon arrives (scale of 0 to 8:0=stationary; 1=NE; 2=E; 3=SE... 8=N).
- DD=Direction of the wind near the ground on the scale (01-32) in which 08=East, 16=South, etc. 00=calm (*).
- 20 dd=Direction of wind in the upper air, or of cloud movement, on the scale (01-36) i.e. degrees from North divided by 10 and rounded off to the nearest whole number (00=calm). 50 added if speed greater than 99 units (See explanation of vv below). (*).
- d=Direction from which swell comes on scale (0-8), in which 2=East, 4=South, etc., 0=no swell (*).
- ds=Direction of movement of ship on scale 0-8, in which 2=Eastwards, 4=Southwards, etc. (*).
- EE=Depth in whole centimetres of the layer fallen during a fall of snow.
- E'E'=Total depth in whole centimetres of the layer fallen during a fall of snow and the layer already existing.
- 30 F=Force of the wind on the Beaufort scale. (Forces above 9 are reported as 9 in telegrams, with the actual force in a word at the end, e.g., force 10 is reported at the end as "Storm ten", force 11 as "Storm eleven". Ships at sea, however, report "gale ten", "storm eleven", "hurricane twelve").
- F_m=Maximum force of wind on the Beaufort scale with the following modifications: 0=force 10; 1=force 11; 2=force 12; 3=force 0 to 3; 4=force 4; 5=force 5, etc..
- F₁=Approximate speed of low cloud (See Code XIV below).
- 40 GG (gg)=Greenwich Time (hour and minute) of observation (01=1 a.m., 12=noon, 13=1 p.m., 24=midnight).

(*) All directions refer to true North and not to magnetic North.

- No. 6 H=Relative humidity of the air (See Code V below).
- Convention relating to the Regulation of Aerial Navigation, 13th Oct., 1919. —Continued
- h=Height of base of lowest cloud present (See Code VII below).
- hhh=Distance expressed in metres.
- H₁=Heights at which upper air temperature and humidity are reported (no code figures telegraphed) (See Code XII below).
- h₁=Height at which upper wind is reported (See Code XI below).
- I_nI_n=Index number of station.
- K=The characteristic of the swell in the open sea (See Code IX (a) below).
- K'=Amount and characteristic of barometric tendency expressed by a single figure (See Code II (a) below). 10
- L*=Amount of sky (scale 0·10) covered by cloud form A and all forms of the same layer (i.e., low, medium or high) as A, if "a" refers to a different layer.
- LLL=Latitude in degrees and tenths, the tenths being obtained by dividing the number of minutes by 6 and neglecting the remainder.
- lll=Longitude in degrees and tenths, the tenths being obtained as for latitude LLL.
- MM=Maximum temperature in the interval of 11 hours ending at 18 h. G.M.T. (or at one of the hours 1 h., 7 h., 13 h., 18 h. G.M.T. following not less than 4 hours after noon, local time).
- mm=Minimum temperature in the interval of 13 hours ending at 7 h. G.M.T., (or at the hour 11, 12, or 13 hours after the time of reporting the maximum temperature).
- N*=Total amount of sky covered with cloud (scale 0·10).
- P=Day of the week, 1=Sunday, 2=Monday, 3=Tuesday, 4=Wednesday, 5=Thursday, 6=Friday, 7=Saturday. The day refers to G.M.T. and not to local time, e.g., Sunday means the period from 0 h. to 24 h. on Sunday at Greenwich.
- Q=Quarter of globe in which ship is situated (See Code XIII below).
- RR=Rainfall (at 7 a.m. for preceding 13 hours and at 6 p.m. for preceding 11 hours (See Code VIII below).
- R=Amount of rainfall for the preceding 24 hours (See Code VIII (a) below). 30
- r=Time of Commencement of precipitation (See Code X below).
- S=State of the sea and swell (coast stations) (See Code IX below).
- TT=Temperature of the air in whole degrees Centigrade (or Fahrenheit) (50 added to negative values).
- tt=Temperature of the sea (surface water) in whole degrees.
- TTT=Temperature of air in degrees and tenths Centigrade (or Fahrenheit). (500 added to negative values).

(*) The figure 0 is only used for L and N when the sky is quite free from cloud. The figure 10 is only used for N when the sky is entirely overcast and for L when the sky is entirely overcast with cloud of type A.

- t_{tt}=Temperature of the sea (surface water) in degrees and tenths.
 t₁t₁=Increase in temperature at an "inversion" in whole degrees.
 V=Horizontal visibility or distance at which objects can be seen in daylight (or at which lights can be seen at night) (See Code IV below).
 v=Horizontal visibility at sea from ships at sea (See Code IV below).
 V_s=Horizontal visibility towards the sea (from coast stations) (see Code IV below).
 VV=The relative speed of clouds as determined by nephoscope and such that the actual speed of the cloud will be given in kilometres per hour by the equation.
- 10
$$vv = \frac{h}{1000} \times VV,$$
- if "h", the height of the cloud, is expressed in metres. This unit is the "radian per hour."
- vv=The speed of the wind in the upper air in kilometres per hour (or miles per hour). (For values greater than 99 the last two figures only are used and 50 is added to the number indicating wind direction dd).
 W=The weather in the interval preceding the time of observation. This interval is 5, 6 or 7 hours for reports at 01.00, 07.00, 13.00 and 18.00 G.M.T., and 3
 20 hours for reports at 04.00, 10.00 and 16.00 G.M.T. (See Code III below).
 ww=The actual weather at the time of observation with which is combined, whenever possible, the general character of the weather (See Code I below).
 w₁=The initial figure of the code ww, thus indicating the general state of the weather.
 W₂=Weather during the squall or thunderstorm (see Code XV below).
 W₃=Weather at the time of observation (see Code XVI below).
 YY=Day of month.

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II. SYMBOLIC FORM OF MESSAGES

A. REPORTS FROM LAND STATIONS

- 30 (a) The form for observations at 0100 and 1300 G.M.T. is:
 BBBDD FwwTT cbWVH ALaNh C₁ddVV and for observations at 0700
 and 1800 G.M.T.:
 BBBDD FwwTT cbWVH ALaNh RRjjr C₁ddVV

where jj in the fifth group is replaced, as follows:

	Inland Stations	Coastal Stations
at 0700 G.M.T...mm	SVs
at 1800 G.M.T...MM	SVs

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The group C₁ddVV containing cloud observations by nephoscope, is omitted entirely (*) if no such observations are available.

(b) Upper winds are reported by groups of the form h₁ddvv, one group being used for each height.

(c) Upper air temperatures and humidities are reported by groups of the form BBTTH.

In this case no figure is telegraphed to indicate the height, it being understood that the groups refer to the heights of the code H₁ (see below) in order.

Inversions are reported at the end by groups 00000 B₁B₁B₁t₁t₁, the first being an index group indicating that an inversion is reported; while B₁B₁B₁ is the pres- 10
 sure in whole millibars at the height of the inversion and t₁t₁ the increase of temperature in whole degrees.

(d) In collective messages the observations of each station are preceded by a group consisting of the index number of the station (usually two figures) by which it is identified. The messages are arranged in sections, the first containing the ordinary observations from all stations, the second, preceded by the word "Pilot" or an equivalent, containing all reports of upper wind, and the third, preceded by "Temp" or an equivalent, containing all observations of upper air temperature.

Any other observations, such as those from ships, form a fourth section.

The symbolic form of a complete message, embracing surface observations at 20
 0700 and 1800 G.M.T., upper winds and upper air temperatures and humidities, would be as follows, where the observations contained in the groups in each line, refer to the stations indicated by the index figures, I₁I₁, I₂I₂, etc., preceding them.

I₁I₁ BBBDD FwwTT cbWVH ALaNh RRj jr C₁ddVV
 I₂I₂ BBBDD FwwTT cbWVH ALaNh RRj jr C₁ddVV
 I₃I₃ BBBDD etc...
 etc...
 etc...

Pilot I₁I₁ h₁ddvv h₁ddvv h₁ddvv etc...
 I₂I₂ h₁ddvv h₁ddvv h₁ddvv etc...
 I₃I₃ h₁ddvv etc...
 etc...
 etc...

Temp I₁I₁ YYGG BBTTH BBTTH etc.....00000
 B₁B₁B₁t₁t₁ etc...
 I₂I₂ YYGG BBTTH BBTTH etc.....00000

30

(*) The general rule in reports of all kinds is, however, that missing figures shall be replaced by hyphens (one for each figure).

B₁B₁B₁t₁t₁ etc..
 I₃I₃ YYGG BBTTH etc..
 etc..
 etc..

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For observations at other hours the form would be the same, except that the group RRj jr would not be included.

B. REPORTS FROM SHIPS AT SEA

The first four groups of these messages are in the form:

PQLLL III GG BBDDF wwvKd

10 The remaining groups are arranged according to national requirements.

C. HOURLY AND OTHER FREQUENT REPORTS FOR AVIATION AND OTHER SPECIAL PURPOSES

(a) The normal form for reports is:

I_nI_n(V_s) xxVhL NDDFz

with the addition, every three hours, of a group;

C_addF₁S,

where C_a is the type of cloud to which ddF₁ refer.

xx and z represent the present weather and past weather. The codes to be used for xx and z will be devised at a later date and will be, as far as possible, uniform over regions of similar climate. These codes will be published in the Official Bulletin
 20 of the International Commission for Air Navigation.

One of the forms of the Code is:

I_nI_n (V_s) wwVhL NDDFW

(b) If fuller information is required, then every three or six hours the form is:

I_nI_n(V_s) BBDD FwwTT cbWVH ALaNh C_addF₁S.

NOTE.—When, for any reason, V_s cannot be given, no hyphen is inserted in its place. If none of the information in the group C_addF₁S can be given, the whole group is omitted. In all other cases hyphens are used, in the normal way (*), to denote lack of information.

D. ABBREVIATED FORM FOR COLLECTIVE MESSAGES COVERING A WHOLE CONTINENT

30 The form of report for each station is:

BBDDF w₁TTK'R for observations at 0700 G.M.T.

BBDDF w₁TTK'W for observations at other hours.

(*) The general rule in reports of all kinds is however, that missing figures shall be replaced by hyphens (one for each figure).

III. SPECIFICATION OF THE SCALES

Code figures

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CODE I

WEATHER AT ACTUAL TIME OF OBSERVATION AND GENERAL CHARACTER OF WEATHER (ww)

NOTES.—(1) In interpreting reports it is to be noted that, as a rule, the largest number in the scale which is appropriate to the weather is reported.

(2) In selecting the numbers for ww no account is to be taken of phenomena which occurred more than one hour before the time of observation, but only of phenomena which occurred during the interval of one hour preceding the fixed hour of observation.

	Code figures
Fine or Fair (Cloud 0-5) :	
Cloud has decreased.....	00
No apparent change.....	01
Cloud has increased.....	02
Precipitation within sight.....	03
With solar or lunar halo.....	04
After fog or mist (or dust storm).....	05
After rain or drizzle.....	06
After snow, sleet or hail.....	07
With or after thunder and lightning in neighbourhood.....	08
After thunderstorm.....	09
Cloudy or Overcast (Cloud 6-10) :	
Cloud has decreased.....	10
No apparent change.....	11
Cloud has increased.....	12
Precipitation within sight.....	13
With solar or lunar halo.....	14
After fog or mist (or dust storm).....	15
After rain or drizzle.....	16
After snow, sleet or hail.....	17
With or after thunder and lightning in neighbourhood.....	18
After thunderstorm.....	19
Fog or mist :	
But clear in zenith.....	20
And apparently overcast	21
But clear in zenith.....	22
And apparently overcast	23
But clear in zenith.....	24
And apparently overcast	25
But clear in zenith.....	26
And apparently overcast	27

But clear in zenith.....	}	for some	28
And apparently overcast		time, has	29
		become	
		thicker	

NOTE.—Numbers 20-29 are not to be used unless visibility is less than two kilometres.

	Code figures
Passing showers:	
Slight with rain.....	30
“ “ hail or rain and hail.....	31
“ “ sleet.....	32
“ “ snow.....	33
Heavy with rain, has become better..	34
“ “ rain.....	35
“ “ rain; has become worse..	36
“ “ hail or rain and hail.....	37
“ “ sleet.....	38
“ “ snow.....	39

	Code figures
Drizzle:	
Slight occasional.....	40
“ continuous.....	41
“ but has increased.....	42
Moderate but has decreased.....	43
“ occasional.....	44
“ continuous.....	45
“ but has increased.....	46
Thick but has decreased.....	47
“ occasional.....	48
“ continuous.....	49

	Code figures
Rain:	
Slight occasional.....	50
“ continuous.....	51
“ but has increased.....	52
Moderate but has decreased.....	53
“ occasional.....	54
“ continuous.....	55
“ but has increased.....	56
Heavy but has decreased.....	57
“ occasional.....	58
“ continuous.....	59
Snow or snow and hail :	
Slight occasional.....	60
“ continuous.....	61
“ but has increased.....	62
Moderate but has decreased.....	63
“ occasional.....	64
“ continuous.....	65
“ but has increased.....	66

III. SPECIFICATION OF THE SCALES—*Con.*

CODE I—*Con.*

	Code figures
Rain:	
Heavy but has decreased.....	67
“ occasional.....	68
“ continuous.....	69
 Sleet or Rain and Snow :	
Slight occasional.....	70
“ continuous.....	71
“ but has increased.....	72
Moderate but has decreased.....	73
“ occasional.....	74
“ continuous.....	75
“ but has increased.....	76
Heavy but has decreased.....	77
“ occasional.....	78
“ continuous.....	79
 Hail or Rain and Hail :	
Slight occasional.....	80
“ continuous.....	81
“ but has increased.....	82
Moderate but has decreased.....	83
“ occasional.....	84
“ continuous.....	85
“ but has increased.....	86
Heavy but has decreased.....	87
“ occasional.....	88
“ continuous.....	89
 Thunderstorm (or line squall) :	
Slight thunderstorm without hail....	90
“ “ with hail.....	91
Moderate thunderstorm without hail..	92
“ “ with hail.....	93
 Without gale—	
Heavy thunderstorm without hail..	94
“ “ with hail.....	95
 With gale—	
Heavy thunderstorm without hail..	96
“ “ with hail.....	97
Line squall without hail.....	98
“ with hail.....	99

CODE II

No. 6

CHARACTERISTIC OF BAROMETRIC TENDENCY DURING THE THREE HOURS PRECEDING THE TIME OF OBSERVATION (c)

Convention relating to the Regulation of Aerial Navigation, 13th Oct., 1919.

—*Continued*

Code figure	
0 = 0 or +....	Steady or rising.....
1 = +0.....	Rising then steady.....
2 = +-.....	Rising then falling.....
3 = -+ or 0+	Falling or steady then rising.....
4 = unsteady+	Unsteady but rising..
5 = -.....	Falling.....
6 = -0.....	Falling then steady.....
7 = -+.....	Falling then rising.....
8 = 0- or +-.....	Steady or rising then falling.....
9 = unsteady-	Unsteady but falling..

The barometer is now higher than or the same as three hours ago.

The barometer is now lower than three hours ago.

CODE II (a)

AMOUNT AND CHARACTERISTIC OF BAROMETRIC TENDENCY EXPRESSED BY A SINGLE FIGURE (K')

Code figure....	Barometer	Change in last three hours in half-millibars
0	Steady.....	0 or 1
1	rising slowly.....	2 or 3
2	rising.....	4 to 7
3	rising quickly	8 to 12
4	rising very rapidly.....	more than 12
5	falling slowly.....	2 or 3
6	falling.....	4 to 7
7	falling quickly.....	8 to 12
8	falling very rapidly.....	more than 12

No. 6

CODE III

Convention relating to the Regulation of Aerial Navigation, 13th Oct., 1919.
—Continued

PAST WEATHER IN INTERVAL SINCE LAST REPORT (W)

Code figure	Without precipitation :
0	Fair or fine
1	Cloudy
2	Overcast continuously
3	Fog or mist
4	Thick fog
	Precipitation :
5	Passing showers
6	Rain or drizzle
7	Snow or sleet
8	Hail or rain and hail
9	Thunderstorm

CODE IV

HORIZONTAL VISIBILITY (V) (Vs)
AND (v)

Code figure	Objects :
0	not visible at 50 metres (55 yards)
1	not visible at 200 metres (220 yards)
2	not visible at 500 metres (550 yards)
3	not visible at 1,000 metres (1,100 yards)
4	not visible at 2,000 metres (1½ miles)
5	not visible at 4,000 metres (2½ miles)
6	not visible at 10,000 metres (6¼ miles)
7	not visible at 20,000 metres (12½ miles)
8	not visible at 50,000 metres (31 miles)
9	visible at 50,000 metres or more.

CODE V

RELATIVE HUMIDITY (H)

Code figure	
0	95 to 100 per cent
9	90 to 94 per cent
8	80 to 89 per cent
7	70 to 79 per cent
6	60 to 69 per cent
5	50 to 59 per cent
4	40 to 49 per cent
3	30 to 39 per cent
2	20 to 29 per cent
1	10 to 19 per cent

CODE VI

CLOUD FORM (A, a, C, C1, Ca)

Code figure	
1	Cirrus..... Ci.
2	Cirro-stratus..... Ci. St.
3	Cirro-cumulus..... Ci. Cu.
4	Alto-cumulus..... A. Cu.
5	Alto-stratus..... A. St.
6	Strato-cumulus..... St. Cu.
7	Nimbus..... Nb.
8	Cumulus or fracto-cumulus..... Cu. or Fr. Cu.
9	Cumulo-nimbus..... Cu. Nb.
0	Stratus or fracto-stratus..... St. or Fr. St.

CODE VII

HEIGHT ABOVE GROUND OF BASE
OF LOWEST CLOUD PRESENT (h)

Code figure	Metres	Feet
0	0 to 50	0 to 150
1	50 to 100	150 to 300
2	100 to 200	300 to 600
3	200 to 300	600 to 1000
4	300 to 600	1000 to 2000
5	600 to 1000	2000 to 3000
6	1000 to 1500	3000 to 5000
7	1500 to 2000	5000 to 6500
8	2000 to 2500	6500 to 8000
9	No low cloud	No low cloud

CODE VIII

AMOUNT OF RAINFALL (RR)

The amount of rainfall is expressed in whole millimetres with the following exceptions:

Specification of certain meanings

Code figures	Meaning
91	0.1 mm.
92	0.2 mm.
93	0.3 mm.
94	0.4 mm.
95	0.5 mm.
96	0.6 mm.
97	Some rain but not measurable.
98	More than 90 mm.
99	Measurement impossible or unreliable.

CODE VIII (a)

AMOUNT OF RAINFALL DURING
PRECEDING 24 HOURS (R)

Code figure	
0	No rain.
1	Trace or 0.1 mm.
2	0.2 to 2 mm.
3	2 to 5 mm.
4	5 to 10 mm.
5	10 to 15 mm.
6	15 to 20 mm.
7	20 to 30 mm.
8	30 to 50 mm.
9	above 50 mm.

CODE IX

STATE OF SEA AND SWELL (S)

Code figure	
0	No swell.
1	Moderate swell.
2	Heavy swell.
3	No swell.
4	Moderate swell.
5	Heavy swell.
6	Rather rough sea.
7	Rough sea.
8	Very rough sea.
9	Mountainous sea.

} Calm or slight sea.
} Moderate sea

CODE IX (a)

CHARACTERISTIC OF SWELL IN
THE OPEN SEA (K)

Code figure	
0	No or slight swell.
1	Moderate swell.
2	Heavy swell.
3	Long low swell.
4	Confused swell.
5	No or slight swell.
6	Moderate swell.
7	Heavy swell.
8	Long low swell.
9	Confused swell.

} and sea smooth to moderate.
} and sea rough.

CODE X

TIME OF COMMENCEMENT OF
PRECIPITATION (τ)

Code figure	
0	No rain
1	0 to 1 hour before time of observation
2	1 to 2 hours before time of observation
3	2 to 3 hours before time of observation
4	3 to 4 hours before time of observation
5	4 to 5 hours before time of observation
6	5 to 6 hours before time of observation
7	6 to 8 hours before time of observation
8	8 to 10 hours before time of observation
9	above 10 hours before time of observation
—	No observation.

No. 6

Convention relating to the Regulation of Aerial Navigation, 13th Oct., 1919.

—Continued

CODE XI

HEIGHT AT WHICH UPPER WIND
IS REPORTED (h_1)

The heights at which the upper wind is reported are the three heights selected from the following list which give the best representation of the result of the pilot-balloon ascent.

Code figure	Metres	Feet (used in British reports)
1	200	1,000
2	500	2,000
3	1,000	3,000
4	1,500	5,000
5	2,000	7,000
6	3,000	10,000
7	4,000	13,000
8	5,000	17,000
9	6,000	20,000

No. 6

CODE XII

Convention relating to the Regulation of Aerial Navigation, 13th Oct., 1919.
—Continued

HEIGHTS AT WHICH UPPER AIR TEMPERATURE AND HUMIDITY ARE REPORTED (H₁)

(No code figure telegraphed)

200 metres	} above ground.
500 metres	
1,000 metres	} above mean sea level.
1,500 metres	
2,000 metres	
2,500 metres	
3,000 metres	
4,000 metres	
5,000 metres	
6,000 metres	

CODE XIII

QUARTER OF GLOBE (Q)

Code figure	Latitude	Longitude	
1	N.	W.	} Barometer in milli-bars.
2	N.	E.	
3	S.	W.	
4	S.	E.	
5	N.	W.	} Barometer in millimetres.
6	N.	E.	
7	S.	W.	
8	S.	E.	

CODE XIV

APPROXIMATE SPEED OF LOW CLOUD (F₁)

Code figure	Corresponding mean speed		Limits of speed	
	If		If	
	in km. per hour	in miles per hour	in km. per hour	in miles per hour
	less than			
0	5	5	0-7	0-4
1	15	10	8-22	5-14
2	30	20	23-37	15-24
3	45	30	38-52	25-34
4	60	40	53-67	35-44
5	75	50	68-82	45-54
6	90	60	83-97	55-64
7	105	70	98-112	65-74
8	120	80	113-127	75-84
9	135	90	128-142	85-94

CODE XV

WEATHER DURING A SQUALL OR THUNDERSTORM (w₂)

Weather	Without tlr	With tlr
No precipitation	1	5
Rain	2	6
Snow	3	7
Hail	4	8

CODE XVI

WEATHER (w₃)

- 1 = Rain or drizzle
- 2 = Snow or hail
- 3 = Thunderstorm
- 4 = Gale.

APPENDIX G₃

ABBREVIATED CODE FOR REPORTS TO PILOTS IN THE AIR BY RADIO-TELEPHONY

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When reports are transmitted to pilots in the air by radio-telephony each report should consist of:

(a) The hour of observation and the name of the station.

(b) The weather at the time and place referred to in (a), in one of the following forms:

Either a statement in plain language or a single group of five figures.

The group will be of the symbolic form:

10

$$I_1 I_2 w_3 V h$$

giving the index figure of the station, the weather, the visibility and the height of the low cloud, in the codes of Appendix G₂.

The third figure has the meaning indicated in Code XVI above.

(c) Any plain language which is necessary owing to exceptional conditions not covered by the group of figures.

—Continued

APPENDIX G₄

SYNOPTIC CHART

The scale of the chart should, if possible, be the internationally recommended scale 1 : 10,000,000 for smaller areas 1 : 5,000,000 and for larger areas 1 : 20,000,000.

20 The wind direction at each station will be indicated by means of an arrow flying with the wind, i.e., pointing in the direction in which the wind is blowing. The speed of the wind will be expressed on the Beaufort scale of 0 to 12, by means of *flèches* added to the tail of the arrow which shows the direction, each degree of the said scale being represented by one *flèche*. Up to Beaufort number 4, the *flèches* should be all on one side of the arrow; above 4, four *flèches* should be on one side and one, two, three, four, etc.... as the case may be, on the other side.

Example: A North West wind, 8 on the Beaufort scale, will be shown as follows:



30 The pressure is indicated by isobars and need not be shown separately for individual stations. The current weather should be indicated by suitable letters or symbols, preferably the symbols recommended by the International Meteorological Committee.

The temperature should be shown in whole degrees (C or F).

TABLE 1. — EXAMPLE OF SCHEMATIC REPRESENTATION OF CHARACTER OF WEATHER (Scale 1 : 1)

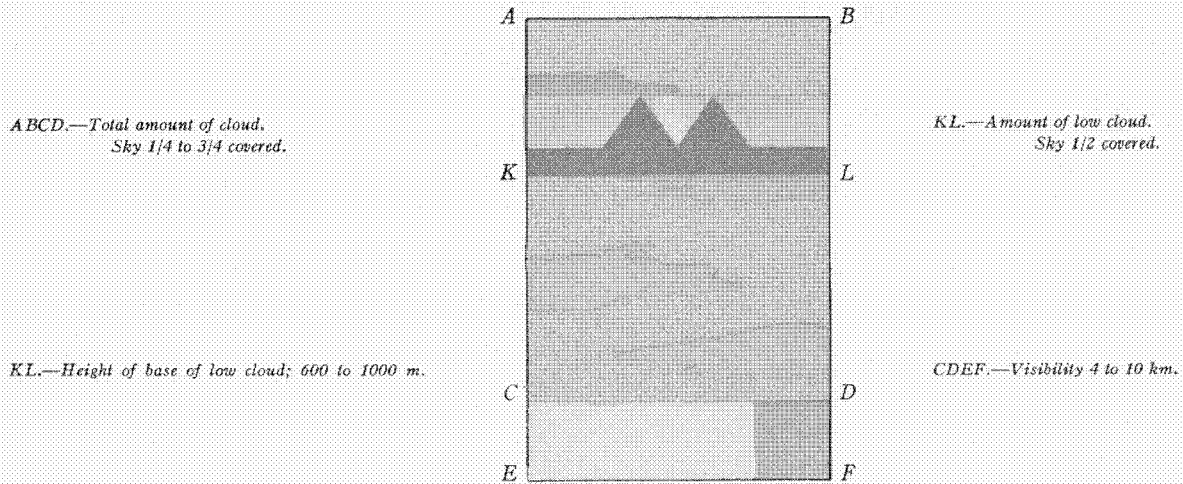
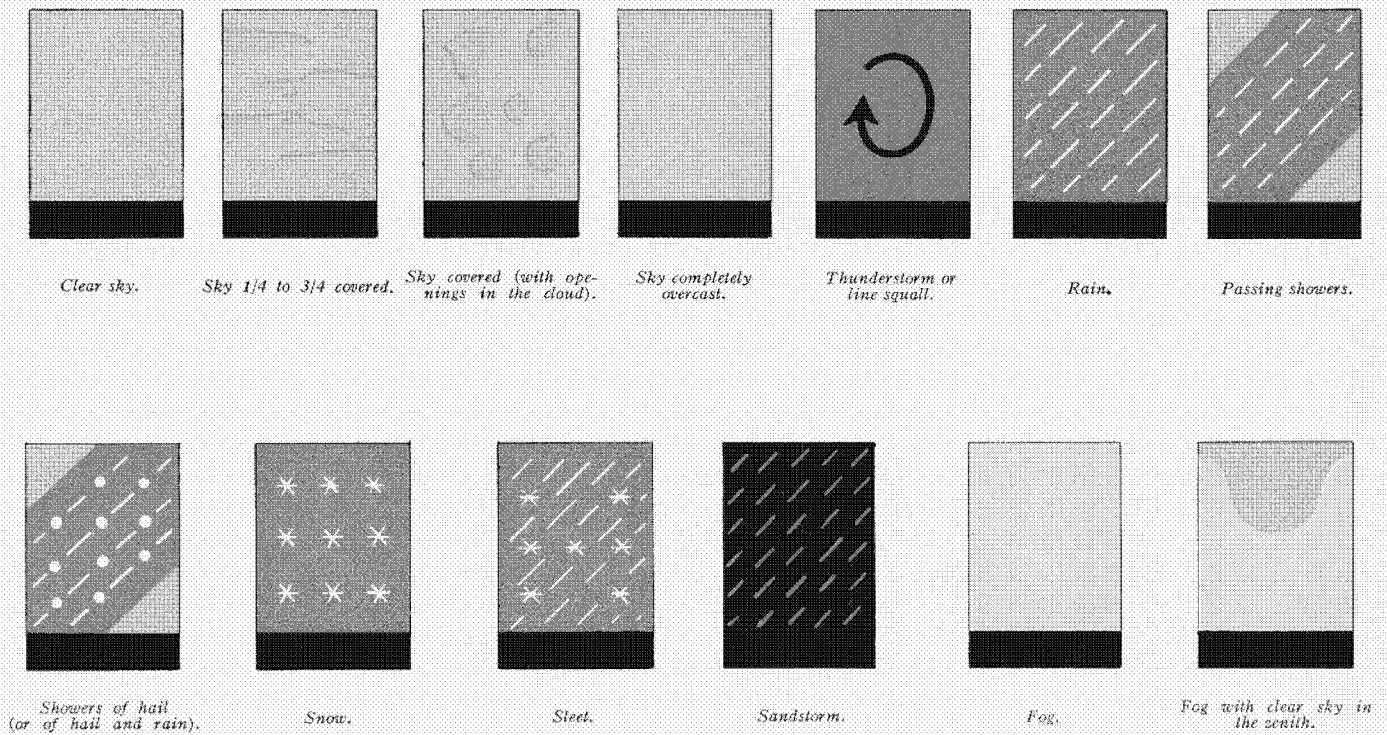


TABLE 2. — DIFFERENT MODES OF SCHEMATIC REPRESENTATION OF CHARACTER OF WEATHER (Scale 1 : 2)

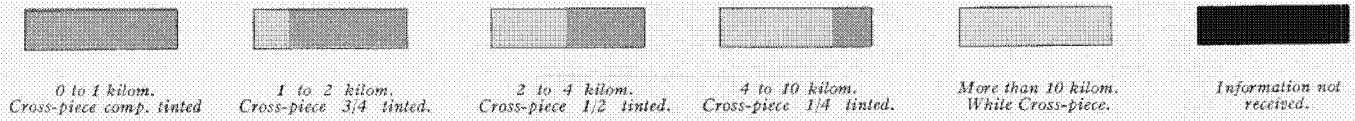


NOTE.—Additional symbols as follows may optionally be employed.

a) Two symbols, similar to symbols Nos. 9 and 10 but with blue corners similar to those of No. 7, for representing "snow showers" and "sleet showers"

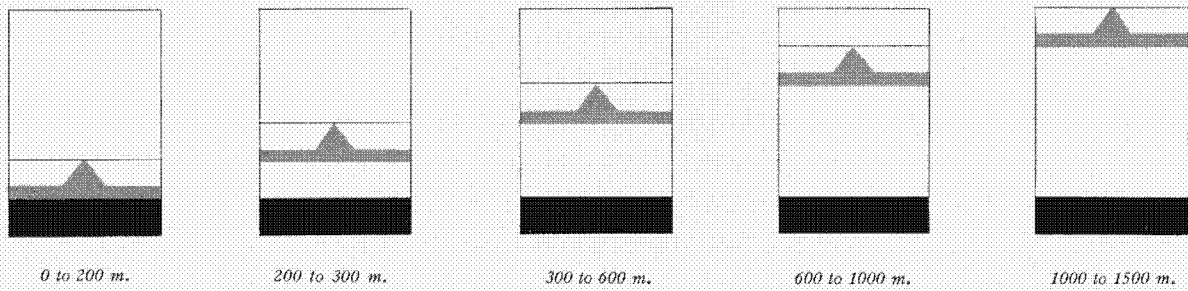
b) A symbol, similar to symbol No. 8 but without blue corners, for representing precipitation with hail and rain when the precipitation is not in the form of showers.

TABLE 3. — SCHEMATIC REPRESENTATION OF VISIBILITY (Scale 1 : 2).



NOTE. — For visibility less than 1000 metres, the visibility should be given on the plate in red figures in the form V 50 ; V 200 ; V 500.

TABLE 4. — REPRESENTATION OF SKY 1/4 COVERED WITH LOW CLOUD AT DIFFERENT HEIGHTS (Scale 1 : 2).



NOTE. — When the cloud is below 200 metres, the height of the base of the cloud in metres above the ground should be given in red figures on the cloud symbol.

TABLE 5. — SCHEMATIC REPRESENTATION OF AMOUNT OF LOW CLOUDS

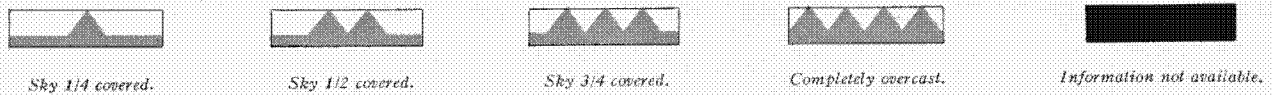
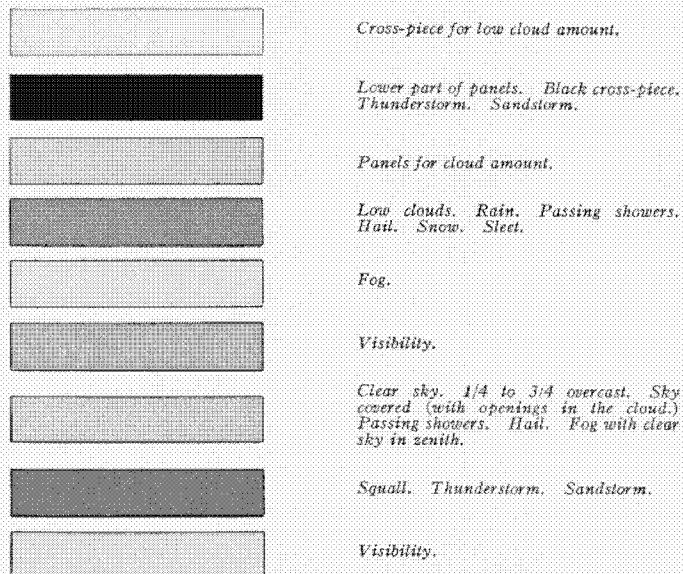


TABLE 6. — COLOURS TO BE EMPLOYED



APPENDIX G₅

SKELETON MAPS

The skeleton maps will be made on a panel on which the position of the meteorological stations are shown.

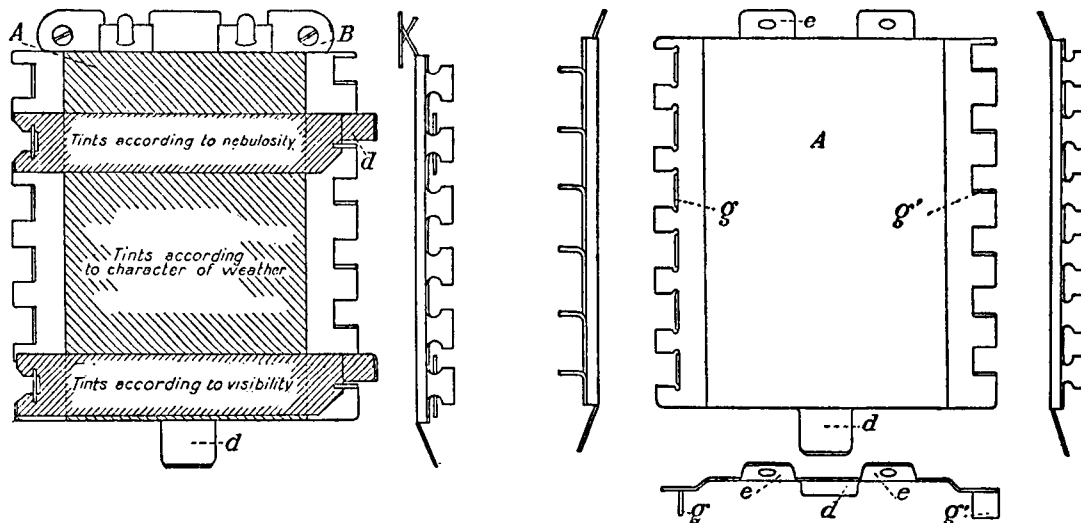
It is recommended that two maps should be used: on one will be exhibited the observations as they arrive, and on the other the information given by the preceding observation.

The scale of the maps should not be less than 1 : 1,000,000: that is to say, it can be 1 : 500,000 but must not be 1 : 5,000,000.

- 10 The weather, cloud and visibility are indicated by metal accessories: a rectangle 5 cm. \times 4 cm. shows the weather; at the bottom of this rectangle a narrow rectangle represents the visibility; on the first rectangle at a height varying according to the altitude of the low cloud, a narrow rectangle similar to that of visibility, represents the amount of low cloud.

(See coloured plates)

Panel, cross-piece and blade for exhibiting character of weather (Scale 1 : 1).



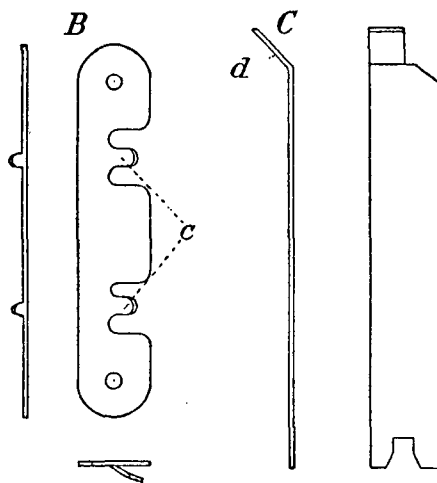
Panel A is stamped out of a sheet of brass by means of suitable punches, dies and mounting. The hangers *e*, the handle *d* of the panel, as well as the fastening clips *g* and *g'* (Bent at right angles) are adjusted by pincers after punching.

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The brass fastening blade B is punched in one operation.
 The two fastening grips c of the panel are adjusted by pinchers after punching.
 The cross-piece for low cloud or visibility C is punched in one operation.
 The handle d of the cross-piece is adjusted by pincers after punching.

APPENDIX G₆

TABULAR FORM FOR EXHIBITION OF INFORMATION ON AERODROMES

1. The exhibition of information on aerodromes will be in the form hereafter which is practically the same as that recommended by the International Meteorological Committee. Such form is based on the principle that the information of greatest importance to safety of navigation should precede the information which ¹⁰ affects safety to a smaller degree, and has perhaps more importance for economic working. The form is as follows:

Hour	Station	Weather	Visibility	Height of base of low cloud	Amount of low cloud

2. Other information depending on the climate of the airway concerned may also be given to the right of the table above. The information suitable to an airway situated in the temperate zone is as follows:

Total amount of cloud	Direction and force of wind	Past weather	Wind at 1000 m.

Note.—The hour to be used in this form should always be clearly indicated to prevent any risk of confusion, e.g., between Standard and Summer time, or between G.M.T. and Mid-European time.

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3. Arrangements should be made for showing the wind at different heights in the following form:

Air Route from.....to.....										
Upper winds dated.....192....										
Time	Place	Wind	On the ground	at 500 m.	at 000 m.	at 1500 m.	at 2000 m.	at 3000 m.	at 4000 m.	Remarks
		Direction (coming from)								
		Speed (K/hr)								
		Direction (coming from)								
		Speed (K/hr)								

APPENDIX G₇

WARNINGS OF DANGEROUS PHENOMENA AND IMPROVEMENTS OF WEATHER

I. GENERAL

Meteorological observing stations will prepare and transmit without delay and 10 by the quickest route one of the reports indicated below in the cases enumerated in the following paragraphs. When the report is transmitted by W/T it is recommended that acknowledgment of receipt be demanded.

These reports, when in code, are transmitted in the following form:

1. An index word indicating the nature of the information transmitted (storm, fog, snow, etc.).
2. The name in clear of the station at which the observations are made.
3. A group of four figures GGgg indicating the time G. M. T., in hours and minutes, at which the observations were made.
4. One or more figure groups, the meaning of which varies according to the 20 warnings. The meanings of the symbols appear in Appendix G₂; for greater clearness the meaning of certain symbols is given below.

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A. Squalls and Thunderstorms

—Continued

Warnings of squalls and thunderstorms are issued in the following cases:

1. When a thunderstorm occurs at the station or at such a distance from the station that the direction of motion of the storm can be observed from the station.
2. When a definite squall passes over the station.

Form of the reports.

Warnings of squalls and thunderstorms are prepared in the following form:

Grain Name of station GGgg DF w₂TT.

The group DF_mw₂TT is decoded as follows: 10

D=Direction from which the phenomenon arrives (scale of 0 to 8:0=stationary; 1=NE, 2=E, 3=SE... 8=N).

F_m=Maximum force of wind during the storm or thunderstorm on the Beaufort scale with the following modifications:

- 0=force 10; 1=force 11;
- 2=force 12; 3=force 0 to 3;
- 4=force 4; 5=force 5, etc.

w₂=weather during the storm or thunderstorm (See table below).

TT=temperature after arrival of phenomenon (optional).

<i>Weather during the storm or thunderstorm; w₂</i>		
<i>Weather</i>	<i>Without tlr</i>	<i>With tlr</i>
<i>No precipitation</i>	1	5
<i>Rain</i>	2	6
<i>Snow</i>	3	7
<i>Hail</i>	4	8

B. Fog or Bad Visibility

20

Warnings of fog or bad visibility are issued in the following cases:

1. When the visibility (1), decreasing on account of the fog or other phenomenon not being itself the subject of a special warning, becomes less than 1,000 metres.

(1) Obscurity arising from lack of light (night, eclipse, etc.) must not be confused with bad visibility which arises from elements present in the atmosphere in the horizontal field of vision of the observer (e.g., fog, snow, dust, etc.)

2. When the visibility, having been less than 1,000 metres further decreases and becomes less than 200 metres.

Form of the reports.

Warnings of fog or bad visibility are prepared in the following form

Fog Name of station GGgg xxVhL.

Optionally, the distance in metres of the furthest object the nature of which can be distinguished, may be added in clear at the end of the report.

(The group xxVhL is the first of the two five-figure groups for hourly reports, in Appendix G2, Section II, C. (a) where the meaning of xx is given).

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10 C. *Low Cloud*

Warnings of low cloud are issued in the following cases:

1. When the height of the base of lowest cloud decreases and falls below 200 metres.

2. When the height of the base of lowest cloud having been below 200 metres, decreases still further and falls below 50 metres.

3. When the total amount of sky covered with low clouds below 200 metres becomes more than 3/4 (for example, stratus spreading over the sky).

Form of the reports.

Warnings of low cloud are prepared in the following form:

20 Cloud Name of station GGgg xxVhL

D. *Snow*

Warnings of snow are issued at the commencement of a fall of snow, of sleet or of rain and hail together; however, when the precipitation is accompanied by the phenomenon characteristic of a squall, the report is to be made in the form A, above (Squalls and Thunderstorms).

Form of the reports.

Warnings of snow are prepared in the following form:

Snow Name of station GGgg xxVhL

E. *Gale*

30 Warnings of gales or high winds are issued in the following cases:

1. When the wind reaches or exceeds force 7 on the Beaufort scale.

2. When the wind reaches or exceeds force 9 on the Beaufort scale.

Form of the reports.

Warnings of gales are prepared in the following form:

Gale Name of station GGgg DDF_mXX

No. 6 In the group DDF_mXX the symbols XX represent optional figures; the meanings of the other symbols appear in Appendix G2.

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When the wind blows in squalls separated by moments of calm, the word "gale" in the report is replaced by the word "squalls" and F_m indicates the maximum force of the wind in squalls.

—Continued

III. IMPROVEMENT OF WEATHER

A. *Visibility*

Reports of visibility are issued when the visibility originally less than 200 metres, has improved and has remained more than 500 metres for at least 10 minutes.

Form of the reports.

10

Reports of visibility are prepared in the following form:

Visib Name of station GGgg xxVhL

N.B. This Report can be prepared in the form:

Visib Name of station GGgg hhh

where hhh represents the distance in metres of the furthest object the nature of which can be distinguished.

B. *Low Cloud*

Improvement in low cloud may occur in two ways: by elevation of the base of low cloud or by dissipation of the cloud.

1st Case. Reports of improvement by elevation of the base of low cloud are issued when the layer of cloud, originally lower than 50 metres, has risen to more than 100 metres and has remained above 100 metres for at least 10 minutes.

2nd Case. Reports of improvement by dissipation of the cloud are issued when the clouds being below 200 metres with total amount of sky covered with low clouds more than 3/4, the amount of sky covered has decreased and has remained less than 3/4 for at least 10 minutes.

Form of the reports.

Reports of improvement in low cloud are prepared in the following forms:

1st Case. (Improvement by elevation of the base of low clouds).

Lifting Name of station GGgg xxVhL

30

2nd Case. (Improvement by dissipation of the cloud).

Clearing Name of station GGgg xxVhL

C. *Cessation of Snow*

Reports of cessation of snow are issued when the fall of snow has ceased for at least 10 minutes.

Form of the reports.

Reports of cessation of snow are prepared in the following form:

Snowend Name of station GGgg xxVhL EEE'E'

where EE represents in whole centimetres the depth of the layer of snow fallen during the fall notified by the report.

In case a pre-existent layer of snow is present the figures E'E' give in whole centimetres the total thickness of the resulting layer. If there is no pre-existing layer of snow E'E' repeat the thickness EE.

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D. Decrease of Gale

Reports of decrease of gale are issued when the wind having reached force 8 on the Beaufort scale, has decreased in force and has not exceeded force 6 on the Beaufort scale for at least 10 minutes.

Form of the reports.

Reports of decrease of gale are prepared in the following form:

Galend Name of station GGgg DDFXX

where the symbols XX represent optional figures.

APPENDIX G8

GROUND SIGNALS

The ground signals are intended to indicate to an aircraft passing over an aerodrome, the existing weather at neighbouring stations on aerial routes.

20 For each station for which information is displayed, four panels will be placed on the ground showing:

The station index, to be given by a letter,

The weather,

The visibility,

The height of the base of low cloud,

The order of these symbols will be from left to right when the letter indicating the station is in its upright position.

The codes used will be:

30 Weather: Will be indicated either by the figures or by the symbols of Plate 2 below.

Visibility: Code IV of Appendix G₂.

Height of base of low cloud: { Code VII of the International code for meteorological messages.

Each panel will consist of a rectangular background of a colour (white) distinct from the normal surface of the aerodrome. Each panel will be 8 m. × 6 m.

There should be approximately 3 metres clear space between the edge of one panel and the edge of the succeeding panel.

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The series of panels for each station should be separated by a suitable distance from the series of panels for another station. This distance should not be less than six metres.

The panel for the station index will have on it a single capital letter permanently fixed. The remaining panels will each have on them 11 diamond-shaped boards (*) each side of which should be 1 metre; each board consists of 2 sections, one fixed, the other movable as a shutter about hinges. Any shutter may be closed or opened as required. One side of the shutter is painted (white) as for the background of the panel; the other side is painted (red) as for the fixed half of the diamond. Thus if all the shutters are closed the whole panel appears (white) and signifies "no observation." If it is desired to show a number such as "4" the four corner shutters are opened so that the panel appears as the 4 of diamonds in a pack of playing cards. Similarly for other numbers except for the 9 which is indicated in the manner shown in the table in Plate 2 and not in the exact form usual in playing cards.

Number 0 of the Meteorological scale will be shown by one open shutter in the upper left hand corner of the panel.

(*) Although the highest code number to be shown is 9, eleven boards are required to enable the code numbers to be indicated by diamonds in the positions shown in the table in Plate 2. The actual arrangement of the eleven boards is indicated in the figure in Plate 1.

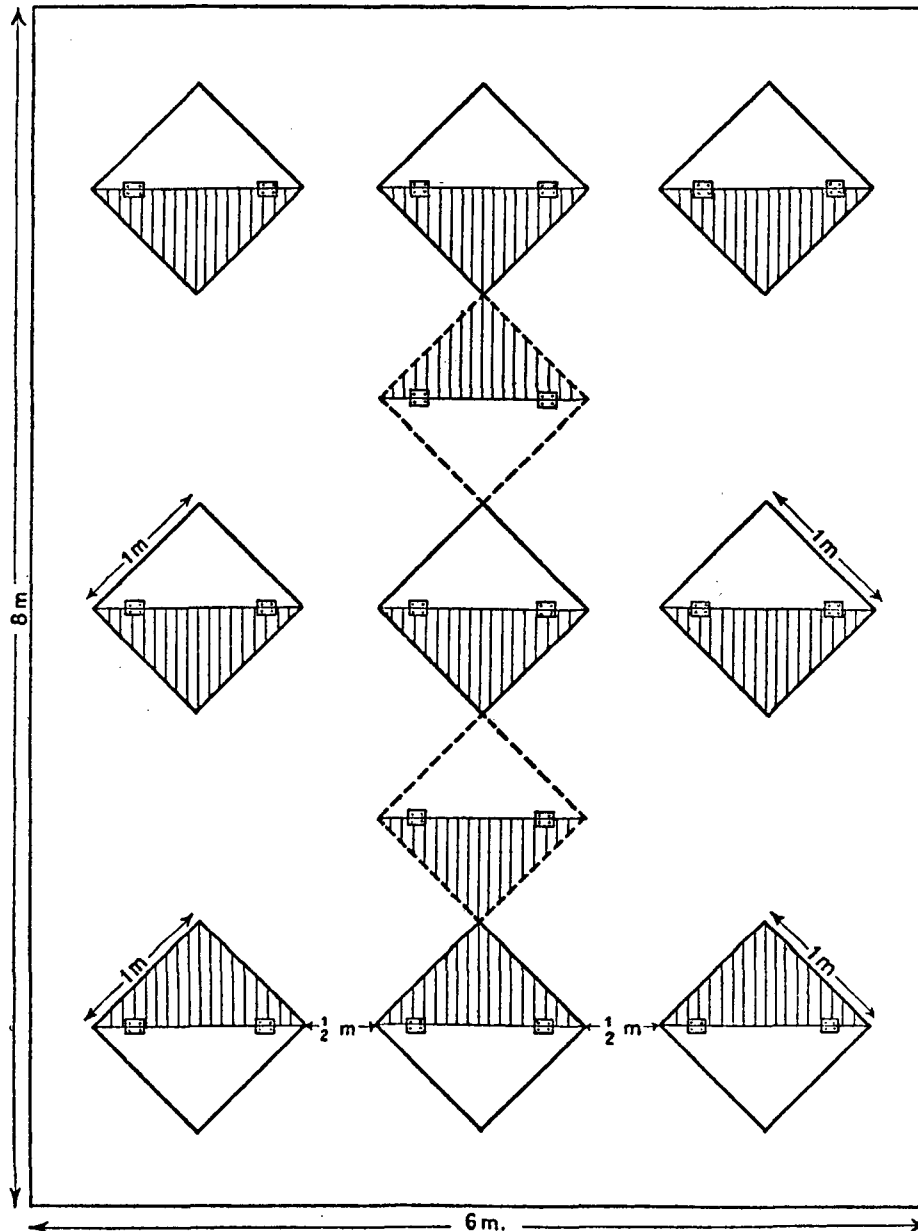
In Plate 1 the fixed sections are shaded and the movable sections are plain. Arrangements must be made for securing the movable sections so that they should not be blown open by the wind when they have been closed or vice versa. Dimensions are also given as a guide to what is suitable; they are based on the results of experiments.

PLATE I

PLAN OF A PANEL FOR GROUND SIGNALS WITH THE "DIAMONDS" IN POSITION

The following is one method of construction of the panels. It is necessary to make provision for fixing the movable shutters both when they are open and when they are closed.

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Each "diamond" is one metre square.

The fixed half of each "diamond" is shaded; the movable half is plain.

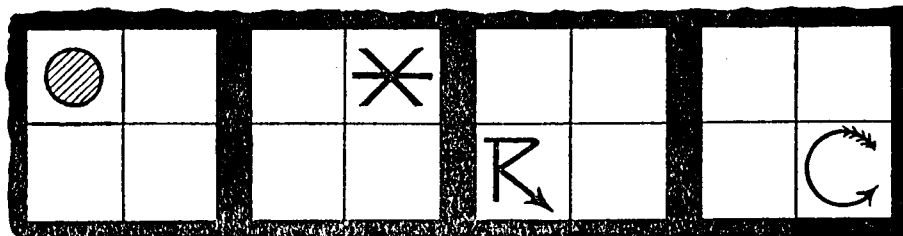
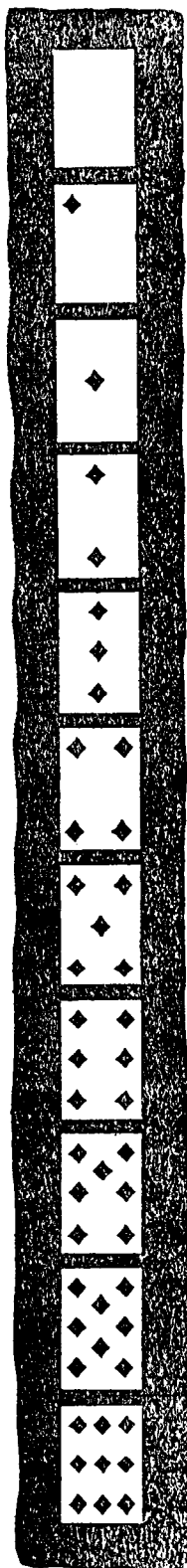
The two "diamonds" with dotted lines are used in forming numbers 7 and 8 only.

PLATE 2

No. 6
 Convention relating to the Regulation of Aerial Navigation, 13th Oct., 1919.
 —Continued

No observation

0
1
2
3
4
5
6
7
8
9



Rain or drizzle Snow or hail Thunderstorm Gale

WEATHER	VISIBILITY	HEIGHT OF BASE OF LOW CLOUD
The Code used is		
1 Rain or drizzle 2 Snow or hail 3 Thunderstorm 4 Gale	CODE IV	CODE VII
of the International Code for Meteorological Messages (See Append. G2)		

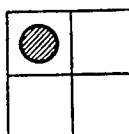
EXAMPLE:



Station Index

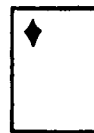


or



Weather

CODE IV



Visibility

CODE VII



Height of base of low cloud

SIGNIFICATION:

PARIS

Rain or drizzle

Objects not visible at 50m (55 yards) 50 to 100m (150 to 300 ft)

Note—It is recommended that the squares on the panels be painted red.

ANNEX H

—
CUSTOMS

GENERAL PROVISIONS

No. 6

Convention
relating
to the
Regulation
of Aerial
Navigation,
13th Oct.,
1919.

—Continued

1. Any aircraft going abroad shall depart only from aerodromes specially designated by the customs administration of each contracting State, and named "customs aerodromes."

Aircraft coming from abroad shall land only in such aerodromes.

2. Every aircraft which passes from one State into another is obliged to cross the frontier between certain points fixed by the contracting States. These points
10 are shown on the aeronautical maps.

3. All necessary information concerning customs' aerodromes within a state, including any alterations made to the list and any corresponding alterations necessary on the aeronautical maps and the dates when such alterations become valid, and all other information concerning any international aerodromes which may be established, shall be communicated by the State concerned to the International Commission for Air Navigation which shall notify such information to all of the contracting states. The contracting States may agree to establish international aerodromes at which there may be joint customs services for two or more States.

4. When, by reason of a case of force majeure, which must be duly justified,
20 an aircraft crosses the frontier at any other point than those designated, it shall land at the nearest customs aerodrome on its route. If it is forced to land before reaching this aerodrome it shall inform the nearest police or customs authorities.

It will only be permitted to leave again with the authorization of these authorities, who shall, after verification, stamp the log book and the manifest provided for in paragraph 5; they shall inform the pilot of the customs aerodrome where he must necessarily carry out the formalities of customs clearance.

5. Before departure, or immediately after arrival, according to whether they are going to or coming back from a foreign country, pilots shall show their log books to the authorities of the aerodrome and, if necessary, the manifest of the
30 goods and supplies for the journey which they carry.

6. The manifest is to be kept in conformity with the attached form No. 1.

The goods must be the subject of detailed declarations in conformity with the attached form No. 2, made out by the senders.

No. 6
 Convention
 relating
 to the
 Regulation
 of Aerial
 Navigation,
 13th Oct.,
 1919.

Every contracting State has the right to prescribe for the insertion either on the manifest or on the customs declaration of such supplementary entries as it may deem necessary.

7. In the case of an aircraft transporting goods the customs officer, before departure, shall examine the manifest and declarations, make the prescribed verifications and sign the log book as well as the manifest. He shall verify his signature with a stamp. He shall seal the goods or sets of goods, for which such a formality is required.

On arrival the customs officer shall ensure that the seal is unbroken, shall pass the goods, shall sign the log book and keep the manifest. 10

In the case of an aircraft with no goods on board, the log book only shall be signed by the police and customs officials.

The fuel on board shall not be liable to customs duties provided the quantity thereof does not exceed that needed for the journey, as defined in the log book.

8. As an exception to the general regulations, certain classes of aircraft, particularly postal aircraft, aircraft belonging to aerial transport companies regularly constituted and authorized and those belonging to members of recognized touring societies not engaged in the public conveyance of persons or goods, may be freed from the obligation of landing at a customs aerodrome and authorized to begin or end their journey at certain inland aerodromes appointed by the customs and police administration of each State at which customs formalities shall be complied with. 20

However, such aircraft shall follow the normal air-route, and make their identity known by signals agreed upon as they fly across the frontier.

REGULATIONS APPLICABLE TO AIRCRAFT AND GOODS

9. Aircraft landing in foreign countries are in principle liable to customs duties if such exist.

If they are to be re-exported, they shall have the benefit of the regulations as to permit by bond or deposit of the taxes.

In the case of the formation between two or more countries of a Union of touring societies, the aircraft of the said countries will have the benefit of the regulations of the "Triptyque". 30

10. Goods arriving by aircraft shall be considered as coming from the country where the log book and manifest have been signed by the customs officer.

As regards their origin and the different customs regimes, they are liable to the regulations of the same kind as are applicable to goods imported by land or sea.

11. With regard to goods exported in discharge of a temporary receiving or bonded account or liable to inland taxes, the senders shall prove their right to send the goods abroad by producing a certificate from the customs of the place of destination.

No. 6
Convention
relating
to the
Regulation
of Aerial
Navigation,
13th Oct.,
1919.
—Continued

AIR TRANSIT

12. When an aircraft to reach its destination must fly over one or more contracting States, without prejudice to the right of sovereignty of each of the contracting States, two cases must be distinguished:—

1. If the aircraft neither sets down nor takes up passengers or goods, it is bound only to keep to the normal air route and make itself known by signals when passing over the points designated for such purpose.

2. In other cases, it shall be bound to land at a customs aerodrome and the name of such aerodrome shall be entered in the log book before departure. On landing, the customs authorities shall examine the papers and the cargo, and take, if need be, the necessary steps to ensure the re-exportation of the craft and goods or the payment of the dues.

The provisions of paragraph 9 (2) are applicable to goods to be re-exported.

If the aircraft sets down or takes up goods the customs officer shall verify the fact on the manifest, duly completed, and shall affix, if necessary, a new seal.

20

VARIOUS PROVISIONS

13. Every aircraft during flight, wherever it may, must conform to the orders from police or customs stations and police or customs aircraft of the State over which it is flying.

14. Customs officers and excise officials, and generally speaking the representatives of the public authorities shall have free access to all starting and landing places for aircraft; they may also search any aircraft and its cargo to exercise their rights of supervision.

15. Except in the case of postal aircraft, all unloading or throwing out in the course of flight, except of ballast, may be prohibited.

30 16. In addition to any penalties which may be imposed by local law for infringement of the preceding regulations, such infringement shall be reported to the State in which the aircraft is registered and that State shall suspend for a limited time, or permanently, the certificate of registration of the offending aircraft.

17. The provisions of this Annex do not apply to military aircraft visiting a State by special authorization (Articles 31, 32, and 33 of the Convention), nor to police and customs aircraft (Articles 31 and 34 of the Convention).

No. 6
 —
 Convention relating to the Regulation of Aerial Navigation, 13th Oct., 1919.
 —Continued

NOTE.—The manifest should not bear on it erasures or corrections except those approved by the proper customs officials, nor contain interlineations or several articles entered on the same line. As many extra sheets may be added as are necessary. MODEL No. 1

AIR NAVIGATION
 MANIFEST
 OR GENERAL DECLARATION OF CARGO

	MACHINE.....	{	Registration Mark.
Space reserved for entries by Customs Officers.	COMMANDING OFFICER	{	Name : Residence : Nationality : Number of Licence Place of departure : Country : Place of destination : Country : Number of annexed declarations :
	GOODS.....		

The Commanding Officer guarantees the accuracy of the contents of this manifest under penalties provided by law. Consequently he has dated and signed this document immediately below the last entry.

File number of	Marks and numbers on the Parcels	Number (in figures and letters) and Descriptions of Parcels	Nature of the goods	Weight	Observations

Place of departure : AIR NAVIGATION No. 2
 Place of destination :

Customs declaration made by M
 for the following goods :

PARCELS		NATURE OF GOODS	DETAILED DESCRIPTION OF CONTENTS	COUNTRY OF ORIGIN	VALUE	WEIGHT		OBSERVATIONS
MARKS AND NUMBERS	NUMBER					GROSS	NET	

At the day of
 Consignor,

No. 7

Procès Verbal of the Deposit of Ratifications of the Convention
relating to the Regulation of Aerial Navigation

PROCÈS-VERBAL

DU DÉPÔT DES RATIFICATIONS SUR LA CONVENTION PORTANT RÉGLEMENTATION DE LA
NAVIGATION AÉRIENNE EN DATE À PARIS DU 13 OCTOBRE 1919 ET SUR LE
PROTOCOLE ADDITIONNEL À LA DITE CONVENTION EN DATE À PARIS
DU 1er MAI 1920

No. 7
—
Procès
Verbal
of the
Deposit of
Ratifications
of the
Convention
relating
to the
Regulation
of Aerial
Navigation,
1st ~~May~~ June
1920/1922.

10 En exécution des clauses finales de la Convention portant réglementation de la navigation aérienne, en date à Paris du 13 octobre 1919, signée par les Etats-Unis d'Amérique, la Belgique, la Bolivie, le Brésil, l'Empire britannique, la Chine, Cuba, l'Equateur, la France, la Grèce, le Guatemala, l'Italie, le Japon, Panama, la Pologne, le Portugal, la Roumanie, l'Etat serbe-croate-slovène, le Siam, l'Etat tchéco-slovaque et l'Uruguay, et à laquelle ont accédé le Pérou par déclaration en date à Paris du 22 juin 1920, le Nicaragua par déclaration en date à Paris du 31 décembre 1920 et le Libéria par déclaration en date à Paris du 29 mars 1922, les Soussignés se sont réunis au Ministère des Affaires Etrangères à Paris pour procéder au dépôt des ratifications sur ladite Convention et les remettre au Gouvernement de la République
20 française.

Les instruments des ratifications de la Belgique, la Bolivie, l'Empire britannique, la France, la Grèce, le Portugal, l'Etat serbe-croate-slovène, le Siam ont été produits et, ayant été, après examen, trouvés en bonne et due forme, ont été confiés au Gouvernement de la République française pour rester déposés dans ses archives.

Les Soussignés, Représentants de la Belgique, la Bolivie, l'Empire britannique, la France, la Grèce, le Portugal, l'Etat serbe-croate-slovène et le Siam, dûment autorisés, ont déclaré que leurs Gouvernements respectifs pourront différer, en ce qui concerne les Etats signataires qui n'ont pas encore déposé leurs ratifications, ainsi que l'Espagne, la Suisse, la Norvège, la Suède, les Pays-Bas, le Danemark, la
30 Finlande, l'Esthonie, la Lettonie et Monaco, l'application des dispositions de l'article 5 de la Convention, jusqu'à ce qu'il soit possible d'accorder les dérogations prévues au Protocole additionnel à ladite Convention. Les décisions prises par lesdits Gouvernements, quant à la faculté ci-dessus de différer l'application des dispositions de l'article en ce qui concerne les Etats énumérés, seront notifiées au Gouvernement

No. 7 de la République française, qui en informera les divers Etats contractants. Dès que la Commission internationale de navigation aérienne sera instituée, ces notifications seront adressées à ladite Commission qui en avisera les Etats contractants.

Procès Verbal of the Deposit of Ratifications of the Convention relating to the Regulation of Aerial Navigation, 1st ~~May~~ ^{June} 1922.
—Continued

Conformément aux clauses finales de la Convention, le Gouvernement français donnera connaissance à tous les Etats contractants des dépôts de ratifications qui seront ultérieurement effectués.

Une copie certifiée conforme du présent procès-verbal sera communiquée, par le Gouvernement français, à tous les Etats signataires.

EN FOI DE QUOI les soussignés ont signé le présent procès-verbal et y ont apposé leurs sceaux.

10

FAIT à Paris le premier juin mil neuf cent vingt-deux.

(L.S.) E. DE GAIFFIER.
 (L.S.) FELIX AVELINO ARAMAYO.
 (L.S.) HARDINGE OF PENSHURST.
 (L.S.) R. POINCARÉ.
 (L.S.) P. METAXAS.
 (L.S.) JOAO. CHAGAS.
 (L.S.) M. BOSHKOVITCH.
 (L.S.) CHAROON.

Copie certifiée conforme:
 Chef du service du Protocole,
Le Ministre plénipotentiaire,
 P. de FOUQUIÈRES.

20

No. 8

Certificate of Dr. O. D. Skelton, Under Secretary of State for
External Affairs

No. 8
—
Certificate
of Dr. O. D.
Skelton,
Under
Secretary of
State for
External
Affairs,
31st Jan.,
1928

The Deputy Minister of Justice,
Ottawa.

SIR,—Official notice has been received of the adherence to the Convention relating to the Regulation of Aerial Navigation of the following signatories:—

1. Belgium.
- British Empire:
2. Great Britain.
3. Dominion of Canada.
4. Commonwealth of Australia.
5. Union of South Africa.
6. Dominion of New Zealand.
7. Irish Free State.
8. India.
9. Bulgaria.
10. Chile.
11. France.
12. Greece.
13. Italy.
14. Japan.
15. Persia.
16. Poland.
17. Portugal.
18. Roumania.
19. Saar Territory.
20. Kingdom of the Serbs, Croats and Slovenes.
21. Siam.
22. Sweden.
23. Czechoslovakia.
24. Uruguay.

I have the honour to be Sir,

Your obedient servant,

O. D. SKELTON,

Under-Secretary of State for External Affairs.

OTTAWA, 31st January, 1928.

No. 9.

Factum of the Attorney-General of Canada.

*In the
Supreme
Court of
Canada.*

I.—STATEMENT OF THE CASE.

No. 9.
Factum
of the
Attorney-
General of
Canada.

1. This is a reference by His Excellency the Governor General in Council, under an order dated 15th April, 1929, (P.C. 367), to the Supreme Court of Canada for hearing and consideration pursuant to sec. 55 of the Supreme Court Act of certain questions touching the respective powers, under the British North America Act 1867, of the Parliament and Government of Canada and the legislatures of the provinces in relation to the regulation and control of Aeronautics in Canada. (Record, pp. 3-4.)

2. The questions referred are as follows :—

1. Have the Parliament and Government of Canada exclusive legislative and executive authority for performing the obligations of Canada, or of any province thereof, under the Convention entitled “ Convention relating to the Regulation of Aerial Navigation ” ?

2. Is legislation of the Parliament of Canada providing for the regulation and control of aeronautics generally within Canada, including flying operations carried on entirely within the limits of a province, necessary or proper for performing the obligations of Canada, or of any province thereof, under the Convention aforementioned, within the meaning of section 132 of the British North America Act, 1867 ?

3. Has the Parliament of Canada legislative authority to enact, in whole or in part, the provisions of section 4 of the Aeronautics Act, chapter 3, Revised Statutes of Canada, 1927 ?

4. Has the Parliament of Canada legislative authority to sanction the making and enforcement, in whole or in part, of the regulations contained in the Air Regulations, 1920, respecting—

- (a) The granting of certificates or licences authorizing persons to act as pilots, navigators, engineers or inspectors of aircraft and the suspension or revocation of such licenses ;
- (b) The regulation, identification, inspection, certification, and licensing of all aircraft ; and
- (c) The licensing, inspection and regulation of all aerodromes and air stations ?

*In the
Supreme
Court of
Canada.*

No. 9.

Factum
of the
Attorney-
General of
Canada—
continued.

In the case will be found the full text of the Convention relating to the Regulation of Aerial Navigation with the Annexes thereto (Record, pp. 41-121), of the Aeronautics Act (Record, pp. 7-9) and of the Air Regulations, 1920 (Record, pp. 10-40).

II.—ARGUMENT.

3. The Attorney-General of Canada submits that the questions above set out should be answered in the terms, and for the reasons in support thereof, respectively stated below.

Question 1: Have the Parliament and Government of Canada exclusive legislative and executive authority for performing the obligations of Canada, or of any province thereof, under the Convention entitled "Convention relating to the Regulation of Aerial Navigation" ? 10

The Attorney-General submits, for the reasons stated below, that this question should be answered unqualifiedly in the affirmative. The question raises for decision the true construction of sec. 132 of the British North America Act in regard particularly to two points: First, whether the Convention referred to is a treaty within the purview of that section, and, secondly, if the answer to the first point be in the affirmative, whether the powers conferred by that section upon the Parliament and Government of Canada for performing the obligations of Canada or of any province thereof arising under such a treaty are, in respect of an obligation of any province thereunder, exclusive of provincial legislative and executive authority. It will be assumed, for the purposes of argument, that the said Convention does create obligations which require legislative action on the part of the High Contracting Parties to make the stipulations of the Convention effective. 20

Sec. 132 provides that:—

"The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada or of any province thereof, as part of the British Empire, towards foreign countries arising under treaties between the Empire and such foreign countries." 30

4. First, is the Convention a treaty within the purview of the Section? In the Water Powers Reference, counsel for the provinces contended that only a binding treaty entered into by the Crown, by virtue of which an obligation was imposed upon Canada or a province thereof, as part of the entire British Empire, that is to say, a treaty affecting the British Empire generally, was within the purview of this section: in other words, that the section had no application to a treaty made by the Crown imposing obligations on Canada or a province thereof alone. (See, Factum of Attorney- 40

General for the Province of Quebec, p. 10; Stenographic Transcript of Oral Argument, pp. 714-720.)

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To this contention, there is, in the present case, a short and conclusive answer. The answer is that, even if there be any justification for the suggested limitation of the scope of sec. 132, the treaty now in question is clearly within the purview of the section. Prior to 1919, whenever His Britannic Majesty entered into a treaty with a foreign state, the treaty, in accordance with the normal practice of diplomacy, took the form of a treaty between heads of states signed by plenipotentiaries provided with full
10 powers issued by the heads of states and authorizing the holders to conclude a treaty. But in 1919 a new practice was inaugurated, when, for the first time, a treaty—the Treaty of Peace with Germany—was concluded in the name of the British Empire as one of the contracting parties, forming along with the United States of America, France, Italy and Japan, the group of Powers described in that treaty as the Principal Allied and Associated Powers. As representative of the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, there signed Mr. Lloyd George and four other British representatives while the Dominion delegates signed for the Dominions concerned as
20 representatives of the Crown. The same form was adopted in the Convention for the Regulation of Aerial Navigation which was drawn up and signed at the same Peace Conference (see Record, p. 122, p. 124) and in certain later Peace Treaties. The said convention was ratified by His Majesty on behalf of the British Empire on 1st June, 1922 (Record, p. 3, l. 27-29) and is now in force as between the British Empire and seventeen foreign States. (Record, p. 124.) Consequently, the treaty now under consideration is literally in form, as in fact, a treaty between the British Empire, as such, and the foreign countries parties to the same.

5. This innovation in the form of concluding treaties, being at variance
30 with British constitutional practice and legal reality, was for this and other reasons, considered undesirable, and it was, accordingly, decided by the Imperial Conference of 1926 that, in future, treaties (other than agreements between governments), should be made in the name of heads of States, and if the treaty is signed on behalf of any or all of the governments of the Empire, the treaty should be made in the name of the King “as the symbol of the special relationship between the different parts of the Empire.” It was also decided that in the case of a treaty applying to only one part of the Empire it should be stated to be made by the King on behalf
40 of that part. (Report of Imperial Conference, 1926, p. 19.) The old constitutional practice has thus been restored.

The Attorney-General submits that sec. 132 of the British North America Act, is to be read and construed in the light of settled constitutional law and practice, under which the treaty-making power resides, as part of the royal prerogative, solely in the King as the delegate or representative

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continued.

of the Empire in the conduct of foreign affairs, subject, of course, to the conventions or understandings of the constitution by which the exercise of this, as of other prerogatives, is regulated and controlled. There is, therefore, solid ground for the view, conceded by counsel for the provinces in the Water Powers Reference, that, when that section speaks of "treaties between the Empire and such Foreign Countries," the term "the Empire" is properly to be understood as meaning His Britannic Majesty as the political head of the Empire. (See Stenographic Transcript of Oral Argument, p. 719.)

6. It does not by any means follow that only treaties entered into by His Majesty with foreign countries affecting all parts of the Empire equally are within the purview of the section. A treaty may be a treaty "between the Empire" (in the sense in which that expression is to be understood) and a foreign country, though the active obligations which it undertakes may relate to only one part of the Empire, e.g., Canada. Take, for example, the form in which the Treaty for the Suppression of Smuggling Operations along the border between Canada and the United States was concluded in 1924. It runs: "His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, *in respect of the Dominion of Canada.*" The form is most significant. The King is the contracting party as the representative of the Empire and the treaty is binding on the King, not as King of Canada merely, but as representing the Empire, although the provisions of the treaty specify the part of the Empire actively affected. 10 20

7. It is submitted that sec. 132 gives "the Dominion plenary power to fulfil all treaty obligations" affecting Canada or any province thereof. (Keith, "Responsible Government in the Dominions," 2nd revised edition, 1928, vol. 2, p. 614, 919, note 4.) In practice that interpretation of the scope of the section has been uniformly acted upon by the Dominion, and judicial opinion tends to confirm it. (See *the King vs. Stuart* (1925) 1 D. L. R. 12; *Atty.-Gen. of British Columbia v. Atty.-Gen. of Canada* (1924) 30 A. C. 203; 63 S. C. R. 293; *Atty.-Gen. of British Columbia v. Atty.-Gen. of Canada*, 64 S. C. R. 377, 381; *In re Nakane*, 13 B. C. R. 370.) The Supreme Court of Canada did not, it is apprehended, intend to express any opinion at variance with this view of the scope of sec. 132, in the Water Powers Reference (1929) S. C. R. 200, where, speaking by Duff, J., they said (at p. 225): "Broadly speaking, the Dominion has, under sec. 132, full authority to legislate for the execution of obligations imposed upon Canada or upon a province in virtue of an Imperial treaty." "It seems fairly clear," as Dr. Keith has recently observed, ("Sovereignty of the British Dominions," 1929, p. 414), "that any treaty negotiated for the King, even if applicable 40 only to Canada, is an Imperial treaty if the treaty is concluded under full powers issued under the Great Seal of the realm and ratified in like manner." (See, also, Keith "Responsible Government in the Dominions," revised 2nd ed., at p. 919, note 4.)

8. The said Convention, being in the nature of a compact between states, became, of course, internationally or diplomatically binding as between the British Empire and the other contracting states when ratified by His Majesty the King, though it no doubt required legislative sanction on the part of Great Britain and the several Dominions to render its provisions fully effective and binding on all His Majesty's subjects within their respective territories. There is, of course, no legal limitation of the power of the Crown to make treaties and the extent to which Parliament is consulted is a matter which is wholly irrelevant to international law. (Halsbury's Laws of England, vol. 6, p. 427; Keith, "Responsible Government in the Dominions," revised 2nd ed., vol. 2, pp. 842, 922.)

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9. Secondly, are the powers conferred by sec. 132 on the Parliament and Government of Canada for performing the obligations of Canada or any province thereof arising under such a treaty, exclusive of provincial legislative and executive authority? In the Water Powers Reference, counsel for the provinces, while conceding that there was, with respect to general treaties affecting the whole Empire, an authority vested by that section in the Dominion Parliament and Government to see that the treaty obligations of the Dominion and of any province thereof are carried out, contended that the power of the Dominion to carry out the obligation of any province under such a treaty, comes into play only if the province itself fails to take the necessary action to implement the obligation. (See, Factum of the Atty.-Gen. of Quebec, p. 10, Stenographic Transcript of Oral Argument, pp. 714-720.)

10. The Attorney-General submits that this contention is opposed to the plain language and intent of the section. The section declares, in terms, that the Dominion Government and Parliament shall have all powers necessary or proper for performing the obligations "of Canada or of any Province thereof" under treaties of the class described therein. There is here no limitation, nor does any arise from other provisions of the Act, which justifies the contention that the powers of the Dominion are, with respect to a treaty obligation of a province, contingent upon failure of the province to take the necessary action to carry out the obligation. Sec. 132 is not a necessary provision so far as concerns powers within the purview of sec. 91 of the British North America Act, and it is apprehended that its purpose was to confer upon the Dominion the powers which it describes in so far as they might require to be exercised with regard to the classes of subjects enumerated by sec. 92, which otherwise rest exclusively with the provinces; it being intended, as is most convenient, that for the enforcement of treaty obligations there should be no distribution of powers between the Dominion and the provinces and that the power of the Dominion should be comprehensive. It is submitted that Dr. Keith correctly appreciates the purpose and effect of sec. 132, when, in discussing the

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position, under the Australian Constitution, of the Commonwealth and State governments in regard to responsibility for the carrying out of treaty obligations, he says (Responsible Government in the Dominions, 2nd ed. revised, 1928, vol. 2, p. 614): "In the Dominion no doubt could ever arise as to the responsibility. Section 132 of the British North America Act, by giving the Dominion plenary power to fulfil all treaty obligations, gave authority over the provinces."

11. It is, the Attorney-General submits, an inherent and essential feature of the scheme of government established by the British North America Act that, in respect of foreign relations, the federal government is the exclusive representative and embodiment of the entire sovereignty of the Dominion, in its united character; for to foreign nations, and in our intercourse with them, provinces and provincial governments and even the internal adjustment of federal power, are unknown, and the only authority those nations are permitted to deal with is the authority of the Dominion as a unit. 10

"The essential feature of a federation" said Dr. Keith in the first edition of his work on Responsible Government in the Dominions, 1909, pp. 134-135, "is, that for external purposes it should be regarded as a unity. This is the case with the Canadian federation 20
In the all-important matter of foreign relations and treaty obligations the Canadian Government is supreme: section 132 of the British North America Act, 1867, gives the government and the Parliament full power to take whatever steps are necessary for the carrying out of any treaty obligation incumbent on Canada or on any province So all treaties in which Canada takes part are concluded for the Dominion as a whole."

A similar view of the responsibility and powers of the Dominion in relation to foreign affairs, and in particular the performance of treaty obligations, is expressed in the judgment of Clement, J., in *Re Nakane* (1908) 13 B.C.R. 370, 376, 377. 30

12. The uniform course of Dominion Legislative action under sec. 132 for the performance of the obligations arising under treaties affecting Canada, whether the domestic law affected be federal or provincial, has been consistent with the above construction of the purpose and scope of that section, and so far as such legislation has come under judicial review, the authority of the Dominion to enact it has been sustained. Take the case of the Japanese treaty of 1911—a treaty of the general character admittedly within the purview of sec. 132. Some of its provisions clearly deal with matters which would normally fall within the field of Property and Civil Rights in the Province; for instance, par. 3 of Article I provides that the subjects of the High Contracting Parties "shall in all that relates to their 40

industries, professional and educational studies, be placed in all respects on the same footing as the subjects or citizens of the most favoured nation." This treaty was ratified by the Japanese Treaty Act, 1913 (3-4 Geo. V., c. 27 (Can.)) and declared "to have the force of law in Canada"; and in *Atty.-Gen. for British Columbia v. Atty.-Gen. for Canada* (1924), A.C. 203, 63 S.C.R. 293, a provincial enactment of British Columbia, purporting to enable the government of British Columbia to prohibit the employment of Japanese in connection with contracts made with that government, was held to be *ultra vires* as violating the principle laid down in the Dominion Act of 1913 so far as concerned subjects of the Emperor of Japan. Similarly, in an earlier case, in *re Nakane* (1908), 13 B.C.R. 370, relating to the Anglo-Japanese Treaty of 1906, the Japanese Treaty Act, 1906 (6-7 Edw. VII, c. 50), which sanctioned that treaty, was held by the Court of Appeal for British Columbia to override a provincial enactment, the British Columbia Immigration Act of 1908.

Again, in *The King v. Stuart* (1925), 1 D.L.R. 12, the Court of Appeal for Manitoba held that the Migratory Birds Convention Act, 1917 (Can.), chap. 18, which was passed to implement a treaty with the United States for the protection of such birds—a treaty affecting Canada alone amongst the British Dominions—was held to be *intra vires* the Dominion under sec. 132, although it incidentally trenched on provincial jurisdiction over Property and Civil Rights, and to override, in so far as it was inconsistent with the Game Protection Act, 1916, chap. 44 of the Statutes of Manitoba.

These decisions are utterly inconsistent with the suggestion that the powers of the Dominion under sec. 132 are not exclusive or are in some way, not expressed in the provisions of the British North America Act, 1867, contingent upon the failure of the province to take the necessary action to implement obligations of the province under a treaty; and nowhere in these or any other decisions, or in the commentary of any writer on constitutional law, is there anything to be found which lends the slightest countenance to such a construction of the section.

13. As a power to perform treaty obligations affecting Canada, the power conferred upon the Dominion Parliament and Government by sec. 132 is, therefore, exclusive. Even in respect of a treaty which in its matter touches topics of provincial jurisdiction only, there being no national or imperial interests involved, the Dominion possesses full power under that section to make good the obligations arising thereunder whether the Provinces agree or not. But, compatibly with that, it is open to the Dominion, in the case of such a treaty, to restrain its hand and advise ratification or adherence only if the Provinces desire it. If the treaty were ratified or adhered to in respect of Canada at all, it would of course have to be ratified or adhered to on behalf of the whole of Canada, for the Dominion in its external relations is a unit and the provinces cannot, therefore, be dealt with differentially. Furthermore, the Dominion might

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leave it to the Provinces to enact such legislation as might be necessary to give effect to the Treaty. The provincial legislation in such a case would be valid, not by virtue of any power reserved to the Provinces to perform treaty obligations, but merely by reason of the circumstance that their legislation dealt with matters with respect to which the Provinces might, entirely apart from the existence of such a treaty, competently legislate in the absence of over-riding Dominion legislation in the same matter. But if such a course be open to the Dominion, as a matter purely of constitutional practice, it does not, in the Attorney-General's submission, detract in the slightest degree from the soundness of his submission that the power conferred upon the Dominion by sec. 132 to perform treaty obligations in respect of Canada is plenary and exclusive and untrammelled by any legislative power vested in the provinces. That is as it should be, for the federal power ought to be in a position to implement its treaty obligations, more particularly those involving national or imperial interests, without being subject to the vacillations or regional differences of the Provinces. 10

Question 2: Is legislation of the Parliament of Canada providing for the regulation and control of aeronautics generally within Canada, including flying operations carried on entirely within the limits of a province, necessary or proper for performing the obligations of Canada, or of any province thereof, under the Convention aforementioned, within the meaning of section 132 of the British North America Act, 1867? 20

14. It is submitted that this question ought clearly to be answered in the affirmative. It being a condition of the jurisdiction created by section 132 that there shall be some obligation of Canada or of some province thereof, as part of the British Empire, towards some foreign country arising under a treaty between the Empire and such foreign country (the Japanese Treaty Reference, 63 S.C.R. 293, 328, per Duff, J.) it is necessary, for the purpose of justifying the foregoing submission, to determine first, whether the obligations arising under the said Convention require, for their performance on the part of Canada, the enactment of legislation providing, in the terms of the question, "for the regulation and control of aeronautics generally within Canada, including flying operations carried on entirely within the limits of a province"; and, secondly, if the treaty obligations are of that character, whether sec. 132 of the British North America Act, which vests in the Dominion Parliament and Government "all powers necessary or proper" for performing treaty obligations, authorizes the enactment by the Parliament of Canada of such legislation. 40

15. The Convention embodies forty-three Articles and eight Annexes; the Articles deal with matters of principle, the Annexes with detailed regulations for those engaged in aerial navigation. They are printed in the Record, pp. 41-121. The principles include the recognition of national

sovereignty over the air space above territories and territorial waters with freedom of international navigation so far as consistent with the security of the state, without discrimination on the ground of nationality; the nationality and registration of aircraft; regulations for safety including certificates of air-worthiness, licences for personnel, international recognition, rules of the air for signals, lights, and the prevention of collision, rules for landing, and ground rules. The Convention provides for an international commission for air navigation and contains specific provisions concerning the marking of aircraft, certificates of air-worthiness, log books, rules as
 10 to lights, signals and methods of flight, qualifications of pilots, aeronautic maps, and ground marking, the collection and dissemination of meteorological information, and customs.

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While the regulation of international air navigation under a uniform system of rules and standards in the interests of public safety and the encouragement of such traffic was no doubt the object primarily in view, the framers of the Convention readily saw the fundamental necessity, for the effective working of the system, of extending the provisions of the Convention, in respect of certain essential requirements, to all other flying
 20 flying operations being permitted, in the absence of treaty stipulation, to be carried on under a heterogeneous system of rules and standards and thus impinging with the most serious consequences upon interstate air traffic. Accordingly, the Convention was so framed as to bring all flying operations, whether intrastate or interstate, in respect of certain fundamental requirements, under the regime of the same system of regulations.

16. Without entering into a detailed analysis of the provisions of the Convention and of the Annexes thereto, the Attorney-General submits that the following appear to be the principal obligations undertaken by Canada as part of the British Empire under the stipulations of the Convention :

30 1. The obligation to see that its regulations as to the admission over Canadian territory of the aircraft of other States are applied without distinction of nationality (Arts. 1 and 2 : Record, p. 41).

2. The obligation not to permit (except by special and temporary authorization or under a special convention) the flight above its territory of an aircraft which does not possess the nationality of a contracting State, and indirectly, registration being the only means by which nationality is acquired, the obligation to require registration of any aircraft owned by a Canadian national and intended to be flown (Arts. 5, 6, 7 : Record, p. 42).

40 3. The obligation to see that no discrimination is made between its private aircraft (see Art. 30 : Record, p. 46) and those of the other contracting States in regard to prohibition of flying over certain areas of its territory and that the locality and extent of the prohibited areas are published and notified beforehand to the other contracting States (Art. 3 : Record, p. 41).

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4. The obligation to require all aircraft engaged in international navigation to bear their nationality and registration marks as well as the name and residence of the owner, in accordance with Annex A (Art. 10 : Record, pp. 42, 51-54, 56-58).

5. The obligation to require every aircraft engaged in international navigation to be provided, in accordance with the conditions laid down in Annex B (Record, p. 55), with a certificate to airworthiness issued or rendered valid by the State whose nationality it possesses, and in the case of Canadian aircraft, by the Dominion (Article 11 : Record, p. 42). 10

6. The obligation to require the commanding officer, pilots, engineers and other members of the operating crew of every aircraft to be provided, in accordance with the conditions laid down in Annex E (Record, pp. 55, 58, 59), with certificates of competency and licences issued by the State whose nationality the aircraft possesses and in the case of Canadian aircraft, by the Dominion (Art. 12 : Record, p. 43).

7. The obligation to see that no wireless apparatus is carried on any aircraft without a special licence issued by the State whose nationality the aircraft possesses and in the case of Canadian aircraft 20 without a special licence issued by the Dominion, and that no such apparatus is operated except by members of the crew provided with a special licence for the purpose; also to require every aircraft used in public transport and capable of carrying ten or more persons to be equipped with sending and receiving wireless apparatus (Art. 14 : Record, p. 43).

8. The obligation to implement the provision that every foreign aircraft shall be exempt within Canada from any seizure on the ground of infringement of patent, design or model, subject to the deposit of security (Art. 18 : Record, p. 44). 30

9. The obligation to require every aircraft engaged in international navigation to be provided with the documents specified in Art. 19 (Record, p. 44).

10. The obligation to afford aircraft of contracting States, within Canada, the same measures of assistance for landing, particularly in case of distress, as national aircraft. (Art. 22 : Record, p. 44).

11. The obligation to require every aerodrome within Canada, which is open to public use by national aircraft, to extend the same facilities to aircraft of all the other contracting States under the same 40 tariff of charges (Art. 24 : Record, p. 45).

12. The obligation to require every aircraft flying within Canada and every national aircraft, wherever it may be, to comply with the

regulations contained in Annex D (Record, pp. 60-69) relative to the rules as to lights and signals and air traffic, etc. (Art. 25 : Record, p. 45).

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13. The obligation to prohibit the carriage by aircraft, in international navigation, of explosives and of arms and munitions of war, and to prohibit foreign aircraft from carrying such articles between any two points within Canada. (Art. 26 : Record, p. 45).

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10 14. The obligation to apply any regulations restricting the carriage of objects other than explosives or arms and munitions of war or photographic apparatus, equally to national and foreign aircraft. (Art. 29 : Record, p. 45).

15. The obligation to accord military aircraft of a contracting State visiting Canada under special authorization the privileges which are customarily accorded to foreign ships of war. (Art. 32 : Record, p. 46).

16. The obligation to co-operate in international measures with the other contracting States in regard to the several matters enumerated in Article 35. (Record, p. 48).

20 17. The obligation to implement and enforce the special agreement relative to customs, contained in Annex H. (Art. 36 : Record, p. 48).

The Attorney-General submits that the obligations of Canada under the said Convention, particularly 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 17, of those enumerated above, manifestly require for their performance legislative regulation and control of aeronautics generally within Canada, including flying operations carried on within the limits of a single province.

30 17. If the obligations which Canada has assumed under the said Convention be of that character, then it remains only to consider whether the Dominion has power under sec. 132 to enact legislation for the performance of those obligations. By that section the Dominion Parliament and Government are declared to have "all powers necessary or proper for performing the obligations of Canada or of any province thereof" under treaties of the class described therein. The phrase "necessary or proper" was probably adopted from Article 1, section 8, clause 18, of the Constitution of the United States of America, which adds to the enumeration of the powers of Congress that of making "all laws which shall be *necessary and proper* for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States or in any department thereof." The meaning of the phrase "necessary and
40 proper" in that clause was the subject of much learned discussion in the celebrated case of *M'Culloch v. Maryland*, 4 Wheat. Rep (U.S.) 316, 407. It was insisted by the advocates of a rigid interpretation, that the word "necessary" was there used in its close and most intense meaning and as limiting the right to pass laws for the execution of the grant of powers to

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such as were indispensable and without which the power would be nugatory : that it excluded the choice of means and left to Congress in each case that only which was most direct and simple.

18. In stating reasons for rejecting the restrictive interpretation, Chief Justice Marshall entered into an elaborate analysis of the grammatical and popular meaning of the terms "necessary and proper," and he concluded, having regard to the subject, the context, and the intention of the framers of the Constitution, that in the sense in which these terms were used in the clause of the Constitution under consideration, the word "necessary" meant only "needful," "requisite," "essential," "conducive to," and that some aid in support of this interpretation of the term was derived from that with which it was associated. If the word "necessary" were used in the strict and rigorous sense contended for, it would, as he observed, be an extraordinary departure from the usual course of the human mind, as exhibited in solemn instruments, to add a word "proper," the only possible effect of which was to qualify that strict and rigorous meaning and to present clearly to the mind the idea of a choice of means in the course of legislation. "The result of the most careful and attentive consideration bestowed upon this clause," the learned Chief Justice concluded (at pp. 420-421 of the report), "is that if it does not enlarge it cannot be construed to restrict the powers of Congress or to impair the right of the legislature to exercise its best judgment in the selection of measures to carry into execution the constitutional powers of the government . . . We admit, as all must admit, that the powers of the government are limited and that its limits are not to be transcended. But we think the solemn instrument of the Constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties essential to it in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited but consists with the letter and spirit of the Constitution, are constitutional." 10 20 30

19. Without treating this pronouncement as one which necessarily governs the interpretation of the corresponding phrase "necessary and proper" in sec. 132 of the British North America Act, the Attorney-General cites it as setting forth weighty considerations upon precisely similar terms employed in relation to a matter of the same nature, the execution of legislative powers, in support of the like interpretation of those terms as used in sec. 132. Allowing that in the execution of the powers conferred by sec. 132, the means employed should be, *bona fide*, appropriate to the end, the Attorney-General submits that that section, on its true interpretation, vests in the Dominion Parliament and Government the utmost latitude of discretion in the selection and application of means for the performance of the obligations of Canada or of any province thereof arising under treaties affecting Canada. 40

The judgment of the Court of Appeal of Manitoba in *The King v. Stuart* (1925) 1 D. L. R. 12, proceeds upon this interpretation of the nature and scope of the powers conferred upon the Dominion by that section. The issue in that case turned wholly on the question of the validity of certain provisions of the Migratory Birds Convention Act, 1918, (Can.), chap. 18, which was passed to implement a Convention with the United States for the protection of such birds. The Act contained a provision (Sec. 6) that "No one, without lawful excuse, the proof whereof shall lie on him, shall . . . have in his possession any birds . . . during the time when the capturing, killing or taking of such birds . . . is prohibited by law." It was argued that the right to buy, sell, or have a bird in one's possession was a civil right in respect of which the province had exclusive jurisdiction and that as the Convention did not in terms cover buying, selling, or having in possession, sec. 132 could not be called in aid of Dominion jurisdiction. The court rejected this contention. Fullerton, J. A. said (p. 14):—

"While it is true that the Convention does not in terms deal with buying, selling, or having in possession, it seems to me that the power to prohibit the having in possession is ancillary to legislation dealing with the killing of migratory game birds and is within the power of the Dominion."

A similar opinion was expressed by the other members of the Court (Deniston, J. A. at pp. 15-16; Truman, J. A., p. 21).

Question 3: Has the Parliament of Canada legislative authority to enact, in whole or in part, the provisions of section 4 of the Aeronautics Act, chapter 3, Revised Statutes of Canada, 1927?

20. The section of the Aeronautics Act referred to in this question (Record, p. 8, lines 12-38; p. 9, lines 1-12), besides empowering the Minister of National Defence, subject to approval by the Governor in Council, to regulate and control aerial navigation over Canada and the territorial waters of Canada, authorizes him, subject to the approval aforesaid, to make regulations with respect to the variety of topics specified in paragraphs (a) to (j) inclusive of this section. These topics embrace substantially all the matters which are required to be the subject of regulation in connection with aerial navigation within Canada whether carried on internationally, interprovincially, or intra-provincially.

21. The Attorney-General submits that this enactment is entirely within the competence of the Parliament of Canada by virtue of its powers under the following provisions of the British North America Act:—

1. The provisions of sec. 132.
2. The general or residuary power conferred by the introductory words of sec. 91 to make laws for "the peace, order, and good government of Canada, in relation to all matters not coming within the classes of subjects by that Act assigned exclusively to the Legislatures of the Provinces.

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3. "The Public Property" (s. 91 (1)).
4. "The Regulation of Trade and Commerce" (s. 91 (2)).
5. "The Raising of Money by any Mode or System of Taxation" (s. 91 (3)).
6. The "Postal Service" (s. 91 (5)).
7. "The Census and Statistics" (s. 91 (6)).
8. "Militia, Military and Naval Service, and Defence" (s. 91 (7)).
9. "Beacons, Buoys, Lighthouses, and Sable Island" (s. 91 (9)).
10. "Navigation and Shipping" (s. 91 (10)).
11. "Quarantine and the Establishment and Maintenance of Marine Hospitals" (s. 91 (11)).
12. "Ferries between a Province and any British or Foreign Country or between two Provinces" (s. 91 (13)).
13. "Naturalization and Aliens" (s. 91 (25)).
14. "The Criminal Law" (s. 91 (27)).
15. "Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province" (s. 91 (29) and s. 92 (10) (a)).
16. "Immigration" (s. 95).

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22. The Attorney-General submits that sec. 132 of the British North America Act gives the Dominion full power to enact the legislation in question. The stipulations of the Convention show that it imposes upon Canada, as part of the British Empire, obligations of such a nature as to render uniform regulation of aeronautics throughout Canada not only desirable, but absolutely indispensable to the complete and effective performance of those obligations. The said enactment was originally enacted as part of the Air Board Act, 1919, chap. II of the Statutes of Canada, 1919 (1st sess.). This Act received the royal assent on the 6th June, 1919. The Convention, while not signed until October 19, 1919, was, at the time the Air Board Act was framed and passed, in course of preparation by a Commission constituted in March, 1919, by the Peace Conference, and the conclusion of a treaty upon the subject, to which Canada would be a party, was anticipated. It was partly at least in view of the anticipated necessity of making provision for performing the obligations of Canada under this treaty that the said Act was passed. The Attorney-General submits, notwithstanding that the Convention was concluded at a date subsequent to the passage of the said Act, that the powers vested in the Dominion under sec. 132 for the performance of the treaty obligations are available in support of the validity of the said Act.

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23. It will be convenient, in approaching the consideration of the powers of the Dominion to enact the legislation referred to otherwise than under sec. 132 of the British North America Act, to make a brief reference to the terminology of this subject and the history of the practical development of the means of aerial navigation. "Aeronautics" is the term used to designate the whole science and art of aerial navigation. It is divisible

into two main branches—*aerostation* relating to flight in machines which, like balloons and airships, are lighter than air, and *aviation* relating to artificial flight by means of flying machines (of which the aeroplane and helicopter are examples) which, like birds, are heavier than air. (Ency. Brit., 11th ed., vol. 1, p. 260; Reports of American Bar Association, vol. 46 (1921), p. 527.)

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The first practical achievements in the science of aeronautics definitely date from 1783, when the Montgolfier Brothers at Annonay, in France, constructed their first balloons. They and their co-workers, Charles, Pilatre
10 de Rozier, Robert and the Marquis d'Arlandes, rapidly developed the spherical balloon to a state of efficiency which practically has not been improved upon to this day. (Ency. Brit., op. cit., pp. 262-63). Balloons were used for reconnaissance in the Napoleonic wars, also in the American Civil War (1861), and for reconnaissance and escape from seige during the Franco-Prussian War, 1870.

The effort to fly by means of heavier-than-air craft antedates all other experiments in aerial navigation, but aviation has emerged as a practical accomplishment of man only within the past generation. The successful
20 flight in a power-driven craft achieved by Orville Wright at Kitty Hawk, North Carolina, on December 17, 1903, marked the practical beginnings of aviation. During the next few years there was steady progress in aircraft accomplishment based largely upon the improvement of the light gasolene engine. The World War removed the limiting factor of expense. It gave a great impetus to aircraft development and signally demonstrated the utility of aircraft for military purposes.

24. But it is not to war purposes alone that this new conquest of science has been dedicated. The years that have passed since the war have witnessed the advent of aircraft as a new and constructive agency in the civil relations of mankind—not in substitution for the railway and the steamboat and the
30 automobile—but as a valuable adjunct to those services. Aviation in Canada is in a period of dynamic development. The statistics published in the annual reports of the Department of National Defence on Civil Aviation and Civil Government Air Operations show remarkable strides since the close of the war in the growth of aeronautical activity in the Dominion. The total mileage flown by aircraft within Canada increased from 422,462 m. in 1920 to 2,728,414 m. in 1928, and it is estimated that this figure will mount for 1929 to 6,000,000 m. In 1920, 15,265 passengers were carried by aircraft within Canada as compared with 74,669 in 1928. The total amount of freight or express carried amounted to 6,740 pounds
40 in 1920 as compared with 2,404,682 pounds in 1928. The aerial mail service was inaugurated in 1924. The total mail matter carried in 1924 amounted to 1,221 pounds as compared with 316,631 pounds in 1928, and this figure was increased by 424,956 pounds in 1929. It is estimated that the total mileage flown by aircraft in the Air Mail Service alone by the end of the present fiscal year, March 31 next, will be 1,900,000 miles.

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The Air Mail Services, operated under contract with the Post Office Department, not only provide a regular service between the main cities of the Dominion and between the Dominion and the United States Air Mail Services, but also provide for the carriage of mails to remote and inaccessible districts, such as the Magdalen Islands, Anticosti, the settlements along the north shore of the Gulf of St. Lawrence, mining camps in northern Quebec, Ontario and Manitoba, Yukon and Mackenzie valleys. These air mail services are to be gradually linked up until a complete chain of air mail service extends throughout the Dominion. In addition to the carriage of mail, goods and passengers, aircraft are extensively used within Canada for timber cruising, forest patrol and fire protection, photographic aerial surveys, crop and forest dusting, patrols for the Customs preventive service, reconnaissance work in connection with marine and land surveys, forest conservation, geology, land settlement, and other miscellaneous purposes. 10

25. DOMINION POWERS UNDER SECTION 91, BRITISH NORTH AMERICA ACT.—While the subject of aerial navigation is not expressly mentioned in the distribution of legislative powers as between the Dominion Parliament and the provincial legislatures, respectively, under the British North America Act, 1867, that is true, not in the sense that the subject is to be taken as extraneous to the statute itself (“for whatever belongs to self-government in Canada, belongs either to the Dominion or to the provinces within the limits of the British North America Act: *Atty.-Gen. for Ontario v. Atty.-General for Canada* (1912) A.C. 571, per Lord Loreburn at pp. 581, 584), but only in the sense that “an exhaustive enumeration being unattainable (so infinite are the subjects of possible legislation), general terms are necessarily used in describing what either is to have, and with the use of general terms comes the risk of some confusion whenever a case arises in which it can be said that the power claimed falls within the description of what the Dominion is to have, and also within the description of what the province is to have.” (ib. supra, per Lord Loreburn, p. 581). In other words, these general terms “overlap each other” and establish “interlacing and independent legislative authorities” (*Great West Saddlery Co. v. The King* (1921), 2 A.C. 91, and the consequent difficulty is to determine the true connotation of the expressions used. In that situation, “the duty of a court of law is,” said Lord Loreburn in *Attorney-General for Ontario v. Attorney-General for Canada* (1912), A.C. 571, 581, “to decide in each particular case on which side of the line it (the power) falls *in view of the whole statute*”; or as he expressed it elsewhere in the same judgment, “When the text is ambiguous, as, for example, when the words establishing two mutually exclusive jurisdictions are wide enough to bring a particular power within either, recourse must be had to the context and scheme of the Act,” (ib. supra, p. 583). 30 40

26. INTER- AND EXTRA-PROVINCIAL FLYING OPERATIONS.—The power of Parliament to regulate and control aerial navigation, when carried on inter-provincially or extra-provincially, does not seem to admit of serious doubt and has not been questioned. The exclusive legislative authority of the Dominion Parliament extends, under sec. 91 of the British North

America Act, to, *inter alia*, "The Regulation of Trade and Commerce," "Postal Service," "Navigation and Shipping," "Quarantine," "Ferries between a Province and any British or Foreign Country or between two Provinces," "Naturalization and Aliens," and "Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province." A concurrent but paramount legislative authority is also committed to Parliament by sec. 95 in regard to "Immigration into all or any of the Provinces." The Statute thus affords abundant evidence of an intention to vest in the Parliament of Canada the amplest authority in relation to the subjects of inter- and extra-provincial transportation, communications and trade.

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27. It is obviously incompetent for the provincial legislatures to regulate and control aerial navigation so far as it may be carried on inter-provincially or extra-provincially, and the scheme of the British North America Act is such as to attribute that power to the Dominion Parliament exclusively. This new mode of transportation, so far as carried on in that manner, seems to be one which falls clearly within sec. 92 (10) (a), as coming within the category of "other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province" in the same manner as "Lines of Steam or other Ships." Furthermore, the exclusive power of Parliament in relation to "The Regulation of Trade and Commerce," though its application has been whittled down, has not been denied efficacy as a power conferring authority to regulate inter-provincial trade (*Atty.-Gen. for Ontario v. Atty.-Gen. for the Dominion* (1896) A.C. 348, 368, 371: answers to questions 3 and 4; *Atty.-Gen. for Manitoba v. Manitoba Licence Holders Ass'n.* (1902) A.C. 73. per Lord Macnaghten, p. 80; *Gold Seal Limited v. Dominion Express Co. and Atty.-Gen. for Alberta* (1921) 62 S.C.R. 424, 435, 456, 457; *Hudson's Bay Co. v. Heffernan* (1917) 3 W.W.R. 167), or to authorize the investigation of facilities for, and the rates of, domestic transport (Reference *re Combines Investigation Act* (1929) S.C.R. 409, 417, 418, per Duff, J.) or to regulate external trade and commerce by means of the imposition of customs duties or otherwise (*Atty.-Gen. for British Columbia v. Atty.-Gen. for Canada* (1924) A.C. 222, 225), or to define and regulate the powers of Dominion companies (*John Deere Plow Case* (1915) A.C. 330: *Great West Saddlery Co. v. The King*, *ib. supra*), or to prescribe the conditions under which aliens or non-resident persons should be permitted to enter Canada and do business here, even within the limits of a single province. (The Insurance Reference, *ib. supra*.) Moreover, it was stated generally by the Judicial Committee in *Citizens Insurance Company of Canada v. Parsons*, *ib. Supra*, that the "regulation of trade and commerce" would include "political arrangements in regard to trade requiring the sanction of Parliament, regulation of trade in matters of interprovincial concern, and it may be . . . general regulation of trade affecting the whole Dominion." That power will, consequently, extend to the regulation of aerial navigation in regard to the carriage of goods and persons, whether inter-provincially or extra-provincially.

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The subject also engages, in some of its aspects, other exclusive legislative powers of Parliament which will be hereinafter particularly referred to.

28. INTER-PROVINCIAL FLYING OPERATIONS.—Assuming for the purposes of argument, that legislative jurisdiction touching the operation of aircraft within the limits of a single province is primarily vested under sec. 92 of the British North America Act in the provincial legislatures under enumerative heads No. 10 “Local Works and Undertakings”; No. 11 “The Incorporation of Companies with Provincial Objects”; No. 13 “Property and Civil Rights in the Province,” or No. 16 “Generally all Matters of a merely local or private Nature in the Province,” the further question must be answered whether, notwithstanding this is so, the subject does not also fall within one of the enumerated classes of subjects in sec. 91. If so, the Dominion has the paramount power of legislating in relation to it. If the subject falls within neither of the sets of enumerated heads, then the Dominion may have power to legislate under the general words at the beginning of sec. 91. (*Toronto Electric Commissioners v. Snider* (1925) A.C. 396, 406.) 10

It is submitted that the regulation of aerial navigation, even in respect of operations confined to a province, is within the exclusive competence of Parliament under its powers in relation to “Navigation and Shipping” generally, and in more particular aspects, “Militia, Military, and Naval Service and Defence,” “Naturalization and Aliens” in conjunction with “The Regulation of Trade and Commerce,” the “Postal Service,” and in incidental aspects “The Public Property,” “The Raising of Money by any Mode or System of Taxation,” and “The Criminal law.” If the subject be not entirely embraced by these enumerated powers of the Dominion, the Attorney-General submits that it is within the competence of the Dominion Parliament to deal adequately with it under its general or residuary power to make laws for the Peace, Order, and good Government of Canada. 20

29. THE DOMINION’S ENUMERATED POWERS.—To deal first with the scope of the Dominion’s legislative authority in relation to “Navigation and Shipping”: The power to control “Navigation and Shipping” conferred on the Parliament of Canada is, the Judicial Committee has repeatedly ruled, to be widely construed and is so wide as to be capable of allowing the Dominion Parliament to restrict very seriously the exercise of proprietary rights, and the extent, character and scope of such legislation is left entirely to the Dominion Parliament. (*Atty.-Gen. for the Dom. of Canada v. Atty’s.-Gen. for the Provinces of Ontario, Quebec and Nova Scotia* (1898), A.C. 700; *City of Montreal v. Harbour Commissioners of Montreal* (1926), A.C. 299, 313). It embraces the right to prescribe rules and regulations for vessels navigating Canadian waters, including such matters as the law of the road, lights to be carried, registration of vessels, evidence of ownership, title and transmission of interests in vessels. (*McMillan v. Southwest Boom Company* (1878) 1 P. & B. 715; *Re Lake Winnipeg Transportation Lumber and Trading Company* (1891), 7 M.R. 255; 259). It also comprehends the exclusive right, on the one hand, to declare what shall be an inter- 40

ference with navigation and to control all works erected in navigable waters (in *re Provincial Fisheries* (1895), 26 S.C.R. 444, 538, 576; *Attorney-General for the Dominion of Canada v. Attorneys-General for the Provinces of Ontario, Quebec and Nova Scotia* (1898), A.C. at pp. 716-717), and, on the other hand, to authorize the building of works which would otherwise constitute an obstruction of or interference with navigation (in *re Provincial Fisheries Reference*, *ib. sup.*, p. 715; *Queddy River Boom Company v. Davidson* (1883), 10 S.C.R. 222, 223, 235; *Hewson v. Ontario Power Company*, 36 S.C.R., 596, 603). Nor is legislation within the scope of this power
 10 *ultra vires* of the Dominion Parliament merely because it incidentally trenches upon property and civil rights in a province (*Paquet v. Corporation of Pilots* (Quebec), (1920), A.C. 1029).

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30. While it is no doubt true that aerial navigation probably was not considered or thought of as a subject of practical legislation in 1867, it does not follow that this subject is not embraced by this legislative power. Regard must be had in ascertaining the full scope of this power “to the object of the Act, viz., to provide a Constitution for Canada, a responsible and developing State,” and to the fact that, “The British North America Act planted in Canada a living tree capable of growth and expansion within
 20 its natural limits.” (*Edwards vs. Atty.-Gen. for Canada* (1929), 46 T. L. R. 4, 7, 9, per Lord Sankey.) “The Act should be, on all occasions, interpreted in a large, liberal and comprehensive spirit considering the magnitude of the subjects with which it purports to deal in a very few words.” (*Ibid.*, p. 8.) As the Supreme Court of the United States has said: “Constitutional provisions do not change but their operation extends to new matters as the modes of business and the habits of life of the people vary with each succeeding generation.” (In *re Debs*, 158 U.S. 564, 591, per Mr. Justice Brewer.) “Being a grant of powers to a government, its language is general; and, as changes come in social and political life, it embraces in its grasp
 30 all new conditions which are within the scope of the powers in terms conferred. *In other words, while the powers granted do not change, they apply from generation to generation to all things to which they are in their nature applicable.*” “The Parliament cannot enlarge its powers by calling a matter with which it is not competent to deal by the name of something else which is within its competence,” said Sir Samuel Griffith, C.J., in *Atty.-Gen. for New South Wales vs. Brewery Employees Union of N.S.W.* (1908), 6 C. L. R. 469, 501, “On the other hand, it must be remembered that with advancing civilization new developments, now unthought of, may arise with respect to many subject matters. *So long as those new
 40 developments relate to the same subject matter the powers of the Parliament will continue to extend to them.*” On this principle the Supreme Court of the United States has held that the powers of the Congress of the United States, and in particular its power to regulate “Commerce with foreign nations or among the several States or with the Indian Tribes,” are not confined “to the instrumentalities of commerce for the Postal Service known or in use when the Constitution was adopted, but keep pace with the progress of

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the country and adapt themselves to the new developments of times and circumstances. They extend from the horse with its rider to the stage coach, from the sailing vessel to the steamboat, from the coach and the steamboat to the railroad, and from the railroad to the telegraph, as these new agencies are successively brought into use to meet the demands of increasing population and wealth. (*Pensacola Telegraph Co. vs. Western Union Telegraph Co.* (1877), 96 U.S. 1.)

31. These citations thus afford ample support for the view which has been expressed by a late commentator on Canadian Constitutional Law, viz., "There can be no doubt that the phrases by which subjects of legislative power are conferred must acquire a more extended connotation as the inventions of science and developments of the national life extend the significance of such phrases beyond what they comprehended when the constitution was originally framed." (26 D. L. R. 71-72, per A. H. E. Lefroy; see, also, Canadian Bar Review, vol. 7 (Dec. 1929), pp. 704-706.) Who can doubt, for instance, that the telephone and the wireless telegraph, though unknown in 1867, are, if used to connect provinces or extend beyond the limits of a province, within the description of "Telegraphs and other Works and Undertakings" in sec. 92 (10 (a)) ? Or that "Beacons, Buoys, Lighthouses" in sec. 91 (9) will comprehend any new invention capable of use for those purposes; or that "Navigation and Shipping" in sec. 91 (10) confers power to regulate the movement of submarines within Dominion waters, although these were unheard of in 1867 ?

This method of construction has, indeed, been applied in the interpretation of ordinary statutes. For instance, in *Atty.-Gen. vs. Edison Telephone Co.*, 6 Q.B.D. 244, Pollock, B., and Stephen, J., held that the telephone was a "telegraph" within the meaning of the Telegraph Acts 1863 and 1869, although the telephone was not invented or contemplated in 1869. More recently, it was decided by the Court of King's Bench in *Neal vs. Guy* (1928), 2 K. B. 451, that a by-law made in 1877 regulating the number of persons who might be carried or conveyed in any omnibus, applied without modification to a motor omnibus in the year 1927, despite the fact that the motor omnibus had not been invented or even contemplated half a century before.

32. The Dominion power to regulate "Navigation and Shipping" ought, therefore, to be held to embrace the regulation of aviation of flying operations however carried on within Canada, because although a new development, it is a development which relates to the same subject matter and to which that power is in its nature applicable. No doubt the Dominion cannot merely by calling aviation "aerial navigation" make it so, and thereby grasp the power to regulate it under "Navigation and Shipping." But the term "aerial navigation" is not the invention of the Dominion, nor is it a mere whimsical description. It is the term commonly employed throughout the world to describe this new mode of transportation and expresses the common understanding of men in regard to it. It is the term employed, since the beginning of governmental regulation, in the British

and other statutory law upon this subject (see, the Aerial Navigation Act, 1911 (1 and 2, Geo. V. chap. 4); Aerial Navigation Act, 1913 (2 and 3 Geo. V. chap. 22); Aerial Navigation Act, 1920 (10 and 11 Geo. V. chap. 80); the Air Commerce Act, 1926 (U.S.), Public No. 254, 69 Congress). It is, as has been observed also the term employed in the International Convention concluded in 1919 upon this subject. The propriety of this term "aerial navigation" arises out of the close relationship which men were quick to discern between air navigation and water-borne navigation. The same methods and principles are employed in air navigation as in water-borne navigation, that is to say, navigators of the air require to possess a knowledge of practical astronomy and of the principles of geometry as applied to navigation (see Annex E, Record, pp. 70-75). The main instrument used in both forms of navigation is the same, namely, the magnetic compass (*ibid.*). Courses are laid by compass bearings in both cases, allowing, in the case of marine navigation for tides and currents, and in the case of aircraft for winds. The qualifications of a pilot of an aircraft are similar in many respects to those of an officer on a ship. He must be able to read his chart or map, understand meteorology, and how to lay and keep a course correctly (*ibid.*). The rules of the road and for avoiding collisions are clearly defined in both cases and are in general drawn on the same lines (see Annex D, Record, pp. 60-69). The different classes of aircraft must give right of way as do different classes of marine craft. Flying machines are required to give right of way to balloons just as steamships are required to give way to sailing ships (*ibid.*). The navigation lights that ships and aircraft are required to carry are similar. In navigation at night, both of them make use of lighting systems, and in conditions of poor visibility, radio direction-finding systems (*ibid.*). Moreover, the common terms relating to water-borne navigation have all been applied to the navigation of the air with the same meaning as they bear in relation to water-borne navigation (see e.g. Annex C, Record, pp. 55, 58, 59). Air navigation is consequently closely allied, in its very nature, to water-borne navigation. It is a development to which the Dominion power in respect of "Navigation and Shipping" is, in its nature, applicable. There is, indeed, just as much, and certainly not less, reason in principle for holding that this power embraces the power to regulate air as for holding that it embraces the power to regulate water-borne navigation. For, while a provincial legislature may, no doubt, incorporate a company with capacity to navigate vessels within the limits of a province (see *Macdougall v. Union Navigation Company* (1887), 21 L.C.J. 63; *Union Navigation Company v. Couillard* (1875), 7 R.L. 215; *McCaffrey v. Hall* (1891), 35 L.C.J. 38), it is past question that such company and its vessels are, nevertheless, subject to the laws and rules enacted by Parliament in respect of the navigation of Canadian waters and the construction of works in or over navigable waters. The elaborate regulations upon this subject, embodied in the Canada Shipping Act (R.S.C. 1927, c. 186), apply generally and make no distinction between vessels which operate only intra-provincially and vessels which operate inter- or extraprovincially. Hence, if it was

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the intention of the framers of the British North America Act to confide to the Dominion the power to regulate all water-borne navigation within Canada, wherever carried on, then the principle underlying that intention affords strong ground for extending that power to the regulation of this new and more spacious form of navigation.

33. There is, in addition to the above considerations, another one of great force for holding that the Dominion possesses the exclusive power to regulate flying operations throughout Canada whether carried on within the borders of a province or more extensively. There is, the Attorney-General submits, a public right of navigation of the air throughout Canada and every part of it, analogous to the public right of navigation on water. The right being a right of the public in general and in no way special to the inhabitants of a province, it cannot be within the competence of any provincial legislature to regulate and control it, and the exclusive power of regulation must reside in the Dominion Parliament. (*Atty.-Gen. for British Columbia v. Atty.-Gen. for Canada* (1914), A.C. 153, 172, 173, 174; *Queddy River Driving Boom Co. v. Davidson*, 10 S.C.R. 222, 233.) The doctrine of the common law expressed in the old maxim *cujus est solum ejus est usque ad coelum*, and the corresponding principle expressed in Article 414 of the Civil Code of Quebec (Art. 552 Code Napoleon), “*La propriété du sol emporte la propriété du dessus et du dessous,*” if applied literally would, of course, be opposed to the existence of such a public right. Every flight of an aircraft over privately-owned property, at whatever height and however harmless in fact, would then constitute an invasion of private property, a trespass; but does the law compel such an application of the maxim, so inconvenient in itself and so utterly repugnant to the march of human progress? Both reason and authority require a negative answer. 10 20

34. The history and limitations of the maxim, in its bearing upon aviation, have been the subject of acute investigation in recent years. The conclusion sanctioned both by principle and authority is that, when properly interpreted and applied, the principle expressed in that maxim is quite compatible with the existence of a public right of air navigation. The maxim has been traced to a “gloss” by the glossator Accursius upon a passage in the Digest (42 tit. 24, pr. 22, sec. 4) justifying the removal of projections over a place of burial. (*Essel sur la navigation aérienne en droit interne et en droit international*, pp. 24 ff.; *Aircraft in Peace and Law*, by J. M. Spaight, p. 54; *Beginnings of Aerial Law*, by Arthur K. Khun, vol. 4, *Journal of International Law*, pp. 109, 123). It is first found, amongst English works, in Coke Litt. 4a. In the minds of the English lawyers of those days, the maxim did not, of course, carry any thought of human occupation of the superincumbent air unless by structures attached to the soil. It was intended, as Coke’s discussion of the principle clearly shows, to ensure to the owner a better enjoyment of the land and to refer to the air space only so far it is *appurtenant* to the land (48 Am. Law Rev., pp. 915–16; 53 Am. Law Rev., p. 722). By way of criticism no doubt of any literal application of the maxim, Brett, M.R., in his judgment in 30 40

Wandsworth Board of Trade v. United Telephone Co. (1884), 13 Q.B.D. 904, 915, referred to the old sister maxim *cujus est solum ejus est usque ad coelum et ad inferos* as "a mere fanciful phrase" and added that "*usque ad coelum*" was to his mind "another fanciful phrase."

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35. If the assertion that a landowner has legal rights to the centre of the earth is at most a theory which cannot be tested, the corresponding statement that his rights ascend to the highest heavens must be equally absurd. There is, moreover, a difference as regards capacity for public use between the depths below and the heights above the surface of the earth.

10 With the exception of tunnels, which after all are very limited, in length, size and depth, the interior of the earth cannot be used for the transportation of passengers and freight. The air, on the other hand, is as much adapted to this purpose as are the waters of the ocean. An element of public utility, therefore, attaches to the air which is absent in regard to the soil. Nor does it make any difference that the public rights thus existing by nature have not been exercised by man until our time. Public rights are not lost by non-user. Much less can it be contended that they have been lost by adverse possession on the part of the landowners.

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36. That there is a limitation to the doctrine expressed in the maxim

20 the courts have recognized. "The maxim *cujus est solum ejus est usque ad coelum*, is not," said Maule, J. in *Fay vs. Prentice*, 1 C. B. 828, 840, "a presumption of law applicable in all cases and under all circumstances: for example, it does not apply to Chambers in the Inns of Court"; for "a man may have an inheritance in an upper chamber, though the lower buildings and soil be in another." Co. Litt. 48b; *Doe d. Freeland v. Burt*, 1 T. R. 701; see also *Potts v. Bovine* (1888), 16 Ont. Rep. 152, 155; Broom's Legal Maxims, 9th ed., p. 262.

So long ago as 1815, Lord Ellenborough, in *Pickering vs. Rudd*, 4 Camp. 219, questioned the doctrine of *usque ad coelum*, and contributed the earliest

30 judicial utterance on the subject of aerial law. He said: (pp. 220-221)

"I do not think it is a trespass to interfere with the column of air superincumbent upon the close. I once had occasion to rule upon the Circuit that a man who from the outside of the field discharged a gun into it so as that the shot must have struck the soil, was guilty of breaking and entering it. . . . But I am by no means prepared to say, that firing across a field *in vacuo*, no part of the contents touching it, amounts to a *clausum fregit*. Nay, if this board overhanging the plaintiff's land be a trespass, it would follow that an aeronaut is liable to an action of trespass *quare clausum fregit*, at the suit of the occupier of every field over which his balloon passes in the course of his voyage. Whether the action may be maintained cannot depend upon the length of time for which the superincumbent air is invaded."

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Lord Ellenborough's denial of the importance of the element of time may no doubt be open to criticism, and, besides, the analogy between bullets or projectiles shot across a person's land, and aircraft passing over

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it, without touching it, is not very satisfactory, because although there is no interference with the land itself in either case, the bullet is inherently, while the aircraft is only incidentally, dangerous; and so Hawkins, J., in *Clifton v. Bury*, 4 T.L.R. 8, 9, while not disposed to regard the discharge of bullets across the plaintiff's land in target practice as constituting a trespass in the strict technical sense of the term, did look upon such firing of bullets as grievances which, under the circumstances, afforded the plaintiff a legal cause of action—no doubt meaning an action for nuisance. Some of the bullets did fall upon the plaintiff's land, and as to these Hawkins, J. considered that they constituted a series of trespasses of an actionable character. In *Guille v. Swan* (1822) 19 Johns. N.Y. 381, 383, Spencer, C.J. said: "I will not say that descending in a balloon is an unlawful act, for it is not so"; but he proceeded to hold the balloonist liable in trespass where he descended into a garden and a crowd assembled in consequence causing damage to the crops. 10

37. More recently, in *Butler v. Frontier Telegraph Co.* (1906) 186 N.Y. 486, Chief Justice Cullen of New York State, said:—

"The surface of the ground is a guide, but not the full measure, for within reasonable limitations land includes not only the surface but also the space above and the part beneath. *Usque ad coelum* is the upper boundary, and while this may not be taken too literally, there is no limitation within the bounds of any structure yet erected by man." 20

The public right of air navigation has been sustained in recent decisions of United States Courts. (*Johnson v. Curtiss Northwest Airplane Co.* (1928) U.S. Aviation Rep. 42; *Commonwealth vs. Nevin*, *ib. supra*, p. 39.)

In *Johnson v. Curtiss Northwest Airplane Co.*, *ib. supra*, the plaintiff invoked the old common law maxim in support of the claim that airplane flights over his land, no matter how great the altitude, constituted actionable trespass. Michael, J., who delivered the judgment of the Court, dealt with this contention as follows (at pp. 43–44): 30

"This rule, like many aphorisms of the law is a generality, and does not have its origin in legislation, but was adopted in an age of primitive industrial development, by the Courts of England, long prior to the American revolution, as a comprehensive statement of the landowner's rights, at a time when any practical use of the upper air was not considered or thought possible, and when such aerial trespasses as did occur were relatively near to the surface of the land, and were such as to exercise some direct harmful influence upon the owner's use and enjoyment of the land. 40

"A wholly different situation is now presented. We are passing through an age of marvellous achievements in the way of useful mechanical inventions, with the result that practical air navigation is now an accomplished fact. Its possibility of great public usefulness in rapid communication and transportation seems to be already well demonstrated.

“ The upper air is a natural heritage common to all of the people, and its reasonable use ought not to be hampered by an ancient artificial maxim of law such as is here invoked. To apply the rule as contended for would render lawful air navigation impossible, because if the plaintiff may prevent flight over his land, then every other land owner can do the same.

“ Condemnation of air lanes is not feasible because aircraft cannot adhere strictly to a defined course.

10 “ Common law rules are sufficiently flexible to adapt themselves to new conditions arising out of modern progress, and it is within the legitimate province of the courts to so construe and apply them. This very rule has been modified by our own supreme court in respect of subterranean waters. *Erickson vs. Crookston, etc.*, 100 Minn. 481.

“ When it is sought to enforce such a rule of law, the extent of the public interests involved on one side, as against the probable substantial injury to the private property owner on the other, is an important element of consideration by the courts. It is elementary in this country that private property is entitled to a full measure of protection.

20 “ The air, so far as it has any direct relation to the comfort and enjoyment of the land, is appurtenant to the land, and no less the subject of protection than the land itself, but when, as here, the air is to be considered at an altitude of two thousand feet or more, to contend that it is a part of the realty, as affecting the right of air navigation, is only a legal fiction, devoid of substantial merit. Under the most technical application of the rule, air flights at such an altitude can amount to no more than instantaneous constructive trespass. Modern progress and great public interests should not be blocked by unnecessary legal refinements.

* * * * *

30 “ Failure to sustain the plaintiff’s contention, relative to upper air trespasses, does not deprive him of any substantial rights or militate against his appropriate and adequate remedies for recovery of damages and injunctive relief, in cases of actual trespass or the commission of a nuisance, hence the scope of the temporary injunction has been limited to enforcing compliance with the Minnesota law already mentioned.”

38. Both principle and authority, the Attorney-General submits, justify the claim that there is, in respect of the air space over all those parts of Canada where the common law of England is the general law in
40 force—and these parts embrace the whole Dominion outside of the province of Quebec—a public right of aerial navigation. The Attorney-General further submits that what is true of the air space over those parts of Canada is not less true of the air space over the province of Quebec, where the civil law prevails. Article 414 of the Civil Code of Quebec is in the identic terms of Article 552 of the Code Napoleon, and in the absence of relevant

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judicial interpretation of Article 414, French jurisprudence and legal opinion upon the interpretation of Article 552 are relevant. In the "Exposé des Motifs," which accompanied the "Projet de loi sur la navigation aérienne," introduced in the Chamber of Deputies in France on the 7th May, 1913, by M. Klotz, Minister of the Interior; M. Jos Thierry, Minister of Public Works; M. Chas. Dumont, Minister of Finance; M. Eugène Etienne, Minister of War, and M. Pierre Baudin, Minister of Marine, it was stated that the elaboration of this *projet de loi* had been confided to a permanent commission consisting of aeronauts, lawyers and officials attached to the various Ministries affected by aviation, and the following statement was made with respect to the interpretation of Article 552. 10

"La Commission s'est préoccupée tout d'abord de la question de la portée de l'article 552 du Code civil, aux termes duquel la propriété du sol emporte la propriété du dessus et du dessous. Elle a pensé que la 'propriété du dessus' telle qu'elle est définie par le deuxième alinéa de l'article 552, ne s'étend pas à l'atmosphère, non susceptible d'appropriation privée.

"Par conséquent, les propriétaires de la surface ne peuvent s'opposer à ce que leurs terrains soient survolés; mais ils doivent être protégés contre les abus, et ils ont droit à la réparation des dommages qu'ils peuvent subir du fait de la circulation ou de l'atterrissage des aéronefs." (Rev. Jur. Inter. de la Locomotion Aérienne, vol. 4, (1913), p. 176.) 20

39. The following marginal note by Henri Lalou (Dalloz (1914), 2, pp. 193-194) sums up the view of French authors upon this subject :

En somme, l'espace aérien n'est soumis à la maîtrise de propriétaire sous-jacent que dans la mesure où il est susceptible d'appropriation privée. C'est du reste en ce sens que les Romains entendaient et pouvaient entendre la maxime *dominus soli, dominus cœli*, et les rédacteurs du code civil, la règle de l'art. 552 : "la propriété du sol emporte la propriété du dessus." A Rome où d'ailleurs l'air était considéré comme une *res communis*, parce qu'il n'était pas susceptible d'appropriation privée (V. Girard, Manuel élémentaire de droit romain, 3ème édit., p. 237), la maxime était employée pour expliquer l'acquisition des constructions et plantations par voie d'accession. On exprimait la même idée en disant: *Qui solum habet, cœlum habet*, ce qui signifiait que le propriétaire du sol était propriétaire, non pas du ciel, ce qui eût été absurde, mais des constructions et plantations se trouvant à la surface, Les rédacteurs du code ne l'ont pas entendue autrement. Portalis écrit dans l'exposé des motifs (Jur. gén., V. Propriété, p. 185, N° 16 : "Nous avons posé le principe que la propriété du sol emporte la propriété du dessus et du dessous; nous en avons conclu que le propriétaire peut faire au-dessus toutes les constructions et plantations et au-dessous toutes les constructions et fouilles qu'il juge convenables." Le rapport du tribun Faure 40

contient l'explication suivante, qui résume la portée de la maxime (Jur. Gén. V. cit., p. 187, No. 38): " Une règle trop ancienne et trop constante pour n'être pas bien connue, c'est que le propriétaire du sol peut planter et bâtir au-dessus, fouiller et creuser au-dessous, en un mot élever ou creuser à telle hauteur ou profondeur qu'il lui plaît."

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10 Mais encore faut-il, pour invoquer un droit de propriété, qu'il y ait appropriation possible. Le droit de propriété, en effet, ne peut s'étendre que dans la mesure de l'utilité pratique (V. Ihering, Œuvres choisies, édit. de Meunelaere, 1893, t. 2, p. 101-104). Le seul intérêt du propriétaire à la liberté de l'espace aérien, c'est qu'on ne lui enlève pas l'air, la lumière et l'eau du ciel, qu'il ne soit pas empêché de bâtir aussi haut qu'il lui plaît, qu'on ne lui rende pas impossible son séjour sur son fonds en remplissant son air atmosphérique d'odeurs pestilentielles ou d'une fumée exagérée (Comp. Blachère, L'air voie de communication et le droit, p. 44).

20 There is much force in the view of Ihering (Œuvres choisies, quoted by Mérignhac, Le Domaine aérien privé et public, R.D.I., 1914, pp. 216-17), that if the right of property extends into the airspace above, it does so only as the basis of a claim that the proprietor must not be deprived of air, light, and the rain from heaven, that he must not be prevented from building as he wishes, and that his occupation of his land must not be made impossible by pestiferous odours, or excessive smoke or dust. Beyond these limits the right to the airspace loses its raison d'être.

40 40. The reported decisions, while recognizing and protecting private property rights (see, e.g., *Bertrand, Bringuant et mauge vs. Société Farman* (Daloz (1913), 2, 117), do so under limitations which concede a public right of aerial navigation. For instance, in the case of *Huertebrise vs. Esnault-Pelterie, Farman and Borel* (Daloz (1914) 2, 193, 194), the Civil Tribunal of the Seine, in awarding 2,500 francs damages to the owner of a farm against the owner of a nearby aerodrome from which flights had been conducted over the plaintiff's land at an insufficient altitude, said:—

40 "Whereas if in terms of the texts cited ownership of the soil carries with it effectively ownership above the soil, this principle must restrict itself reasonably to the advantage of the proprietor, according to the height in the air usable by him either in the way of buildings or accessories of buildings, such as architects and engineers can conceive and realize, or from the standpoint of cultivated land generally. As to that which is above this height—estimated and fixed according to knowledge or experience deduced from usage, common sense, scientific rules, and the special circumstances of each case—the freedom of the air is complete and the *circulation aérienne* is in the present state of the law free from all restraint, and should not call forth new claims on the part of the proprietors of lands over which flights take place."

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41. Without attempting to enter here upon a detailed examination of the authorities upon the subject, the position of the law may be summed up as follows :—

1. The application of the maximum in adjudicated cases has always turned on circumstances showing that rights appurtenant to the land and the use thereof have been infringed.

2. The maxim, on its true interpretation, ensures to the land-owner a property in the air space only so far as it is *appurtenant* to the land and essential to its safe and quiet enjoyment; and

3. So far as private property rights are concerned, there is a right in the public in general to navigate the air at a due height without thereby committing trespass, subject to liability for acts amounting to a nuisance or for injury resulting from negligence. 10

Halsbury's Laws of England, vol. 24, p. 156, note (f);

Salmond, Law of Torts, 5th ed., pp. 196-7;

Burdick, Law of Torts, 4th ed. (1926), p. 406;

Spaight, Aircraft in Peace and Law (1915), pp. 54-56;

Hotchkiss, Aviation Law, pp. 12-27;

Zollman, Aircraft Space Rights (1919), 53 Am. Law Rev. 711;

Bogert, Problems in Aviation Law (1921), Cornell Law Quarterly; 20

Valentine, The Air, a Realm of Law (1910), 22 Juridical Review, 16;

Aviation and Trespass, 48 Am. Law Rev., pp. 914-919;

Airships—A Legal Problem, 51 Sol. Journ., 771.

42. In another view, the regulation of aerial navigation within any province closely engages the exclusive power of the Dominion in relation to "Militia, Military and Naval Service and Defence." The "Air Services" are, by the National Defence Act, R.S.C. 1927, chap. 136, sec. 4, specifically collocated with the Militia, Military, and Naval Services of Canada as being embraced by "all matters relating to defence" with which the Minister of National Defence is charged. The importance of exercising jurisdictional control over all aircraft and flying equipment and facilities owned by Canadian nationals and over the personnel employed for the operation of such aircraft, from the viewpoint of defence, is obvious. As was said, in the report of the Board, composed of representative citizens, appointed by the President of the United States in 1925 to make a study of the best means of developing and applying aircraft in national defence, "Progress in civil aviation is to be desired of and for itself. Moreover, aside from the direct benefits which such progress may be expected to bring us in our peace-time life, commercial aeronautic activity can be of real importance in its effect on national defence. It creates a reservoir of highly skilled pilots and ground personnel. Whatever is done to increase the use of aircraft, to spread familiarity with aircraft among the people, and in general to develop 'air mindedness' will make it easier rapidly to build up an expanded air power, if an emergency arises." (*Vide*, Senate Document No. 18, 69th Congress, 1st Sess., p. 8). A wealth of testimony—military, naval and 40

civilian—emphasizes the indispensability and almost incalculable potentialities of aircraft both alone and in co-operation with military and naval forces, as an arm of national defence. (*Vide*, Report of the Select Committee on Operations of the United States Air Services, H. of R., 68th Congress, 2nd Sess., Report 1653, pp. 5, 18, 19, 29, 30, 36, 37).

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43. By the Aeronautics Act (Record, pp. 7-9) and the Air Regulations, 1920 (Record, pp. 10-40), the regulation of aircraft (which expression includes airships and balloons), flying equipment and facilities, and of the personnel connected therewith, is closely knit up with defence. Control
10 over the civilian as well as the military air service is vested in the Minister of National Defence. Under the regulations, no aircraft can be primarily registered in Canada unless it belongs wholly to a British subject or British subjects, or to a company which has been incorporated in His Majesty's dominions and of which the President and Chairman, and at least two-thirds of the directors, are British subjects (Art. 5 : Record, p. 13, lines 4-7); and it is a condition of the primary registration in Canada of any aircraft that, upon the Governor in Council declaring that a national emergency exists or is immediately apprehended, every such aircraft shall be subject to requisition in the name of His Majesty by the Minister of National Defence or any
20 officer of the Canadian Air Force, and upon being so requisitioned becomes the property of His Majesty, subject to its return or to the payment of compensation, or to both, as may be provided by law (Art. 10, par. 1 : Record, p. 13, lines 31-34; p. 14, lines 1-3). Moreover, the registration in Canada of any aircraft primarily registered in any of His Majesty's dominions other than Canada, is subject to the like condition, unless under the law of the dominion in which the aircraft are primarily registered it is subject to a paramount right to be requisitioned on His Majesty's behalf (Art. 10, par. 2 : Record, p. 14, lines 4-8).

Similarly, it is a condition of every licence to any air harbour that, in
30 case the Governor in Council declares that a national emergency exists or is immediately apprehended, the owner of such air harbour shall comply with such directions, if any, with respect to the use of the air harbour, as may be given by the Minister of National Defence or an officer of the Canadian Air Force, subject only to the payment of such compensation as may be provided by law (Art. 28 : Record, p. 18, lines 4-9).

Then, again, no certificate can be issued authorizing any person who is not a British subject to act as pilot, navigator, engineer or inspector of passenger, freight, commercial or state aircraft (Art. 37 : Record, p. 19, lines 19-23); and until December 20, 1927, it was a condition of every such
40 certificate "that the holder shall be a member of the Canadian Air Force and shall perform such military training or other duty as may be required." This part of the article was deleted by an amendment of the regulations dated December 20, 1927, for the reason that no authority then existed for the organization of a Reserve Air Force. Such authority has since been granted, and it will now be open to the Governor in Council, if he sees fit, to make every holder of a certificate under Art. 37 a member of the Canadian

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Air Force. These regulations show how the general regulation of aerial navigation in Canada whether carried on solely within a province or more extensively, is linked up with the national defence forces.

There are also other aspects in which the regulation of aerial navigation engages the militia, naval and defence power. It would, for instance, be exclusively competent to the Dominion, in virtue of that power, to authorize the designation of intra-provincial as well as inter-provincial routes in the navigable air space as military airways and to provide for the regulation of the use thereof on routes which do not conform to civil airways. The same power, coupled with that relating to "The Public Property," would sanction the prohibition by the Dominion of flying over certain designated areas within any province, such as any fortress, arsenal, dockyard, military camp, or governmentally owned agencies which by their nature should not be subject to the surveillance of any casual air traveller. The prohibition of the carriage by aircraft anywhere in Canada of arms, explosives, and other munitions, and of photographic or other apparatus which might be used for purposes of espionage, would no doubt be competent to the Dominion under the same power or its power in relation to the Criminal Law. 10

44. There are still other aspects of the regulation of aerial navigation, intra- as well as inter- and extra-provincial, which appear to be clearly embraced by exclusive powers of the Dominion. It would appear, for example, to be within the exclusive power of Parliament in relation to the "Postal Service" (s. 91 (5)) to establish, define and control aerial routes and airways, even within the limits of a province, for the distribution of mail; and the Dominion has in fact embarked upon an aggressive policy looking to the extension of air mail services throughout Canada and in every province. These include air mail routes of an intra-provincial as well as inter- and extra-provincial character. It would also appear to be within the exclusive authority of the Dominion to provide for the maintenance and operation of Beacons, Buoys and Lighthouses on land and water (s. 91(9), the registration of all aircraft owned by Canadian nationals as a condition of obtaining Canadian nationality (s. 91 (25), the prohibition of the operation of aircraft by aliens within any province or their employment in connection with any flying operations (*ibid.*), and the designation and punishment of criminal offences relating to aerial navigation (s. 91 (27)). 20 30

45. It is further submitted that the regulation of all intra-provincial flying operations, if not substantively embraced by the enumerated exclusive powers of the Dominion referred to, is at all events "necessarily incidental" or "truly ancillary" or "reasonably necessary" to the exercise by the Dominion of complete and effective control over the operations inter- and extra- and intra-provincially which are within its exclusive power to regulate. In regard to its enumerated powers, the Dominion Parliament, it is now well settled, is clothed with plenary powers of legislation, including power to enact measures which may trench upon provincial legislative authority when such enactments are necessarily incidental or truly ancillary, or 40

reasonably necessary to the complete and effective exercise of the powers so conferred.

Atty.-Gen. for Ontario v. Atty.-Gen. for Canada, (1896) A.C. 348, 359, 360;

City of Montreal v. Montreal Street Railway, (1912) A.C. 333, 343, 344;

Grand Trunk Railway Co. v. Atty.-Gen. for Canada, (1907) A.C., 65, 68;

City of Toronto v. C.P. Railway Company, (1908) A.C. 54, 55;

10 *Royal Bank of Canada v. Larue*, (1928) A.C. 187.

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Moreover, the legislation of the Dominion is of paramount effect whether it be attributable to the exercise of a jurisdiction which should be regarded as an integral part of that conferred by an enumerated head or as incidental or ancillary thereto.

Atty.-Gen. for Canada v. Atty.-Gen. for Quebec, (Silver's Case) (1929) S.C.R., 557, 560.

20 If inter- and extra-provincial flying operations generally, including the laying out and control of airways for such traffic, be subject to exclusive Dominion control, if intra-provincial operations for the Postal Service and for Military and Defence purposes, including the establishment of aerial routes and airways for those services, not to speak of other matters connected with flying operations, be also subject to exclusive Dominion control, as appears to be manifest, there are strong grounds for the submission that those services cannot be completely and effectively regulated and protected by the Dominion, unless all other intra-provincial flying operations are brought under the same measures of regulation.

30 Consider, for instance, the peculiar character and vital importance of "airways." An "airway" is far more than a mere air line; it is a material and permanent way through the air, laid out with the precision and care that an engineer adopts in choosing the course of and laying down a railway. A typical example of a modern airway is the transcontinental route between New York and San Francisco, said to be the most completely equipped airway in the world. On it, between New York and Salt Lake City, are twelve airports and ninety-two intermediate fields connected by six hundred and twelve electric and gas route beacons spaced along and indicating the entire distance. The electric beacons of one million and two million candle-power are in general located at or near intermediate fields and are spaced approximately twenty-two miles apart with small gas beacons between. The modern airways now being built in Canada are of the same character. 40 In Eastern Canada there now extends an airway stretching from Windsor to London, Hamilton, Toronto, Kingston, Montreal, Quebec, Riviere du Loup, Fredericton, Moncton and St. John. This will probably be extended in the near future to include Halifax, and will then pass over four provinces. In Western Canada, the equipment of an airway across the three Prairie Provinces for night flying has just been completed and flying over it will commence on the 1st February, 1930. This airway is completely lighted

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from end to end. At intervals of thirty miles between the main aerodromes, intermediate aerodromes have been established by the Dominion Government, and radio direction finding beacon stations will be erected at intervals of two hundred miles along its entire length. It is expected that this airway will be extended to the Pacific coast in the near future.

46. The primary requisite of any airway is that it shall be safe, reliable and regular. These objects can be attained only if it is adequately laid out and equipped and if the aircraft which use or cross it are required to comply with uniform standards and to observe uniform rules in regard to flight and all its incidents. How can the safety of air traffic along these airways be secured if flying operations in other respects, so far as confined within the borders of a province, be exclusively subject to provincial regulation? Is each of the nine provinces to be free to establish its own and possibly different standards and rules for the regulation of such flying operations? Is diversity rather than uniformity to be admissible in regard to such matters as standards of airworthiness and competency of pilots, lights, signals, rules of the air governing flight and traffic in the vicinity of and on the ground at aerodromes, ground markings, etc.? Is the Dominion to be powerless to regulate flying operations within a province which may interfere with or impinge upon flying operations which are subject to its exclusive authority? These considerations touching air flight and its incidents points to uniformity of fundamental control, that is, uniform regulations emanating from a single source of power, the Dominion, as not only desirable but absolutely indispensable to the security of air traffic within Canada, to the promotion of efficiency in its conduct, and to the maintenance of conditions under which it may be carried on without molestation or hindrance. The Attorney-General submits that flying operations whether carried on intra-provincially or inter- or extra-provincially are so mingled together and so closely and substantially related as to render them, as a subject of regulation, a unity. In this matter, there can be no divided empire. The subject is essentially a proper subject of Dominion legislation exclusively.

47. *The Dominion's Residuary Power.*—The Attorney-General submits that the regulation of aerial navigation, whether carried on solely within a province or more extensively, if not wholly authorized by the enumerated exclusive powers of the Dominion, is, nevertheless, within the competence of Parliament under the power conferred by the initial words of sec. 91, "to make laws for the Peace, Order, and good Government of Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the Provinces." The Attorney-General relies on the reasons which have been already stated above in support of the submission that the general regulation of this service throughout Canada is a matter unquestionably of Canadian interest and importance—that is to say, a matter of national and not merely local or provincial concern—and, therefore, entirely competent to the Dominion, under its residuary power, if it is not fully embraced by its enumerated powers. (*Atty.-Gen. for Ontario v. Atty.-Gen. for Canada* (1896) A.C. 348; *Russell vs. The Queen*, 7 A.C. 829.)

In making this submission, the Attorney-General is not unmindful of the judgment of the Judicial Committee (opinion by Viscount Haldane) in *Attorney-General for Canada vs. Attorney-General for Alberta* (1916) A.C. 588, 595, where it is said :—

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10 “ It must be taken to be now settled that the general authority to make laws for the peace, order and good government of Canada, which the initial part of s. 91 of the British North America Act confers, does not, unless the subject matter of legislation falls within some one of the enumerated heads which follow, enable the Dominion Parliament to trench on the subject matters entrusted to the provincial legislatures by the enumeration in s. 92. There is only one case outside the heads enumerated in s. 91 in which the Dominion Parliament can legislate effectively as regards a province, and that is where the subject-matter lies outside all of the subject-matters enumeratively entrusted to the province under sec. 92. *Russell v. The Queen* is an instance of such a case; ”

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and that upon this view of the scope and character of the Dominion's residuary power, certain Dominion legislation was, in subsequent decisions of the Board, held to be *ultra vires* of the Dominion on the ground that it
20 involved an attempt to deal with matters which were not really of general Canadian interest and importance, but were local and provincial and consequently reserved exclusively to the provinces. (*The Board of Commerce Reference* (1922) 1 A.C. 191; *Toronto Electric Commissioners v. Snider* (1925) A.C. 396.)

Accepting the ruling which has thus been laid down as to the character and scope of the Dominion's power, the Attorney-General submits that the legislation now in question is within the scope of that power (1) because the subject-matter of the legislation does fall in some very important aspects, if not entirely, within the enumerated heads of sec. 91; (2) because there is
30 a public right of navigation of the air space over the whole of Canada, and the right being a right of the public in general and in no way special to the inhabitants of any province, the power to regulate it is beyond the competence of any provincial legislature and must reside in the Dominion Parliament; and (3) because flying operations, whether carried on intra-provincially or inter- or extra-provincially, are so closely mingled together and vitally related as to form, and make it indispensable that they should be dealt with, for purposes of regulation, as a unit and placed under one uniform system of regulations respecting standards and rules, and the subject-matter of the legislation consequently lies outside all of the
40 matters enumeratively entrusted to the provinces under sec. 92.

Question 4 : Has the Parliament of Canada legislative authority to sanction the making and enforcement, in whole or in part, of the regulations contained in the Air Regulations, 1920, respecting—

(a) The granting of certificates or licences authorizing persons to act as pilots, navigators, engineers or inspectors of aircraft and the suspension or revocation of such licences;

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(b) The regulation, identification, inspection, certification, and licensing of all aircraft; and

(c) The licensing, inspection and regulation of all aerodromes and air stations?

48. The regulations embodied in the Air Regulations, 1920, to which this question refers are,—

(1) With respect to those referred to in paragraph (a), Articles 33 to 38 inclusive (Record, pp. 18–19), with which must be read, under Art. 38, the provisions contained in Parts 5, 6, 7 and 8 of the said regulations, comprising Articles 39 to 91 inclusive (Record, pp. 19–28), and also Art. 128 (Record, p. 37); 10

(2) With respect to those referred to in paragraph (b), Articles 3 to 17 inclusive (Record, pp. 12–16), relating to the registration, certification, and marking of aircraft and the various other provisions contained in other Parts of the regulations relating to the regulation of aircraft; and

(3) With respect to those referred to in paragraph (c), Articles 18–32 inclusive (Record, pp. 16–18), relating specifically to the licensing, laying out and inspection of air harbours, and Articles 52–62, relating to signals (Record, pp. 22–24), Articles 77–91 inclusive (Record, pp. 26–28), relating to traffic in the vicinity of licensed aerodromes and airplace stations; Articles 94–110 inclusive (Record, pp. 29–32), relating to customs air harbours; Article 122 (Record, p. 36), and Articles 125, 126 and 128 (Record, p. 37). 20

49. If the regulation and control of aeronautics generally within Canada, including flying operations carried on entirely within the limits of a province, be within the exclusive competence of the Dominion, for the reasons stated above, as the Attorney-General submits, then it follows that Parliament has legislative authority to sanction the making and enforcement of the regulations to which this question refers, and none the less so by reason of the adoption of a licensing system involving the exaction of fees as a condition of obtaining a licence (See Articles 14 (Record, p. 14), 20 (Record, p. 17) and 36 (Record, p. 19) for the purpose of carrying out the scheme of regulation embodied in those regulations. (*Atty.-Gen. for the Dominion of Canada vs. Atty.-Gen. for the Provinces of Ontario, Quebec and Nova Scotia* (1898) A.C. 700, 713, 716; *Atty.-Gen. for British Columbia vs. Atty.-Gen. for Canada* (1914) A.C. 153; *Atty.-Gen. for Canada vs. Atty.-Gen. for Alberta* (1916) 1 A.C. 588.) 30

LUCIEN CANNON.

C. P. PLAXTON.

40

No. 10.**Factum of the Attorney-General for Ontario.**

Filed pursuant to the Order of the Right Honourable the Chief Justice of Canada, dated the 18th day of May, 1929.

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The Province of Ontario adopts the position of the Province of Quebec with respect to the questions which have been referred to the Supreme Court of Canada by and on behalf of the Government of the Dominion of Canada and endorses the argument outlined by the Honourable the Attorney General for Quebec in the factum filed herein on behalf of the
10 Province of Quebec.

The Honourable the Attorney General for Ontario desires to be represented at the hearing of the Reference and to have the opportunity of being heard by counsel.

F. D. HOGG,
of counsel on behalf of the
Attorney-General for Ontario.

No. 11.**Factum of the Attorney-General of Quebec.**

Filed pursuant to the Order of the Chief Justice of Canada, dated the
20 18th of May, 1929.

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Factum
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The questions referred are as follows :—

1. Have the Parliament and Government of Canada exclusive legislative and executive authority for performing the obligations of Canada or of any province thereof, under the Convention entitled "Convention relating to the Regulation of Aerial Navigation" ?
2. Is legislation of the Parliament of Canada providing for the regulation and control of aeronautics generally within Canada, including flying operations carried on entirely within the limits of a province, necessary or proper for performing the obligations of Canada, or of any
30 province thereof, under the Convention aforementioned, within the meaning of section 132 of the British North America Act, 1867 ?
3. Has the Parliament of Canada legislative authority to enact, in whole or in part, the provisions of section 4 of the Aeronautics Act, chapter 3, Revised Statutes of Canada, 1927 ?

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4. Has the Parliament of Canada legislative authority to sanction the making and enforcement, in whole or in part, of the regulations contained in the Air Regulations, 1920, respecting :—

(a) The granting of certificates or licenses authorizing persons to act as pilots, navigators, engineers or inspectors of aircraft and the suspension or revocation of such licenses ;

(b) The regulation, identification, inspection, certification, and licensing of all aircraft ; and

(c) The licensing, inspection and regulation of all aerodromes and air stations ?

10

The matters in the questions referred may be divided into two parts calling for separate consideration.

Questions 1 and 2 are inquiries as to the legislative and executive authority of the Parliament and Government of Canada in connection with aeronautics under section 132 of the British North America Act, 1867, which provides :—

“ 132. The Parliament and Government of Canada shall have all Powers necessary or proper for performing the Obligations of Canada or of any Province thereof, as Part of the British Empire, towards Foreign Countries arising under Treaties between the
Empire and such Foreign Countries.”

20

Questions 3 and 4 concern the validity of section 4 of the Aeronautics Act, chapter 3 of the Revised Statutes of Canada, 1927, and the Regulations in the Air Regulations, 1920.

It will be convenient to take questions 3 and 4 in the first place and deal later with the special position which may be brought about under section 132.

The Order in Council making the Reference opens with a recital from a report of the Minister of Justice of the Air Board Act, Chapter 11 of the Statutes of Canada, 1919 (1st session), and the National Defence Act, 1922, Chapter 34 of the Statutes of Canada, 1922, as the origin of the Aeronautics Act, Chapter 3 of the Revised Statutes of Canada, 1927. Neither of these two important Statutes are printed in the Record but they will have to be considered and all three Statutes are therefore printed in the Appendix hereto.

30

The Aeronautics Act contains the following provisions :—

Section 2. “ Minister ” means the Minister of National Defence.

Section 3 prescribes the duties of the Minister.

Section 4, sub-section 1 is as follows :—

“ 4. Subject to approval by the Governor in Council, the Minister shall have power to regulate and control aerial navigation over Canada and the territorial waters of Canada, and in particular, but not to restrict the generality of the foregoing terms of this section,

40

he may, with the approval aforesaid, make regulations with respect to

- (a) licensing pilots and other persons engaged in the navigation of aircraft, and the suspension and revocation of such licenses;
- (b) the registration, identification, inspection, certification and licensing of all aircraft;
- (c) the licensing, inspection and regulation of all aerodromes and air-stations;
- 10 (d) the conditions under which aircraft may be used for carrying goods, mails and passengers, or for the operation of any commercial service whatsoever, and the licensing of any such services;
- (e) the conditions under which goods, mails and passengers may be imported and exported in aircraft into or from Canada or within the limits of the territorial waters of Canada or may be transported over any part of such territory;
- (f) the prohibition of navigation of aircraft over such areas as may be prescribed, either at all times or at such times or on such occasions only as may be specified in the regulation, and either absolutely or subject to such exceptions or conditions as may be so specified;
- 20 (g) the areas within which aircraft coming from any places outside of Canada are to land, and the conditions to be complied with by any such aircraft;
- (h) aerial routes, their use and control;
- (i) the institution and enforcement of such laws, rules and regulations as may be deemed necessary for the safe and proper navigation of aircraft in Canada or within the limits of the territorial waters of Canada; and
- 30 (j) organization, discipline, efficiency and good government generally of the officers and men employed in the Air Force."

Sub-section 2. Penalty for violating the regulations.

Sub-sections 3 and 4. The publication of the regulations.

Sections 5, 6, 7 and 8 deal with the organization and payment of officers and employees for the administration of the Act.

Now aerial navigation is of course not one of the subjects enumerated in section 91 of the British North America Act as coming within the exclusive power of the Parliament of Canada.

40 It is therefore necessary to inquire under what authority the Parliament of Canada can assume to exercise this wide exclusive power.

The powers of the Parliament of Canada and of the Provincial Legislatures respectively are contained in sections 91 and 92 of the British North America Act, 1867, and are as follows:—

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“ VI.—DISTRIBUTION OF LEGISLATIVE POWERS

“ *Powers of the Parliament*

91. “ It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters 10 coming within the Classes of Subjects next hereinafter enumerated; that is to say,—

1. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
3. The raising of Money by any Mode or System of Taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Service.
6. The Census and Statistics.
7. Militia, Military and Naval Service, and Defence.
8. The fixing of and providing for the Salaries and Allowances 20 of Civil and other Officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses, and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any British or Foreign Country or between Two Provinces.
14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the Issue of Paper 30 Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians, and Lands reserved for the Indians. 40
25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.

28. The Establishment, Maintenance, and Management of Penitentiaries.

29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

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“ Exclusive Powers of Provincial Legislatures.

“ 92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,—

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant-Governor.

2. Direct Taxation within the Province in order to the Raising of a Revenue for Provincial Purposes.

20 3. The borrowing of Money on the sole Credit of the Province.

4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.

5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.

6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.

7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.

30 8. Municipal Institutions in the Province.

9. Shop, Saloon, Tavern, Auctioneer, and other Licenses in order to the raising of a Revenue for Provincial, Local or Municipal purposes.

10. Local Works and Undertakings other than such as are of the following Classes :—

(a) Lines of Steam or other Ships, Railways, Canals, Telegraph, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province;

40 (b) Lines of Steam Ships between the Province and any British or Foreign Country;

(c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

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11. The Incorporation of Companies with Provincial Objects.

12. The Solemnization of Marriage in the Province.

13. Property and Civil Rights in the Province.

14. The Administration of Justice in the Province including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.

15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section. 19

16. Generally all Matters of a merely local or private Nature in the Province.”

The Air Board Act, 9–10 George V, Chapter 11, established a Board of aeronautics called the Air Board. Section 4 is the same as in the above quotation from the Aeronautics Act, the words “ Air Board ” being in place of the word “ Minister.”

The National Defence Act, 1922, 12–13 George V, Chapter 34, provides :—

Section 2. That “ Minister ” means the Minister of National Defence. 20

Section 3. Sets up a department of the Government of Canada to be called the Department of National Defence.

Section 4. “ The Minister shall be charged with all matters relating to Defence including the Militia, the Military, Naval and Air Services of Canada.”

Section 7, sub-section 2. “ The powers, duties and functions vested in the Air Board by *The Air Board Act*, chapter eleven of the statutes of 1919, or by any order or regulation made thereunder, shall be administered, exercised and performed by or under the 30 direction of the Minister.”

In the Revision of 1927, the subjects of Aeronautics and National Defence are separated, the former being dealt with by the Aeronautics Act and the latter by the Department of National Defence Act (Revised Statutes of Canada 1927, c. 136, vol. III).

Therefore the Air Board Act is practically the Aeronautics Act as it appears in the Revised Statutes of Canada, 1927.

Now no one of these three Statutes contains any suggestion as to the basis of authority of the Parliament of Canada to enact such legislation.

Possibly later on or at any rate after the Conference between represen- 40
tatives of the Dominion and the several Provincial Governments in November 1927, the Dominion Government experienced some doubt as to the validity of Parliament’s legislation. It was agreed that the question was a proper one for the decision of this Honourable Court and in the Order of the Governor General in Council making the reference, the Minister of Justice states that he apprehends that this legislation was enacted by Parliament by reason

not only of the expediency of making provision for the regulation of a service essentially important in itself as touching closely the national life and interests, but also of the necessity of making provision for performing the obligations of Canada, as part of the British Empire under the Convention relating to Aerial Navigation, dated the 13th of October, 1919, and ratified by His Majesty on the 1st of June, 1922.

The second of these reasons for the enacting of the legislation will be considered hereafter in connection with section 132 of the British North America Act.

10 As to the first ground, it would seem that the Minister would place the authority of the Act on the general powers of the Dominion Parliament under section 91.

It is however very clearly established that the importance of a subject matter is not in itself sufficient to give the Dominion Parliament power to trench on any of the subject matters committed to the exclusive jurisdiction of the provincial Legislatures.

In the judgment in *Toronto Electric Commissioners v. Snider* (1925), A.C., at p. 412, it is said :—

20 “ It appears to their Lordships that it is not now open to them to treat *Russell v. The Queen* (7 App. Cas. 829) as having established the general principle that the mere fact that Dominion legislation is for the general advantage of Canada, or is such that it will meet a mere want which is felt throughout the Dominion, renders it competent if it cannot be brought within the heads enumerated specifically in s. 91. Unless this is so, if the subject matter falls within any of the enumerated heads in s. 92, such legislation belongs exclusively to Provincial competency. No doubt there may be cases arising out of some extraordinary peril to the national life of Canada, as a whole, such as the cases arising out of a war, where legislation is required of an order that passes beyond the heads of exclusive Provincial competency. Such cases may be dealt with under the words at the commencement of s. 91, conferring general powers in relation to peace, order, and good government, simply because such cases are not otherwise provided for. But instances of this, as was pointed out in the judgment in *Fort Frances Pulp and Power Co. v. Manitoba Free Press* (1923) A.C. 695) are highly exceptional. Their Lordships think that the decision in *Russell v. The Queen* (7 App. Cas. 829) can only be supported to-day, not on the footing of having laid down an interpretation, such as has sometimes been invoked of the general words at the beginning of s. 91, but on the assumption of the Board, apparently made at the time of deciding the case of *Russell v. The Queen*, that the evil of intemperance at that time amounted in Canada to one so great and so general that at least for the period it was a menace to the national life of Canada so serious and pressing that the National Parliament was called on to intervene to protect the nation from disaster. An epidemic of pestilence

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might conceivably have been regarded as analogous. It is plain from the decision in the *Board of Commerce* case (1922) (1 A.C. 191) that the evil of profiteering could not have been so invoked, for Provincial powers, if exercised, were adequate to it. Their Lordships find it difficult to explain the decision in *Russell v. The Queen* (7 App. Cas. 829) as more than a decision of this order upon facts considered to have been established at its date rather than upon general law.”

In the *Board of Commerce* case here referred to it was pointed out that the *Board of Commerce Act* and the *Combines and Fair Prices Acts, 1919*, were not enacted to meet special conditions in war time. It was passed in 1919 after peace had been declared and it was not confined to any temporary purpose but was to continue without limit of time and to apply throughout Canada. 10

This is equally true of the *Air Board Act* which was passed in the same year, 1919, and there are no special circumstances which would create an interest which might conceivably become of such paramount and overriding importance as to amount to what lies outside the heads in section 92 and is not covered by them.

Even to the present day the matters enumerated in sections 91 and 92 are of importance exceeding that of aviation which falls, as will hereafter appear, within the classes of subjects enumerated in section 92 as coming within the exclusive Provincial jurisdiction. 20

That the subject of flying is one *prima facie* falling within the exclusive legislative authority of the Provinces is *prima facie* clear enough.

A comparison of sections 91 and 92 shows the intention to confine the jurisdiction of the Parliament to cases where there is connection between two or more of the Provinces leaving the exclusive power to the Province of matters solely confined therein.

Thus in section 91, No. 13, the Parliament is giving authority in the case of “*Ferries between a Province and any British or foreign country or between two Provinces.*” 30

And in No. 29, by reference to the exception in No. 10 of section 92—

“(a) Lines of Steam or other Ships, Railways, Canals, Telegraph, and other Works and Undertakings connecting the Provinces with any other or others of the Provinces, or extending beyond the Limits of the Province;

“(b) Lines of Steam Ships between the Province and any British or Foreign Country;

“(c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general advantage of Canada or for the Advantage of two or more of the Provinces.” 40

It is suggested that the works to which paragraph (c) refers must be of the same character as the works to which paragraph (a) refers.

In paragraph (a) an enumeration is given, closing by the words “and other works and undertakings, etc.”

It is suggested that the rule "*ejusdem generis*" has its application here.

If so applied, the works must be of a connecting nature, either for transportation of persons or goods, transmission of electricity or transmission of messages. Telephones, for example, should be added, but from the enumeration it seems obvious that what was in the mind of the Imperial Parliament was to see that intercourse between the provinces should be under the control of the Dominion.

Section 92 which gives the provincial Legislature exclusive authority
10 over,—

" 9. Shop, Saloon, Tavern, Auctioneer, and other Licenses in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.

" 10. Local Works and Undertakings other than such as are of the following classes :—

- (a) Lines of Steam or other Ships, Railways, Canals, Telegraph, and other Works and Undertakings connecting the Provinces with any other or others of the Provinces, or extending beyond the Limits of the Province;
- 20 (b) Lines of Steam Ships between the Province and any British or Foreign Country;
- (c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the Provinces.

" 11. The Incorporation of Companies with Provincial Objects.

" 13. Property and Civil Rights in the Province.

" 16. Generally all Matters of merely local or private Nature in the Province."

30 It is perhaps unnecessary to distinguish under which particular enumeration the subject of aviation falls. The Privy Council have often decided in a particular case that the subject matter fell within one or more of the enumerations in this section.

It may be suggested that the regulation of aviation properly comes within No. 13 " Property and Civil Rights in the Province " or No. 16 " Local and Private Matters in the Province."

Aviation, it may be said, is an undertaking and not a work and therefore falls under subsection 10 within the jurisdiction of the Province, it is not a work within the exception (c) of that sub-section.

40 It seems abundantly clear from the above that the provincial Legislature has authority over the subject of flying within the Province, its property of course extends indefinitely above the land surface and it has consequent jurisdiction over the super ambient air. Except as it may be restricted by the legislation of any other province there would seem to be no reason why avions should not pass freely into any other province, as of course

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steam ships can do over the water and motor or indeed any other road traffic on land.

It will be well however to consider briefly any possible authority which the Dominion can have under any of the enumerated subjects in section 91.

The following numbers in the enumerated subjects may perhaps be suggested as possibly touching the subject of the questions:—

- “ 2. The Regulation of Trade and Commerce.
- 5. Postal Service.
- 7. Militia, Military and Naval Service, and Defence.
- 10. Navigation and Shipping.
- 25. Naturalization and Aliens.”

10

Perhaps it is hardly necessary to consider No. 2 “ The Regulation of Trade and Commerce ”. This has often been suggested as a foundation for Dominion legislation and as often denied. The general rule for the construction to be put upon this number in the section, is stated by the Privy Council in the case of *Citizens Insurance Co. v. Parsons*, 7 App. Cas., 96, as follows :

“ The words ‘ regulation of trade and commerce,’ in their unlimited sense are sufficiently wide, if uncontrolled by the context and other parts of the Act, to include every regulation of trade ranging from political arrangements in regard to trade with foreign governments, requiring the sanction of parliament, down to minute rules for regulating particular trades. But a consideration of the Act shows that the words were not used in this unlimited sense. In the first place the collocation of No. 2 with classes of subjects of national and general concern affords an indication that regulation relating to general trade and commerce were in the mind of the legislature when conferring this power on the Dominion Parliament.

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.....
Construing therefore the words ‘ regulation of trade and commerce ’ by the various aids to their interpretation above suggested, they would include political arrangements in regard to trade requiring the sanction of parliament, regulation of trade in matters of inter-provincial concern, and it may be that they would include general regulation of trade affecting the whole Dominion. Their Lordships abstain on the present occasion from any attempt to define the limits of the authority of the Dominion Parliament in this direction.”

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See also the case of *Attorney-General for Canada v. Attorney-General of Alberta (The Insurance Reference)* (1916) 1 A.C., 588.

And in the case of *The Board of Commerce Act 1919*, and *The Combines and Fair Prices Act, 1919*, (1922) 1 A.C. 191, in which it was,—

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“ HELD, that the Acts were *ultra vires* the Dominion Legislature, since they interfered seriously with ‘ Property and Civil Rights in the Provinces,’ a subject reserved exclusively to the Provincial Legislatures by s. 92, head 2, of the British North America Act, 1867, and were not passed in any highly exceptional circumstances, such as

war or famine, which conceivably might render trade combination and hoarding subjects outside the heads of s. 92 and within the general power given by s. 91. The power of the Dominion Legislature to pass the Acts in question was not aided by s. 91, head 2 (trade and commerce), since they were not within the general power; nor by s. 91, head 27 (the criminal law), because the matter did not by its nature belong to the domain of criminal jurisprudence."

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No. 5, Postal Service.

The Parliament could no doubt have power to legislate as to the conveyance of post office matter by aeroplanes but this would be confined to the service and could not warrant the appropriation of the whole subject of flying by the Dominion Government. Indeed postal service seems to be rather a restricted expression. It does not include telegraphs, which are separately mentioned under sub-section 29 with the exception from sub-section 10 of section 92.

As to No. 7 "Militia, Military and Naval Service, and Defence."

The administration of the powers vested in the Air Board by the Air Board Act was transferred by the National Defence Act, 1922, to the Minister of National Defence. There is no suggestion that so far as the control of civil flying was concerned it is necessary for the defence of the country that it should be under the control of the militia authorities.

The Air Board Act was not passed as a military measure and the administration of the subjects which it regulates having been transferred to the Minister of National Defence without alteration, it was evidently not an Act passed under the powers of No. 7 of section 91 of the British North America Act, although of course it has some reference to military as well as civil flying affairs.

It is moreover impossible to suppose that the control of all civil aviation, commercial or private, or for any provincial purpose, is necessary for the defence of the country.

As before pointed out transport by automobiles and every sort of road vehicle is under the jurisdiction of the Province, the authority of which in the subject has never been questioned. There does not seem to be any ground for differentiating motor travelling on land and in the skies.

No. 10. Navigation and Shipping.

It is perhaps doubtful if any foundation for the authority to pass the Act and regulations in question in this reference could be attempted under this heading.

It would of course be the veriest playing upon words to suppose that by merely calling a flying machine an airship, it could be brought within the meaning of the words "Navigation and Shipping" as used in the British North America Act when flying machines were unknown.

From the earliest times a ship or vessel has meant as it is defined in the Oxford Dictionary "Any structure designed to float upon and traverse the

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water". And under the heading "Navigation": "The action of navigation. The action or practice of passing on water, especially the sea, in ships or other vessels."

The Imperial Act of 1870, 33-34 Victoria, Chapter 90, section 30, defines a ship as follows:—"Ship shall include any description of boat, vessel, floating battery, or floating craft; also, any description of boat, vessel, or other craft, or battery, made to move either on the surface of or under water, or sometimes on the surface of and sometimes under water."

In the interpretation clauses in both the International Convention (Annex D) and the Air Regulations, 1920, the French version has in place of "airship" the word "dirigeable". 10

The distinction between airships and flying machines would seem to be a purely arbitrary one for use in the flying service but both to be in reality flying machines with no proper connection with ships or navigation.

No. 25. Naturalization and Aliens.

The Aeronautics Act has no reference to any question of aliens and any provisions regarding them are only to be found in the Regulations.

The Act certainly cannot be one dealing with aliens though it need not be contended that if the Act were itself valid the authority having power to make regulations could not make provision as to aliens. 20

Union Colliery Co. of British Columbia v. Bryden (1899) A.C., 580.

The Attorney General of Quebec, whilst submitting that for the above reasons the answers to questions 3 and 4 are in the negative, says further, in the alternative, that a distinction is to be drawn, first, in the case of flying operations carried on entirely within the limits of a province and, secondly, by or on behalf of the Government of a province.

It is denied that the Federal Parliament has power to regulate lines for interprovincial flying but even if it had such power that is no reason why it should interfere with those which are confined entirely to a particular Province. 30

By No. 29 of section 91 and the exception from No. 10 of section 92, great powers are devolved upon the federal authority in the case of interprovincial communications but it has never been suggested that railways, which do not extend beyond the Province, are not within the exclusive jurisdiction of the Province.

The same is true of ships other than the particular classes of extra-provincial operation in No. 29.

If it be said that flying machines can traverse the boundaries of the Province in a way that railways cannot, the answer would seem to be that ships can also pass the boundaries of the Province going either to other provinces or foreign countries. 40

If the answer to question 3 is in the negative, of course the answer to No. 4 is in consequence also in the negative. But if the answer to 3 is that the Parliament has only legislative authority as to part of the provisions of section 4 of the Aeronautics Act, then it is submitted that the regulations respecting the subject of question 4 should be in the negative so far as

concerns solely provincial flying operations and the places and persons concerned therein.

Next the questions 1 and 2, of which consideration was postponed, have to be dealt with.

In the Procès-Verbal of the deposit of Ratifications of the Convention relating to the Regulation of aerial Navigation (Record, p. 122), only seven States are said to have ratified the Convention. Others have presumably done so since, but Chile would appear from the Certificate of the Under Secretary of State (Record, p. 124), to be the only one in either North or South America that has ratified it at any time.

There is an error in the Index to the Record which gives the date of the Procès-Verbal of the Ratification of the Convention as the 1st May, 1920, instead of the 1st June, 1922, the real date as appears on p. 123.*

The International Convention of the 13th of October, 1919, of course deals only with the regulation of international flying and that as between the parties to the Convention.

Such a Convention could not justify the assumption of the entire control in every respect of all sorts of flying. For example, a Convention respecting international trade could not justify the controlling of intraprovincial rates.

It is to be noted in the first place that the Air Board Act received the Royal assent on the 6th of June, 1919. The International Convention relative to aerial navigation, made pursuant to the Treaty of Peace signed on the 28th of June, 1919, was not signed until the 13th of October of that year, and was not ratified by any of the Powers until the 1st of June, 1922.

If, therefore, as the Minister of Justice states in his report recited in the Order in Council of the 15th of April, 1929, the Aeronautics Act was enacted by reason of the necessity of making provision for performing the obligations of Canada as part of the British Empire under the Convention, Parliament was certainly anxious to be in ample time to make provision for performing the obligations of Canada.

It was years before the Convention had any force and it would seem that up to the present time it has no importance with regard to this country.

The submission in question 1 depends upon the terms of section 132, which provides :

“ 132. The Parliament and Government of Canada shall have all Powers necessary or proper for performing the Obligations of Canada or of any Province thereof, as Part of the British Empire, towards Foreign Countries arising under Treaties between the Empire and such Foreign Countries.”

The Parliament and Government of Canada have of course the necessary or proper powers for performing the obligations of Canada and of any province thereof on failure by such province to discharge its obligations, as part of the British Empire, towards foreign countries arising under Treaties between the Empire and such Foreign Countries.

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But the performance of the obligations of any Province under a Treaty such as mentioned can only give occasion for the exercise of federal power on failure to discharge the provincial obligations. The obligations referred to in this section are of course only towards foreign countries and under the Treaty.

The answer to question No. 2 is, it is submitted, in the negative.

CHARLES LANCTOT.
AIMÉ GEOFFRION.

APPENDIX.

1. (1919) The Air Board Act, 9-10 Geo. V, c. 11 (1st session). 10
2. (1922) The National Defence Act, 1922, 12-13 Geo. V, c. 34.
3. (1927) The Aeronautics Act, R.S.C. 1927, c. 3.

No. 1

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CHAP. 11.

An Act to authorize the Appointment of an Air Board for the control of Aeronautics.

(Assented to 6th June, 1919.)

HIS MAJESTY, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows: 20

- Short title. 1. This Act may be cited as *The Air Board Act*.
- Air Board. 2. (1) There shall be a Board on Aeronautics (hereinafter called the "Air Board") which shall consist of not less than five and not more than seven members, who shall be appointed by the Governor in Council.
- Chairman and Vice-chairman. (2) The Governor in Council shall appoint a member of the Air Board who is one of the Ministers of the Crown to be Chairman of the Board, and shall appoint one of the other members of the Air Board to be Vice-chairman.
- Representatives of Militia and Defence and Naval Service Depts. Term of office. Salaries. (3) One member of the Air Board shall be appointed as a representative of the Department of Militia and Defence and one as a representative of the Department of the Naval Service. 30
- (4) The members of the Air Board shall be appointed for a term of three years, and shall be eligible for reappointment.
- (5) The members of the Air Board shall be paid such salaries as the Governor in Council may determine.

3. It shall be the duty of the Air Board,—

(a) to supervise all matters connected with aeronautics;

(b) to study the development of aeronautics in Canada and in other countries, and to undertake such technical research as may be requisite for the development of aeronautics, and to co-operate with other institutions in carrying out such research;

(c) to construct and maintain all Government aerodromes and air-stations, including all plant, machinery and buildings necessary for their efficient equipment and upkeep;

10 (d) to control and manage all aircraft and equipment necessary for the conduct of any of His Majesty's services;

(e) to operate such services as the Governor in Council may approve;

(f) to prescribe aerial routes;

(g) to co-operate with other officers of His Majesty, and to assist in the carrying out of any services under their jurisdiction which may require aerial work of any nature, and collaborate with the officers employed in existing air services of His Majesty in such extension of their present work as the development of aeronautics may require;

20 (h) to take such action as may be necessary to secure, by International Regulation or otherwise, the rights of His Majesty in respect of His Government of Canada in International Air Routes;

(i) to co-operate with the officers of the Departments of Militia and Defence and of the Naval Service on all questions relating to the air defence of Canada;

(j) to co-operate with the Air staffs or authorities of other Governments or countries for any purposes pertaining to air services;

30 (k) to investigate, examine and report on all proposals for the institution of commercial air services within or partly within Canada or the limits of the territorial waters of Canada;

(l) to consider, draft, and prepare for approval by the Governor in Council such regulations as may be considered necessary for the control or operation of aeronautics in Canada or within the limits of the territorial waters of Canada; and

(m) to perform such other duties as the Governor in Council may from time to time impose.

40 4. (1) Subject to approval by the Governor in Council, the Air Board shall have power to regulate and control aerial navigation over Canada and the territorial waters of Canada, and in particular, but not to restrict the generality of the foregoing terms of this section, it may, with the approval aforesaid, make regulations with respect to—

(a) licensing pilots and other persons engaged in the navigation of aircraft, and the suspension and revocation of such licenses;

(b) the registration, identification, inspection, certification and licensing of all aircraft;

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(c) the licensing, inspection and regulation of all aerodromes and air-stations;

(d) the conditions under which aircraft may be used for carrying goods, mails and passengers, or for the operation of any commercial service whatsoever, and the licensing of any such services;

(e) the conditions under which goods, mails and passengers may be imported and exported in aircraft into or from Canada or within the limits of the territorial waters of Canada, or may be transported over any part of such territory;

(f) the prohibition of navigation of aircraft over such areas as may be prescribed, either at all times or at such times or on such occasions only as may be specified in the regulation, and either absolutely or subject to such exceptions or conditions as may be so specified; 10

(g) the areas within which aircraft coming from any places outside of Canada are to land, and the conditions to be complied with by any such aircraft;

(h) aerial routes, their use and control;

(i) the institution and enforcement of such laws, rules and regulations as may be deemed necessary for the safe and proper navigation of aircraft in Canada or within the limits of the territorial waters of Canada; and, 20

(j) organization, discipline, efficiency and good government generally of the officers and men employed under the Air Board.

Penalty.

(2) Any person guilty of violating the provisions of any such regulation shall be liable, on summary conviction, to a fine not exceeding one thousand dollars, or to imprisonment for any term not exceeding six months, or to both fine and imprisonment.

Publication
of regula-
tions.

(3) All regulations enacted under the provisions of this Act shall be published in the *Canada Gazette*, and upon being so published, shall have the same force in law as if they formed part of this Act. Such regulations shall be laid before both Houses of Parliament within ten days after the publication thereof if Parliament is then sitting, and if Parliament is not then sitting, then within ten days after the next meeting thereof. 30

Officers and
men.

5. The Air Board shall have power to employ such officers and men under this Act as may be authorized by the Governor in Council, under such conditions as to discipline and pay as the Governor in Council may determine, and may make such arrangements for their proper training, housing, board, clothing and equipment as may be deemed necessary and as may be approved by the Governor in Council. 40

Civil Staff.

6. Subject to the provisions of *The Civil Service Act, 1918*, the Air Board shall have power to employ such officers, clerks and employees as may be necessary for attending to the business of the Air Board.

Payment of
expenses,
etc., under
Act.

7. All salaries mentioned herein and all expenses incurred under the provisions of this Act shall be paid out of such money as may be appropriated by Parliament therefor.

An Act respecting the Department of National Defence.

(Assented to 28th June, 1922.)

HIS MAJESTY, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

1. This Act may be cited as *The National Defence Act, 1922*. Short title.
2. In this Act and in any orders and regulations made hereunder, Definitions.
10 unless the context otherwise requires,—
- (a) "Minister" means the Minister of National Defence.
- (b) "The Deputy Minister" means the Deputy Minister of National Defence.
- (c) "Department" means the Department of National Defence.
- (d) "Prescribed" means prescribed by this Act, or by regulations made hereunder.
3. There shall be a department of the Government of Canada which Department and Minister of National Defence.
shall be called the Department of National Defence, over which a Minister of the Crown shall preside, who shall be the Minister of National Defence.
- 20 4. The Minister shall be charged with all matters relating to Defence, Services included.
including the Militia, the Military, Naval, and Air Services of Canada.
- 5.—(1) There shall be a Deputy Minister of National Defence, who shall Deputy Minister.
be appointed by the Governor in Council and who shall hold office during pleasure.
- (2) Such officers may be appointed as are necessary for the carrying Officials.
on of the business of the department, all of whom shall hold office during pleasure.
- (3) The Governor in Council, on the recommendation of the Minister, Appointment of officer to exercise powers of the Deputy Minister under Naval Service Act.
30 in relation to the Naval Service, administer, exercise and perform all the powers, duties and functions vested in or exercisable by the Deputy Minister of the Naval Service by or under *The Naval Service Act*, and who while holding such office shall have the rank and salary of a Deputy Head of a Department.
- (4) At the expiration of sixty days from the coming into force of this Comptroller.
Act by proclamation as provided by section nine of this Act, the officer appointed under subsection three of this section shall become and be known as Comptroller, and shall, under the Deputy Minister of National Defence, be charged with all financial matters pertaining to the department. The
40 Comptroller shall be paid an annual salary not exceeding six thousand dollars.
6. The Governor in Council may make such orders and regulations Regulations.
as are deemed necessary or advisable for the proper and efficient administration and organization of the Department.

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—continued.

Powers
vested in
Ministers
and Deputy
Ministers
under
various
Acts, to be
vested in
Minister and
Deputy
Minister of
National
Defence.

7.—(1) All the powers, duties and functions vested in any Minister or Deputy Minister by *The Naval Service Act*, chapter forty-three of the statutes of 1910; the *Militia Act*, chapter forty-one of the Revised Statutes of Canada, 1906; the *Militia Pension Act*, chapter forty-two of the said Revised Statutes; the *Royal Military College Act*, chapter forty-three of the said Revised Statutes, and all Acts in amendment of any of the said Acts, shall be vested in and performed and exercised by the Minister and Deputy Minister of National Defence respectively, and wherever the terms “Department,” “Minister,” and “Deputy Minister” appear or are referred to in any of the said Acts, or in any order or regulation made under any of the said Acts, the same shall, after the passing of this Act, mean the Department of National Defence, the Minister of National Defence, and the Deputy Minister of National Defence respectively. 10

Proviso as
to officer
who is to
exercise
duties of
Deputy
Minister
under Naval
Service Act.

Provided, however, that all the powers, duties and functions vested in, or exercisable by, the Deputy Minister of the Naval Service by or under *The Naval Service Act*, shall, in the event of an officer being appointed under the provisions of subsection three of section five of this Act, be administered, exercised and performed by such officer, and in the event of the appointment of such officer the term “Deputy Minister” wherever it appears or is referred to in *The Naval Service Act*, or in any order or regulation made under the said Act, shall mean such officer. 20

Powers of
Air Board
to be exer-
cised by
Minister.

(2.) The powers, duties and functions vested in the Air Board by *The Air Board Act*, chapter eleven of the statutes of 1919, or by any order or regulation made thereunder, shall be administered, exercised and performed by or under the direction of the Minister.

Repeals.

8. The following Acts are hereby repealed to the extent hereby set forth :

(a) The Naval Service Act (Statutes of 1910, Chapter 43) Sections 5, 6 and 10.

(b) The Militia Act (Revised Statutes, 1906, Chapter 41) Sub-section 1 of section 5 and sections 6 and 7. 30

(c) The Air Board Act (Statutes of 1919, Chapter 11) Section 2.

Commence-
ment of Act.

9. This Act shall come into force on date to be named by proclamation by the Governor in Council.

No. 3

REVISED STATUTES OF CANADA, 1927 (Vol. I).

CHAPTER 3

An Act to authorize the control of Aeronautics.

SHORT TITLE

No. 11.
Factum
of the
Attorney-
General of
Quebec—
continued.
Short title.

1. This Act may be cited as the Aeronautics Act, 1919, c. 11, s. 1; 1922, c. 34, s. 7.
2. In this Act, unless the context otherwise requires, "Minister" means the Minister of National Defence. 1922, c. 34, s. 7.
- 10 3. It shall be the duty of the Minister,—
- (a) to supervise all matters connected with aeronautics;
- (b) to study the development of aeronautics in Canada and in other countries, and to undertake such technical research as may be requisite for the development of aeronautics, and to co-operate with other institutions in carrying out such research;
- (c) to construct and maintain all Government aerodromes and air-stations, including all plant, machinery and buildings necessary for their efficient equipment and upkeep;
- 20 style="padding-left: 40px;">(d) to control and manage all aircraft and equipment necessary for the conduct of any of His Majesty's services;
- (e) to operate such services as the Governor in Council may approve;
- (f) to prescribe aerial routes;
- (g) to co-operate with other officers of His Majesty, and to assist in the carrying out of any services under their jurisdiction which may require aerial work of any nature and to collaborate with the officers employed in existing air services of His Majesty in such extension of their present work as the development of aeronautics may require;
- 30 style="padding-left: 40px;">(h) to take such action as may be necessary to secure, by International Regulation or otherwise, the rights of His Majesty in respect of His Government of Canada in International Air Routes;
- (i) to co-operate with the officers of His Department on all questions relating to the air defence of Canada;
- (j) to co-operate with the Air staffs or authorities of other governments or countries for any purposes pertaining to air services;
- (k) to investigate, examine and report on all proposals for the institution of commercial air services within or partly within Canada or the limits of the territorial waters of Canada;
- 40 style="padding-left: 40px;">(l) to consider, draft, and prepare for approval by the Governor in Council such regulations as may be considered necessary for the control or operation of aeronautics in Canada or within the limits of the territorial waters of Canada; and
- (m) to perform such other duties as the Governor in Council may from time to time impose. 1919, c. 11, s. 3; 1922, c. 34, s. 7.

Duties of
Minister.

No. 11.
Factum
of the
Attorney-
General of
Quebec—
continued.
Powers of
Minister to
make regu-
lations with
approval of
Governor in
Council.

4. Subject to approval by the Governor in Council, the Minister shall have power to regulate and control aerial navigation over Canada and the territorial waters of Canada, and in particular, but not to restrict the generality of the foregoing terms of this section, he may, with the approval aforesaid, make regulations with respect to

(a) licensing pilots and other persons engaged in the navigation of aircraft, and the suspension and revocation of such licenses;

(b) the registration, identification, inspection, certification and licensing of all aircraft;

(c) the licensing, inspection and regulation of all aerodromes and air-stations; 10

(d) the conditions under which aircraft may be used for carrying goods, mails and passengers, or for the operation of any commercial service whatsoever, and the licensing of any such services;

(e) the conditions under which goods, mails and passengers may be imported and exported in aircraft into or from Canada or within the limits of the territorial waters of Canada, or may be transported over any part of such territory;

(f) the prohibition of navigation of aircraft over such areas as may be prescribed, either at all times or at such times or on such occasions only as may be specified in the regulation, and either absolutely or subject to such exceptions or conditions as may be so specified; 20

(g) the areas within which aircraft coming from any places outside of Canada are to land, and the conditions to be complied with by any such aircraft;

(h) aerial routes, their use and control;

(i) the institution and enforcement of such laws, rules and regulations as may be deemed necessary for the safe and proper navigation of aircraft in Canada or within the limits of the territorial waters of Canada; and 30

(j) organization, discipline, efficiency and good government generally of the officers and men employed in the Air Force.

Penalty.

(2) Any person guilty of violating the provisions of any such regulation shall be liable, on summary conviction, to a fine not exceeding one thousand dollars, or to imprisonment for any term not exceeding six months, or to both fine and imprisonment.

Publication
of regula-
tions.

(3) All regulations enacted under the provisions of this Act shall be published in the *Canada Gazette*, and, upon being so published, shall have the same force in law as if they formed part of this Act. 40

To be laid
before Par-
liament.

(4) Such regulations shall be laid before both Houses of Parliament within ten days after the publication thereof if Parliament is sitting, and if Parliament is not sitting, then within ten days after the next meeting thereof. 1919, c. 11, s. 4; 1922, c. 34, s. 7.

Officers and
men.

5. The Minister may employ such officers and men under this Act as may be authorized by the Governor in Council, under such conditions

as to discipline and pay as the Governor in Council may determine, and may make such arrangements for their proper training, housing, board, clothing and equipment as may be deemed necessary and as may be approved by the Governor in Council. 1919, c. 11, s. 5; 1922, c. 34, s. 7.

6. Such officers, clerks and employees as may be necessary for the proper administration of this Act may be employed in the manner authorized by law. 1919, c. 11, s. 6; 1918, c. 12. Civil Staff.

7. The Governor in Council may make regulations prescribing the compensation to be paid, the persons to whom, and the manner in which, such compensation shall be payable, for the death or injury resulting directly from a flight undertaken in the course of duty in the public service of Canada of any person employed in the public service of Canada, or employed under the direction of any department of the public service of Canada. Governor in Council may prescribe compensation payable for death or injury directly resulting from a flight undertaken in course of duty.

(2) Such regulations shall not extend to the payment of compensation for any death or injury in respect of which provision for the payment of compensation or a gratuity or pension is made by any other Act, unless the claimant elects to accept the said compensation, instead of the compensation, gratuity or pension under any such other Act. 1922, c. 6, s. 1.

8. All salaries mentioned herein and all expenses incurred under the provisions of this Act shall be paid out of such money as may be appropriated by Parliament therefor. 1919, c. 11, s. 7. Payment of expenses, etc., under Act.

No. 12.

Factum of the Attorney-General of Manitoba.

The questions submitted for the opinion of the Court are :—

1. Have the Parliament and Government of Canada exclusive legislative and executive authority for performing the obligations of Canada, or of any Province thereof, under the Convention entitled " Convention relating to the Regulation of Aerial Navigation " ?

2. Is legislation of the Parliament of Canada providing for the regulation and control of aeronautics generally within Canada, including flying operations carried on entirely within the limits of a province, necessary or proper for performing the obligations of Canada, or of any Province thereof, under the Convention aforementioned, within the meaning of Section 132 of the British North America Act, 1867 ?

3. Has the Parliament of Canada legislative authority to enact, in whole or in part, the provisions of Section 4 of the Aeronautics Act, Chapter 3, Revised Statutes of Canada, 1927 ?

*In the
Supreme
Court of
Canada.*

No. 12.
Factum
of the
Attorney-
General of
Manitoba,
14th Sept-
ember 1929
—continued.

4. Has the Parliament of Canada legislative authority to sanction the making and enforcement, in whole or in part, of the regulations contained in the Air Regulations, 1920, respecting;—

(a) The granting of certificates or licenses authorizing persons to act as pilots, navigators, engineers or inspectors of aircraft and the suspension or revocation of such licenses?

(b) The regulation, identification, inspection, certification and licensing of all aircraft: and

(c) The licensing, inspection and regulation of all aerodromes and air stations?

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RELEVANT SECTIONS OF STATUTES AND DOCUMENTS.

Section 132 of the British North America Act, 1867, is as follows:—

“ 132. The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada or of any Province thereof, as part of the British Empire, towards foreign countries, arising under treaties between the Empire and such foreign countries.”

The Act referred to in the questions is the Aeronautics Act, R.S.C. 1927, Chapter 3, and is entitled “ An Act to authorize the control of Aeronautics.”

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The first Act upon the subject was passed by the Parliament of Canada, in 1919, Chapter 11 of the Statutes of that year.

By Section 2 of that Act provision was made for the appointment of a Board on aeronautics to be called The Air Board, and the powers and duties of the Board were defined in Sections 3 to 7.

By the Statute of Canada, 1922, Chapter 34, the Department of National Defence was constituted, and it was provided by Section 7, subsection 2 of that Act, that:—

“ The powers, duties, and functions vested in the Air Board by the Air Board Act, Chapter Eleven of the Statutes of 1919, or by any order or regulation made thereunder shall be administered, exercised and performed by or under the direction of the Minister.”

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By Section 8 of the same Act, Section 2 of the Air Board Act, (Statutes of 1919), Chapter 11 was repealed.

The Air Regulations, as printed in the Record (pages 10 to 40) were approved by the Governor-in-Council 31st December, 1919, pursuant to the Air Board Act.

The Convention, dated 13th October, 1919, is printed in the Record, pages 41 to 107.

By the Revised Statutes of Canada, 1927, Schedule A, Chapter 34 of the Statutes of 1922, being “ An Act Respecting the Department of National Defence ” was repealed, with an exception which is not material.

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The legislation upon the subject is now contained in Chapter 3 of the R.S.C. 1927, and is printed in the Record, pages 7 to 10.

At page 124 of the Record there is a copy of a letter from Dr. Skelton, Under Secretary of State for External Affairs, giving a list of the States or powers who have signified their adherence to the Convention.

The question has been framed for the purpose of submitting to this Court whether the Provinces have any power legislative or executive in regard to aerial navigation.

On behalf of the Province of Manitoba it is submitted that exclusive legislative and executive authority in the Case submitted is not conferred by Section 132.

10 The question may be considered under the following general heads :—

1. The language and purpose of Section 132, and its relation to other Sections of the British North America Act.
2. Reference to illustrative cases.

No question is raised with regard to the formal use of the word Convention.

Section 132 does not refer to Conventions, but for the purposes of this Reference it may be admitted that a Convention of the character in question may be considered as being a Treaty within the meaning of Section 132, but it is submitted that not all Conventions are Treaties within the
20 meaning of Section 132.

Before considering the language of Section 132, attention should be directed to the place which it occupies and its function as a Section of the British North America Act.

The British North America Act is divided into Eleven different General headings or divisions and among the rest appears Heading VI. "Distribution of Legislative Powers".

Heading VI includes Sections 91–95 inclusive.

30 Upon referring to these Sections it will be seen that they are all strictly referable to the heading of the respective powers of the Parliament of Canada and of the Provincial Legislatures, and in the numerous cases upon the subject they have been treated and discussed as being a comprehensive statement of all powers of legislation.

Section 92 is headed Exclusive Powers of Provincial Legislatures, and is followed in the first line of the Section by the declaratory clause "in each Province the Legislature may exclusively make laws in relation to the matters and things hereinafter enumerated".

What then is the purpose of Section 132 ?

40 It is submitted that the Section is intended to designate the Parliament and Government of Canada as the proper authority to represent Canada in its external relations in regard to the performance of the obligations of Canada or of any Province thereof towards foreign countries or for purposes international.

The general power is limited by the words that they shall have "all powers necessary or proper", and also that they are to be confined to such powers as are required for performing the obligations of Canada

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—continued.

towards foreign countries, namely, such obligations as may arise under Treaties between the Empire and such foreign countries.

It is therefore submitted that the purpose of Section 132 is not to define the powers of the Dominion of Canada, or of the Provinces thereof in relation to one another upon the subject of aviation, and that the distribution of the powers of the Dominion and Provinces must be sought in Sections 91 and 92.

Applying to the question the provisions of Sections 91 and 92, the use and employment of aircraft appears broadly to be given to the Provincial Legislatures by Section 92 (13) "Property and Civil Rights in the Province", and by Section 92 (16) under the heading "Generally all matters of a merely Local or Private Nature in the Province"; see also subheads 92 (2), (9), and (15). 10

Counsel further submit that the power to legislate in regard to Treaties and Conventions, under Section 132, is subject to the rights of the Provinces under Section 92.

The subject of legislation, under Section 132, is discussed generally in Clement, 3rd Ed. 1916, at pages 134 to 140.

On behalf of the Province of Manitoba Counsel submit that while conceding to the Dominion a certain field in which it may have exclusive jurisdiction there remains a considerable field in which the Provinces necessarily have concurrent legislative powers and in other cases exclusive legislative power. 20

It is submitted that the Provinces have, notwithstanding the provisions of Section 132, jurisdiction over aircraft for surveying and prospecting, for police and fire protection, for the relief and assistance of sufferers from disease and famine, and for commercial or private use, and that for these and similar Provincial purposes the licensing and control of aircraft falls within either the concurrent or exclusive jurisdiction of the Province.

Apart from Section 132, the Dominion Government would probably be deemed to have exclusive jurisdiction over aeronautics under one or other of the general powers contained in Section 91, such as those which may be necessary under Section 91 (5) regarding Postal Service; 91 (7) Militia, Military and Naval Service and Defence, but Provincial and Commercial services and the use of air craft for private use within Canada both within Provinces and between Provinces should remain under Provincial control, and control of air navigation for such purposes is not necessary or proper for the performance of the obligations of Canada towards foreign powers under Section 132. The nearest analogy seems to be the jurisdiction of the Provinces over Automobiles and trucks. 30 40

The following cases are referred to :—

Employment of Aliens, 63, S.C.R. 293, at pp. 328, 329.

Brooks v. A. G. 1923, A.C. pp. 452, 457.

A. G. of B.C. v. A. G. Canada, 1924, A. C. 210, 212.

Halsbury, Vol. VI, Article 271, p. 250.

Halsbury, Vol. VI, Article 679, p. 440.

Walker v. Baird, 1892, A.C. 491.

A convention with a foreign country as to registration of a Trade Mark did not give the right to register a Trade Mark in Great Britain contrary to the provisions of the Trade Marks Act.

California Fig Syrup Co. 40, Ch. Div. 620, 627.

Carter Medicine Co. 1892, 3 Ch. 472, 477.

It was held by the Court of Appeal in Manitoba that the jurisdiction of the Dominion Parliament should not be extended under the authority of Section 132 so as to interfere with the jurisdiction of the Province.

This was a case arising under the Migratory Birds Act, and the 10 Regulations thereunder.

King v. Stewart, 43 Can. Crim. Cases, 108.

Judgment of Dennistoun, J. at pages 111-112.

See also A. G. of Alberta, 1916, 1 A. C. 588, 595 :—

“ There is only one case outside the heads enumerated in Section 91 in which the Dominion Parliament can legislate effectively as regards a Province, and that is when the subject matter lies outside of all the subject matters enumeratively entrusted to the Province under Section 92.”

Attention is directed to Article I of the Convention (Record, p. 41); 20 the Article is as follows :—

“ I. The high contracting parties recognize that every power has complete and exclusive sovereignty over the air space above its territory.”

If this Article is understood, as it was no doubt intended to be understood, as referring merely to international obligations, there can be no objection to the generality of the statement; but if it is intended to state as a proposition of law that the air space over the Dominion of Canada is under the exclusive sovereignty of the Dominion, the proposition it is submitted is false and misleading. On the contrary, it is submitted that the 30 air space above each Province is under the control of the legislative authority and the Courts of the Province. Further that the air space over each private owner's property is the exclusive property of such owner and any interference therewith can be prevented.

W. J. MAJOR,

Attorney General of Manitoba.

F. H. CHRYSLER,

Of Counsel for the Province of Manitoba.

Dated, 14th September, 1929.

*In the
Supreme
Court of
Canada.*

—
No. 12.

Factum
of the
Attorney-
General of
Manitoba,
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—continued.

*In the
Supreme
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No. 13.

Factum of the Province of Saskatchewan.

No. 13.
Factum
of the
Province of
Saskatche-
wan.

The Province of Saskatchewan does not consider it necessary to file any lengthy printed argument. It desires, however, to be present at the reference to preserve its rights as a party to the reference and to take such part in the argument before this Court as it may deem necessary.

M. A. McPHERSON,
Attorney General of Saskatchewan.

ALLAN J. FRASER,
of Counsel on his behalf.

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No. 14.
Formal
Judgment,
7th October
1930.

No. 14.

Formal Judgment.

IN THE SUPREME COURT OF CANADA.

Tuesday the Seventh day of October, A.D. 1930.

Present :

The Right Honourable F. A. ANGLIN, C.J.C., P.C.
The Right Honourable Mr. Justice DUFF, P.C.
The Honourable Mr. Justice NEWCOMBE, C.M.G.
The Honourable Mr. Justice RINFRET.
The Honourable Mr. Justice LAMONT.
The Honourable Mr. Justice SMITH.
The Honourable Mr. Justice CANNON.

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IN THE MATTER of a reference as to the respective legislative powers under the British North America Act, 1867, of the Parliament of Canada and the Legislatures of the Provinces in relation to the Regulation and Control of Aeronautics in Canada.

WHEREAS by Order-in-Council of His Majesty's Privy Council for Canada, bearing date the fifteenth day of December, in the year of Our Lord one thousand nine hundred and twenty-nine (P.C. 367), the questions hereinafter set out were referred to the Supreme Court of Canada for hearing and consideration, pursuant to the provisions of Section 55 of the Supreme Court Act, R.S.C. 1927, Chap. 35 :—

1. Have the Parliament and Government of Canada exclusive legislative and executive authority for performing the obligations of Canada, or of any province thereof, under the Convention entitled "Convention relating to the Regulation of Aerial Navigation" ?

2. Is legislation of the Parliament of Canada providing for the regulation and control of aeronautics generally within Canada, including flying operations carried on entirely within the limits of a province, necessary or proper for performing the obligations of Canada, or of any province thereof, under the Convention aforementioned, within the meaning of section 132 of the British North America Act, 1867?

3. Has the Parliament of Canada legislative authority to enact, in whole or in part, the provisions of section 4 of the Aeronautics Act, chapter 3, Revised Statutes of Canada, 1927?

10 4. Has the Parliament of Canada legislative authority to sanction the making and enforcement, in whole or in part, of the regulations contained in the Air Regulations, 1920, respecting—

(a) The granting of certificates or licenses authorizing persons to act as pilots, navigators, engineers or inspectors of aircraft and the suspension or revocation of such licenses;

(b) The regulation, identification, inspection, certification, and licensing of all aircraft; and

(c) The licensing, inspection and regulation of all aerodromes and air stations?

20 And whereas the said questions came before this Court for hearing and consideration on the tenth and eleventh days of April, in the year of Our Lord one thousand nine hundred and thirty, in the presence of Counsel for the Attorney-General of Canada, the Attorney-General for the Province of Quebec, the Attorney-General for the Province of Ontario and the Attorney-General for the Province of Manitoba, and after due notice to the Attorneys-General for the Provinces of Nova Scotia, New Brunswick, British Columbia, Prince Edward Island, Alberta and Saskatchewan:

Whereupon and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct that the said Reference should stand over
30 for consideration, and the same having come on this day for determination, the Court hereby certified to His Excellency the Governor General in Council, for his information, pursuant to subsection 2 of section 55 of the Supreme Court Act, that the following is its opinion upon each of the questions submitted by this reference; and that the reasons for such answers are to be found in the judgments written by each individual member of the Court:—

To Question No. 1, as framed, the Court unanimously answers “No.”

To Question No. 2 the answer of the majority of the Court (the Chief Justice, Duff, Rinfret, Lamont, Smith and Cannon, JJ.) is:

40 “Construing the word ‘generally’ in the question as equivalent to ‘in every respect’ the answer is ‘No.’”

To Question No. 3 the answer of the majority of the Court (the Chief Justice, Duff, Newcombe, Rinfret, Lamont and Cannon, JJ.) is

“Construing the question as meaning, ‘Is the section mentioned, as it stands, validly enacted’? the answer is ‘No.’”

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tinued.

But, if the question requires the Court to consider the matters in the enumerated subheads of s.4 of the Statute as severable fields of legislative jurisdiction, then the answers are to be ascertained from the individual opinions or reasons certified by the Judges.

As to Question No. 4, the answers are to be ascertained from the individual opinions or reasons certified by the Judges.

(Sgd.) E. R. CAMERON,
Registrar.

No. 15.
Reasons for
Judgment.
(a) Anglin,
C.J.C.

No. 15.

Reasons for Judgment.

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(a) ANGLIN C.J.C.

I have had the advantage of reading the carefully prepared opinions of my brothers Newcombe, Smith and Cannon.

By s. 55 of the Supreme Court Act (R.S.C. 1927, c. 35) this court is required to "hear and consider" important questions of law or fact touching—

(a) the interpretation of the British North America acts, or

(b) the constitutionality or interpretation of any Dominion or provincial legislation; or

(d) the powers of the Parliament of Canada, or of the legislatures of the provinces, or of the respective governments thereof, whether or not the particular power in question has been or is proposed to be exercised; or

(e) any other matter, whether or not in the opinion of the court *ejusdem generis* with the foregoing enumerations, with reference to which the Governor in Council sees fit to submit any such question; and any question touching any of the matters aforesaid, so referred by the Governor in Council, shall be conclusively deemed to be an important question . . . ;

and it is declared to be

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the duty of the Court . . . to answer each question so referred and the Court shall certify to the Governor in Council, for his information, its opinion upon each such question, with the reasons for each such answer.

Lord Chancellor Haldane, in the *British Columbia Fisheries Case*, 1914 A.C., 153, at p. 162, contrasting the position of this Court with that of the Judicial Committee of the Privy Council, trenchantly observed that—

The business of the Supreme Court of Canada is to do what is laid down as its duty by the Dominion Parliament.

While I agree with Mr. Justice Newcombe that the advisability of propounding for the consideration of the court abstract questions, or

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questions involving considerations of debatable fact, is, to say the least, doubtful, that it is undesirable that the court should be called upon to express opinions which may affect the rights of persons not represented before it, or touching matters of such a nature that its answers must be wholly ineffectual in regard to parties that are not, and cannot be, brought before it (e.g. foreign governments); and that, where the court is asked to hear and determine any such question, it is entirely proper for it to represent to the Governor in Council the undesirability of its being called upon to do so (*A. G. for Ontario v. A. G. for Canada*, 1912, A. C. 571 at pp. 588-9), in the present instance I do not find in the questions submitted enough that it is objectionable to justify the adoption of that course. On the contrary, as I understand the questions, they can be, at least partially, answered without going beyond the clear jurisdiction of the court or expressing an opinion upon any debatable matter affecting foreign governments. So far as concerns the interests of private parties in the several provinces, the questions submitted touch them only obliquely, inasmuch as they are directed to the respective legislative powers of the Dominion and the provinces. Such private interests are probably sufficiently represented by counsel for the several provinces concerned; but, if not, by subs. 4 of s. 55, the court is empowered to direct notice to any persons interested, or, where there is a class of persons interested, to nominate one or more persons as representatives thereof, and by subs. 5, it may, in its discretion request any counsel to argue the case as to any interest which is affected and as to which counsel does not appear. I am, accordingly, unable to accept the view that there is here such absence, or non-representation, of parties interested as would justify our declining to answer the questions submitted.

As I read the opinions of my three learned brothers, they all agree that "the Convention relating to the regulations of Aerial Navigation," dated the 13th of October, 1919, is "a treaty between the Empire and foreign countries," within the meaning of s. 132 of the B. N. A. Act. They are also in accord in regarding intra-provincial aviation as, *prima facie*, a matter of provincial legislative jurisdiction and as falling within the purview of s. 92 (13) of the B. N. A. Act; and I share those views.

When it comes, however, to the question of how far, and under what circumstances, Dominion legislative power supersedes that of the provinces in regard to aviation, my learned brothers differ, *toto coelo*. While Newcombe and Cannon JJ. recognize the power of Parliament, under s. 132, to legislate—

... for (the) performing (of) the obligations of Canada or of any province thereof, as part of the British Empire, towards foreign countries arising under treaties between the Empire and such foreign countries,

they are not prepared to admit that that power involves or implies the supersession of provincial by Dominion legislation under the circumstances of the case now before us.

*In the
Supreme
Court of
Canada.*

No. 15.
Reasons for
Judgment.
(a) Anglin,
C.J.C.—
continued.

*In the
Supreme
Court of
Canada.*
—
No. 15.
Reasons for
Judgment.
(a) Anglin,
C.J.C.—
continued.

My brother Smith, while of the opinion that the power of Parliament, under s. 132, is not “exclusive,” but merely “paramount” (so far Cannon J. agrees), holds the view that, the circumstances of the present case, as disclosed in the record, justify its exercise regardless of any provincial legislation, existing, or proposed, or possible. My brother Cannon, on the other hand, thinks that, in regard to matters of provincial legislative competence, the power conferred on Parliament by s. 132 arises only in the absence of adequate provincial legislation, and that Parliament may not anticipate failure or refusal on the part of any province to pass “necessary or proper” legislation for performing its obligations under the treaty, or that identic legislation (and regulations) will not be enacted by the legislatures of the several provinces interested. Mr. Justice Newcombe, I understand, shares the views of my brother Cannon in this regard. 10

My brother Newcombe, as I read his judgment, is further of the opinion that Questions Nos. 1 and 2 cannot be answered without first ascertaining in detail the precise obligations imposed by the treaty on Canada, or any of its provinces, and that this court should not be called upon to answer these questions because of the fact that the other contracting parties, viz., the foreign governments concerned, are not before it. If I found it necessary to interpret in detail the entire Convention, I would be disposed to accept my brother Newcombe’s view; but, in my opinion, it is necessary only to envisage the Convention as a whole, to ascertain its general tenor and to discern its obvious purpose and to determine a very few of the outstanding obligations imposed by it in terms so clear that their meaning admits of no dispute, and, therefore, does not require interpretation. 20

With regard to the power of Parliament to implement any term of a treaty, it is entirely competent to, and, indeed, it is the duty of this court, explicitly imposed by s. 55 (d) of the Supreme Court Act, to advise the Government of Canada, if duly called upon to do so, as to the meaning and effect of such treaty and as to the right of Parliament to enact legislation necessary to carry it out, whether or not the government proposes to legislate in regard thereto. 30

I agree with the view taken by my brother Smith as to the obligations of Canada (and its several provinces) created by the treaty in question, so far as he has found it necessary to define them, and with his conclusion as to the powers of Parliament under s. 132 of the B.N.A. with respect thereto.

The first question submitted, it will be noted, is framed almost in the language of s. 132, although it omits some significant phrases thereof and inserts words which may be regarded as important. For instance, the word “exclusive” is inserted. The word “exclusive” is not found in the section. Again, for the words “all powers necessary or proper” are substituted the words “legislative and executive authority”; the words of the section “as part of the British Empire, towards foreign countries,” are omitted; and for the words of the section “arising under treaties between the Empire and such foreign countries” are substituted the words “under the 40

Convention entitled 'Convention relating to the Regulation of Aerial Navigation'.

It will be perceived that the word "exclusive" appears to introduce an idea quite foreign to s. 132 and not warranted by anything which that section contains. I agree with the view of my brother Smith that, if the question is to be answered in the affirmative, the word "paramount" must be substituted for "exclusive." It might also be better to insert the words "as part of the British Empire, towards Foreign Countries" immediately after the word "thereof", so as definitely to limit the question and answer to the very matter dealt with by s. 132.

I fail to appreciate my brother Newcombe's difficulties in regard to the meaning and scope of Question No. 2, and as to the right and duty of this court to hear and consider it and to express its opinion to the best of its ability upon the matter thereby submitted to it. While the Judicial Committee is, no doubt, in a position as it did in the B.C. Fisheries Case, 1914 A.C. 153, to decline to answer questions which it thinks cannot conveniently be dealt with, this court has no such discretion. As to it, the Statute is imperative.

Question No. 2 is distinctly directed to the validity of legislation of the character described, under the authority of s. 132 of the B.N.A. Act. The general application of the maxim *audi alteram partem* is beyond dispute. But, in a question of legislative power as between the Dominion and its provinces, submitted to the Court by the Governor General in Council, the provinces are "the other party"—and they have been heard. As pointed out by my brother Smith, s. 37 of the Convention provides for the adjudication of disputes between contracting parties to it as to its interpretation. Nothing which this court may do in the present reference can affect any such matter.

My three brothers are also in accord with regard to the legislative control of Parliament over aircraft and aerial navigation in connection with various matters assigned by s. 91 of the B. N. A. Act to the Dominion, such as military and naval service, defence, postal service, customs, aliens, regulation of trade and commerce, etc. How far the exercise of powers necessarily incidental to such control may be made effectual, without regulating and controlling aeronautics generally, is, to say the least, questionable; but Question No. 2, as I read it, is not directed to that aspect of the case, but rather to the bearing of s. 132 of the B. N. A. Act upon Dominion legislative jurisdiction. In this connection, my brother Newcombe very properly observes that "Dominion powers derived from s. 132 should be liberally interpreted to include all such as are necessary or proper for achieving the purposes defined . . . irrespective of the question as to where the power would have resided if s. 132 had not been enacted."

My brother Smith also agrees with Newcombe and Cannon J.J. in holding that the control of aeronautics in no sense comes within the subject of "Navigation and Shipping" assigned by s. 91 (10) of the B. N. A. Act to the Dominion. In that view I entirely concur.

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While it is quite true that the Dominion Act of 1919 ante-dated the Convention under consideration, and, consequently, cannot be regarded as having been enacted by Parliament in the exercise of its jurisdiction conferred by s. 132 as legislation "necessary or proper for performing the obligations of Canada or of any province thereof, as part of the British Empire, towards foreign countries" under that Convention, as Mr. Justice Cannon points out, the statute which we have to consider, is not the Act of 1919, but c. 3 of R.S.C., 1927, which became law on the 1st of February, 1928, long after the date of the Convention. So far as this legislation implements the Conventional obligations its validity may probably be upheld under s. 132 of the B.N.A. Act. 10

I understand Mr. Justice Cannon to concur in the view of Mr. Justice Smith that—

Parliament and the Government of Canada have paramount, though not exclusive jurisdiction to legislate for the performance of all treaty obligations of Canada or any province thereof under the Convention.

Mr. Justice Cannon, however, adds that—

Parliament has not yet found it necessary or proper to exercise this legislative power. 20

With deference, I can hardly accede to this latter view.

Dealing with s. 4 as giving to the Minister single and complete control over aerial navigation throughout Canada and the territorial waters of Canada in all respects, followed by enumeration of certain matters by way of illustration merely, such enumeration being preceded by the words "and in particular, but not to restrict the generality of the foregoing terms of this section." I would answer Question No. 3 in the negative. But, I agree with my brothers Smith and Newcombe that it is scarcely possible fully to answer Question No. 3 if it requires consideration in detail of each enumerated subhead under subs. 4. The regulations adopted by the Governor General in Council, under the provisions of s. 4 of the Aeronautics Act (R.S.C., 1927, c. 3) are so general and comprehensive in their terms that it would require minute and meticulous consideration of each of them before deciding whether or not it is necessary or proper in order to implement some treaty obligation within s. 132 of the B.N.A. Act, or may be defended as an exercise of power necessarily incidental to some one of the enumerated heads of Dominion legislative jurisdiction under s. 91. I cannot, however, think that it was intended by Question No. 3 to involve the Court in such a detailed and minute examination of each particular regulation enacted under s. 4—still less, of the possibilities under all the subheads of s. 4. Adequate argument was not directed to such details either of the section or of the regulations. I, therefore, refrain from further discussion of these matters. 30 40

As has been stated, legislative jurisdiction over intraprovincial flying—and there must be a great deal of it—*prima facie* belongs to the provinces under s. 92 (13), and it is only where legislation by the Dominion can be justified, either as falling directly within an enumerated head under s. 91,

or as necessarily incidental to such a head, or in so far as the subject of aeronautics can be said to be of such Dominion-wide importance that provincial legislative jurisdiction over it may be regarded as ousted, or because it falls within the purview of s. 132, that such Dominion legislation can be held valid.

In order to avoid possible misapprehension, I should, perhaps, add that, in so far as the questions submitted are directed to legislative capacity of the Dominion Parliament, I am not satisfied that the establishment and maintenance of a line of aircraft covering an international or interprovincial route is not an "undertaking" within the meaning of subs. 10 (a) of s. 92 of the B.N.A. Act. Moreover, it is possible that although lines of air transportation are not physical works, the construction, maintenance and operation of flying machines may be regarded as "works" within the meaning of clause (c) of subs. 10 of s. 92. That aspect of the case, however, was not fully dealt with at bar, and, therefore, I do not give it further consideration.

As to Question No. 4, I agree with the views thereon expressed by my brother Smith.

I certify the foregoing to be my opinion (and reasons therefor) upon the four questions herein submitted for hearing and consideration of the Court by His Excellency the Governor in Council.

(Sgd.) F. A. ANGLIN,
C.J.C.

Ottawa, October 7th, 1930.

The answers of Mr. Justice Duff to the interrogatories submitted.

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QUESTION 1.

To question 1, the answer is in the negative.

QUESTION 2.

To question 2, construing the word "generally" as meaning "in every respect," the answer is in the negative.

QUESTION 3.

Reading section 4, as I think it ought to be read, as conferring a single indivisible authority to regulate and control, in every respect, aerial navigation over Canada, with an enumeration by way of illustration of particular matters falling within this authority, the answer to question 3 is in the negative.

Assuming, on the other hand, as some of my brethren think that the question requires us to consider the matters mentioned in the enumerated subheads as severable fields for the operation of the power, and the section

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as comprising distinct enactments, in relation to each of these severable matters, enacted in view of the Convention relating to aerial navigation, 1919, the answer to question 3 is partly in the negative and partly in the affirmative.

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In relation to the matters mentioned in sub-paragraphs (a), (h) and (i), such enactments would be invalid.

In relation to the matters within sub-paragraph (b) such enactments would be valid in respect of "identification" and "inspection," and in other respects invalid.

In relation to the matters within sub-paragraph (c) such enactments would be valid as respects "inspection" and in other respects invalid. 10

In relation to the matters within sub-paragraph (d) such enactments would be valid as respects the subject the carriage of mails, in other respects invalid.

In relation to the matters within sub-paragraph (e) such enactments would be valid in so far as concerns "the conditions under which goods, mails and passengers may be imported and exported in aircraft into or from Canada, or within the limits of the territorial waters of Canada"; and in so far as concerns the second part, "the conditions under which goods, mails and passengers . . . may be transported over any part of such territory," such enactments would, in relation to the subject the transport of mails, be valid, but in relation to other matters, invalid. 20

In relation to the matters within sub-paragraphs (f), (g) and (j), the enactments would be valid.

QUESTION 4.

Treating this question on the assumption that it requires us to consider whether the regulations referred to, or any of them (and, if so, which) are susceptible of legislative sanction under section 132 (in view of the Convention of 1919) or under any other power vested in the Dominion Parliament, the answers are as follows:— 30

SUB-PARAGRAPH (A).

The regulations which deal specifically with the subjects mentioned in this paragraph are those numbered 33 to 38.

Regulation 33 would be valid in so far as it relates to flying outside Canada; but invalid in so far as it relates to commercial aircraft generally. Regulations 34 to 38, inclusive, are subsidiary regulations and would be valid if associated with a valid principal regulation.

Regulations 116 and 118 are also subsidiary regulations as to which the answer is the same.

SUB-PARAGRAPH (B).

Regulations 3, 4, 124 (2) and 10 would be invalid. Regulations 5 and 6 would be valid. Regulations 7, 8, 9, 11, 15, 16 and 17 are subsidiary regulations which would be valid if associated with a valid principal regulation. Subsections 1 and 3 of regulation 12 would be valid, and subsection 2 of that regulation invalid. 40

SUB-PARAGRAPH (C).

Regulations 18 to 32 deal specifically and substantively with the licensing, inspection, and in some respects with the regulation, of air harbours. The principal provisions are regulations 18, 19, 22, 23 and 24. These regulations would be invalid. Regulations 21 and 26 are subsidiary regulations, which would be valid if attached to a valid principal regulation. Regulations 25 and 29 to 32, inclusive, would be valid. Regulation 27 (1), dealing with inspection of air harbours and construction buildings would be valid. Subsection 2 of regulation 27 would be invalid. Regulation 28 would be
 10 invalid.

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The view presented by the Solicitor General of the questions raised by the interrogatories which it is our duty to answer was based primarily upon the proposition that the Dominion possesses authority to legislate upon the subject of aeronautics in every respect, and that this authority is exclusive, or at all events, over-rides any law of a province.

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This proposition is supported upon a variety of grounds. It is con-
 20 tended that, in their very nature, the matters embraced within that subject cannot be local, in the provincial sense, and that accordingly the subject is beyond the ambit of section 92; that, in the alternative, it falls within one of the enumerated heads of 91, No. 10 Navigation and Shipping that, as a sort of further alternative, so many aspects and incidents of the subject fall within various enumerated heads of section 91, such as the regulation of trade and commerce, undertakings extending beyond the limits of a province, customs, aliens, beacons and lighthouses, postal service, defence, ferries or under immigration (sec. 95) that the subject must as a whole be treated as within Dominion jurisdiction, that being, it is argued, the only interpretation under which the undoubted authority of the Dominion over the various aspects of the subject can be effectively exercised. Still again, it is said,
 30 the authority of the Dominion under section 132, to legislate for the performance of its obligations under the Convention relating to Aerial Navigation, 1919, extends over the whole field.

I am unable to agree that "navigation and shipping" would, "according to the common understanding of men," embrace the subject of aeronautics. Nor can I agree that aerial navigation as a subject for legislation is outside the purview of sec. 92 of the British North America Act, as not comprising matters which are provincial within the contemplation of that section. The provincial jurisdiction under heads 10 to 16 extends through the air space above, as well as the soil below; and the control of the province over its own property is as extensive in the case of aerodromes and
 40 aircraft as in the case of garages and automobiles. The employment of aircraft for the survey, exploration, inspection and patrolling in the management of public domain, for police purposes, and in the interests of public health (head 7) is as strictly a provincial matter as the employment of any other local agency for such purposes. Primarily, the matters embraced within the subject of aerial navigation fall within section 92.

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The argument that because the Dominion has authority to legislate in relation to this subject, in several, it may be many, aspects, it therefore has authority to appropriate the whole subject to itself, is one which in various forms has been often advanced; and always rejected. It really amounts to this, that it would have been simpler and more convenient if the subject had in terms been committed to exclusive jurisdiction of the Dominion Parliament. As for section 132, the provisions of the Aeronautics Act, and the regulations thereunder, must be considered in relation to the undertakings embodied in the Convention for the purpose of testing the Dominion contention. 10

Section 4 of the Aeronautics Act confers upon the Minister a single, indivisible authority to regulate and control aerial navigation in Canada. What I have just said will indicate my reasons for the conclusion that it is not competent for the Dominion to exercise or authorize the Minister to exercise such a comprehensive control over that subject. In my own view, that is sufficient to dispose of question 3.

But it is thought by some of my colleagues that each of the subparagraphs of section 4 may be treated as comprising severable fields of legislation and that the section may be considered as involving distinct enactments in the terms of the principal clause applying to each of the severable matters therein comprised; and that by the question we are directed to say to what extent the Dominion might now authorize the Minister to exercise unrestricted control over these several matters under the powers conferred by section 132 (in view of the Convention of 1919) or under any other powers vested in the Dominion Parliament. The section was originally enacted before the Convention came into effect and could not therefore be treated as passed in execution of any power under section 132. 20

As reproduced in the Revised Statutes, 1927, it does not take effect as the re-enactment of a new law, and to the extent to which it was invalid in 1919, it is invalid to-day. Nevertheless, some of my brethren think it is our duty to examine the sub-clauses of section 4 with a view to ascertaining to what extent the section, if enacted to-day, and with reference to the Convention of 1919, could take effect as law. 30

While I do not agree that this course is in conformity with the purport of the question, the point is not free from doubt, and therefore I shall proceed to discuss the questions raised by the interrogatory when so interpreted.

It will be convenient to consider, first of all some of the matters of primary importance embraced within the subparagraphs of section 4. The most important of all are those falling within subparagraphs (a), (b) and (c). An unrestricted power of regulation and control is conferred upon the Minister. Such a sweeping authority in relation to the matters within these subparagraphs could be derived from no section or sections of the British North America Act other than section 132; and it is necessary therefore to consider whether, under that section, Parliament possesses such authority in itself, or can invest the Minister with it, in consequence of the obligations undertaken by the Dominion under the Convention. 40

The question in concrete form is whether the power to give the force of law to section 4 in relation to such matters is a power necessary or proper for performing the obligations of Canada under the Convention.

One observation should be made here. The powers under that section are given for performing (in the concrete case before us) the obligations under the Convention; and, in this connection can be validly exercised only in the performance of and for the purpose of performing these obligations.

The subject of paragraph (a) is the licensing of personnel, which is dealt with by article 12 of the Convention. Under article 12, when read with Annex E, the obligation of each of the contracting States is to enforce in respect to certificates and licenses, the conditions set forth in Annex E as regards international traffic, and, as regards domestic traffic, to enforce such conditions, not more stringent than those stated in Annex E, as the contracting State may deem adequate to ensure the safety of air traffic. No argument seems to be needed to shew that for performing that obligation the Dominion does not require an unrestricted authority to regulate and control the licensing of personnel in all respects; which would include power to select licensees upon some principle having no relation to the safety of air traffic, or indeed, to any of the conditions laid down in Annex E.

It is convenient to refer to regulation 33, which seems broadly to require a certificate from the Air Board to entitle anybody to act as pilot, engineer or inspector of any commercial aircraft, or of any Canadian aircraft flying outside Canada. It would be inadmissible to suppose that regulations 33 to 38 contemplate the issue, upon demand, of a certificate to any applicant; and indeed the enactment of regulations to that effect would constitute a grave departure from the requirements of Annex E.

The regulations appear to leave the conditions upon which licenses may be granted to the unlimited discretion of the Air Board, which conditions might be framed without any reference to Article 12 or Annex E. Clearly regulations 33 to 38 on any construction of them, could not be validly sanctioned under the powers given under section 132 to legislate for the performance of the obligations mentioned.

Sub-paragraph (b) of section 4 deals with registration, identification, inspection, certification and licensing of aircraft. Let us first consider registration. There is an implied duty to provide for registration in accordance with the provisions of section 1 (c) of Annex A of the Convention. The main purpose of registration under the provisions of the Convention is to provide facilities for identification. There is no duty arising out of these provisions to impose conditions other than those indicated in the Annex. There is nothing in that part of the Convention requiring legislation in the terms of section 4 or in the terms of regulations 3 and 4, the effect of which is, that aircraft may be registered only on compliance with the conditions defined by the Air Board, and that registration is a condition of the right to fly. These regulations as they stand could not be validly sanctioned under section 132.

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As to certification and licensing of aircraft, the Convention imposes no duty as to such certificates, except in relation to international navigation. No duty arises out of the Convention which would enable the Dominion to sanction the sweeping enactment of section 4 in relation to the certification and licensing. Regulation 12 (2) seems to require a certificate of airworthiness in respect of commercial aircraft and provincial aircraft registered in Canada. By regulation 13, such certificates may be issued upon compliance with specified conditions. In the result, such aircraft may not be registered, and consequently will not be permitted to fly, unless certified as air worthy upon conditions prescribed by the Air Board. 10
These regulations are rather obscurely worded, but this seems to be the practical effect of them. There is no obligation, under the convention that is to say, no express obligation, to require such certification as a condition of domestic flying, and it is difficult to discover on what ground the condition imposed by these regulations, which affects all commercial aircraft flying in Canada, and all provincial aircraft, can be justified. The regulation as it stands would not be a valid one.

Sub-paragraph (c) deals with the licensing, inspecting and regulation of aerodromes and air-stations. No obligation arises under the Convention, which requires, for the performance of it, the unrestricted power of regula- 20
tion in relation to these subjects given by section 4. In truth, the only undertakings on the subject of aerodromes and air-stations in the body of the Convention are undertakings against discrimination and as to places fixed for the landing of foreign aircraft; while certain duties respecting aerodromes arise out of the rules in Annex D. But there is no obligation under the Convention, the performance of which would require the enact-
ment of sub-paragraph (c) or of regulations 18 and 19.

It seems to be sufficiently clear that neither sub-sections (a), (b) and (c), of section 4, which were enacted before the Convention was concluded, nor the regulations made under that section, were framed with a view to providing 30
for the performance of obligations undertaken or to be undertaken by Canada in the Convention. They appear to be framed on the theory, which the Dominion now supports as the true view, that the Dominion Parliament possesses authority to control aerial navigation in all respects. The result is that we have regulations which are framed too broadly to go into effect under section 132 of the British North America Act; but although these enactments and regulations could not now be validly sanctioned under the powers conferred by section 132, it does not follow that the Dominion may not exercise under that section very considerable powers of regulation in respect to the matters enumerated in sub-paragraphs (a), (b) and (c) 40
of section 4. Indeed there seems to be no room for doubt that for the purpose of procuring the observance of its valid regulations, regulations, that is to say, framed for the purpose of securing the observance of its undertakings under the Convention and regulations put into force under the powers arising under section 91, the objects aimed at by the regulations of 1919 could be very largely, if not entirely, accomplished. For example, article 25 of the Convention imposes upon the Dominion a duty to take

measures to insure the observance of the regulations contained in Annex D, and the prosecution and punishment of persons contravening these regulations. I can see no reason to doubt, if the Dominion considered it a suitable measure for implementing its obligations under article 25 to require, as a condition of registration, that aircraft should in design and otherwise be adapted and equipped for the observance of the rules laid down in Annex B, that such a condition might properly be exacted. To exact such a condition or other conditions aptly designed to secure the performance of obligations under the Convention, and limited to that, would of course be a vastly different thing from legislation in the form of regulations 3 and 4, which leave the conditions of the right to register, that is to say, of the right to fly to the unbridled discretion of the Air Board. So with regard to air harbours, it is competent to the Dominion in order to secure the observance of the rules in Annex D, to require aerodromes to perform the duties expressly or impliedly imposed upon them by that Annex. For this purpose, it would be within the power of the Dominion to prohibit the use of, or suspend the use of, any locality as an aerodrome, where these duties were disregarded, and to take proper measures to maintain such control over such aerodromes as would enable the Government to make its decrees effective; and it would also seem a reasonable and proper measure, for this purpose, to require the licensing of aerodromes under such conditions as to granting licenses or as to the suspension or rescission of them as should appear to be calculated to secure this object. It would, of course, be competent to the Dominion, in licensing aerodromes as landing places for aircraft entering the country, to exact such conditions as it might see fit; as well as to provide for the observance at all aerodromes of the undertakings against discrimination in charges or in facilities under article 24 of the Convention. Furthermore, I do not doubt the power of the Dominion to control the use of aerodromes in such a way as to prevent the frustration of the rules of Annex D, and, for this purpose, to prescribe conditions as to the granting suspension and cancellation of licenses. I have already stated my views as to the obligations incurred by the Dominion with respect to the conditions to be imposed in respect of the licensing of personnel. As I have said, the Dominion, in my judgment, is entitled to exact, as a condition of the granting of such a license, the minimum conditions laid down in article 12 and Annex E. But I do not doubt that the Dominion is also entitled to exact sanctions for the performance of the rules in Annex D by providing for the suspension or cancellation of licenses upon a breach of such rules; and furthermore, to take any measures calculated to prevent any person acting as navigator, pilot, or member of the crew of an aeroplane not fully equipped by knowledge of the rules in Annex D, and otherwise to perform any duty cast upon him by them.

In addition to all this, there are other regulations which could be sustained as enacted in view of the obligations imposed by the Convention in Article 25. Regulation 15, for example, requires any registered aircraft to bear the prescribed nationality and registration marks. The Convention

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provides explicitly for the use of these marks in international navigation though not in domestic navigation. But it would obviously be proper, in order to secure identification for the purposes of enforcing, and punishing breaches, of the rules, to require that all aircraft should bear the marks of identification mentioned in regulation 15. Similar considerations apply to a number of other regulations; those, for example, requiring aircraft to land in response to signals of police officers, representatives of the Air Board, the Immigration and Customs officials, those requiring the possession and production of licenses and certificates and other documents by aircraft, and generally those dealing with inspection.

As to "identification" and "inspection," in sub-paragraphs (b) and (c). I do not doubt the authority of the Dominion to legislate fully and completely on these subjects. The reasons appear to be too obvious to require statement. As to the remaining sub-paragraphs of section 4, little need be said. The Dominion has authority to provide for the carrying of mails, to prescribe the areas in which aircraft entering Canada shall land and the conditions to be observed on such landings, and to provide for the control of the Air Force. Other matters stand in a different situation. For example, the carriage of goods and passengers, the use and control of aerial routes, and those embraced in sub-paragraph (i) which is in the following terms :

"the institution and enforcement of such laws, rules and regulations as may be deemed necessary for the safe and proper navigation of aircraft in Canada or within the limits of the territorial waters of Canada."

In relation to all these last mentioned matters, the vice of section 4 is that its terms are too comprehensive. Under various heads of section 91, the Dominion, as I have already said, possesses authority to legislate in respect to certain aspects of some of these matters, but section 4 is framed in such a way as to render it impossible to treat the enactment, in its relation to the matters just mentioned, as one falling within the Dominion's authority under, for example, the regulation of Trade and Commerce, Undertakings extending beyond the limits of a province or Defence.

Some comment is required upon sub-paragraph (f). The Dominion possesses, I am disposed to think, authority to prohibit the navigation of non-Canadian aircraft over prescribed areas, and by the terms of the Convention, where such a prohibition is put into effect, there is an obligation to treat foreign aircraft on the same terms as Canadian aircraft. In the result, I am disposed to think, section 4 is validly enacted in respect of sub-paragraph (f).

A further comment is required in respect to regulation 33. As affecting flying outside of Canada, I am disposed to think this regulation is valid under the powers of the Dominion independently of the Convention.

No reference was made upon the argument to regulation 133, which among other things provides that the regulations shall not apply to aircraft or to air harbours to the extent to which they have been relieved by the

Air Board from compliance therewith. Every regulation is subject to this declaration; and the existence of this dispensing power exerciseable according to the absolute discretion of an administrative board, affecting as it does every order, prohibition and declaration in the regulations, on the subject with which it deals adds to the difficulty of holding that these regulations could be sanctioned validly in exercise of the powers under section 132, which are given for the purpose of providing for the performance of the obligations under the Convention. There is nothing in the Convention giving any countenance to the idea that the performance by each State of its obligations is, strictly not obligatory, but within the discretion of the State itself.

Two regulations, 10 and 28, the first classified as relating to the subject of registration, and the second as relating to the subject of air harbours, both within the scope of question 4, cannot be passed over wholly without comment. I shall quote verbatim regulation 10, the form of which is closely followed in regulation 28 :

“ 10. It shall be a condition of the primary registration of any aircraft in Canada that, upon the Governor in Council declaring that a national emergency exists or is immediately apprehended, every such aircraft shall be subject to requisition in the name of His Majesty by the Air Board or any officer of the Canadian Air Force, and upon being so requisitioned shall become the property of His Majesty subject to its return or to the payment of compensation or to both as may be provided by law. New.

“(2) The registration in Canada of any aircraft primarily registered in any of His Majesty’s dominions other than Canada shall be subject to the like condition unless, under the law of that one of His Majesty’s dominions in which the aircraft was primarily registered, it is subject to a paramount right to be requisitioned on His Majesty’s behalf. New.”

Although two of my brethren would answer question 4 (c) in a sense which recognizes regulation 10 as valid, I must say, with great respect, that neither of these regulations has any sort of relation to anything in the Convention; and that there is no section of the British North America Act other than section 132 under which they could be susceptible of valid sanction. Under them, the power of the Air Board to requisition aeroplanes and aerodromes in the name of His Majesty comes into play upon a proclamation by the Governor General declaring that a “national emergency” exists or is immediately apprehended. “Emergencies” may possess widely different degrees of gravity and urgency. But this authority is not conditioned upon the existence, in fact, of any conjuncture of the sort, loosely and vaguely indicated by the words “national emergency.” According to the tenor of the regulation, the condition is fulfilled upon a proclamation that this undefined state of affairs has come into being. These regulations afford instructive examples of the extremes to which an administrative board may allow itself to be carried, even when

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restrained by the necessity of securing the approval of the Governor in Council. They bring into relief, also in a striking way, the sweeping character of section 4 of the Aeronautics Act of 1919. For under subparagraphs (b) and (c) of that section (if it had itself been valid) investing as it does the Air Board with unlimited authority over the registration and the licensing of aircraft as well as over the licensing and regulation of aerodromes (in all the aspects of these subjects), these regulations could have been effectively put into force.

On the argument, there was an extended discussion touching the authority of the Dominion in respect of a regular service (or line) of aeroplanes operating between two provinces. The discussion centred in the scope and effect of the excepting clauses of No. 10 of section 92. But these subjects are not before us for consideration. The enactment in the principal clause of section 4, could not in its application to any one of the severally enumerated matters, be supported as within the ambit of any of the powers contemplated by the excepting clauses of section 92 (10). The subject of lines of aeroplanes, regular services of aeroplanes "ferries" of aeroplanes is not the subject, or one of the several subjects of that section; or of any of the regulations we are asked to consider. It must be understood that I express no opinion, favourable or unfavourable, upon the contentions presented in argument on these points. 10 20

The same may be said of head No. 2 of section 91 "trade and commerce." Except in cases already specifically dealt with, there is nothing in the statute or in the regulations which properly, as subject of legislation, could be assigned to the subject of interprovincial or of foreign trade.

Save as to cases specified above, it would be necessary to rewrite these enactments in order to bring them within the ambit of any power possessed by the Dominion under head 2 of section 91.

Before taking leave of the reference, it is desirable, perhaps, to refer to a suggestion that the position taken in these reasons, if made good, would lead to confusion, indeed, to chaos, through the prevalence at one and the same time and place of different, and possibly conflicting, rules of aerial navigation. There is no foundation for such fears. The Dominion, I repeat, has full authority under section 132, to give effect to the rules embodied in the Convention and to take effective measures for the enforcement of them. It is now settled, if indeed, there ever was a doubt upon it, that provincial legislation repugnant to valid legislation of the Dominion under section 132 is thereby superseded. *The Attorney-General of British Columbia v. Attorney-General of Canada*, 63 S.C.R., pages 327 to 331, and 1924, A.C., pages 211, 212, and 213. 30 40

The course followed in these reasons in examining the regulations in some detail, with a view to answering question 4, has necessitated the consideration of some points in respect of which we had little or no assistance from the argument. That questions 3 and 4 call for such an examination in the one case, of the matters enumerated in the sub-paragraphs and in the other, of the regulations, was assumed in the factums, and in the factum of the Dominion, the particular regulations falling under the several

divisions of question 4 were indicated. It was also assumed by counsel, and this assumption to a considerable degree dictated the course of the argument. The argument for the provinces was addressed in detail to the provisions of the statute and to most of the essential regulations upon each subject. In the argument for the Dominion, although the emphasis was predominantly upon the broader contentions, matters of detail were also the subject of extended discussion. It has seemed right to deal with these questions from the point of view from which they were discussed, especially since that point of view rests upon a construction of those questions which (although I think it is not strictly the right one) is in itself not an unreasonable one.

Nevertheless, I think it my duty to say that I sympathize with the feeling of my learned brethren as to the extreme difficulty of making what in practice will be regarded as a judicial pronouncement upon such a variety of topics, presenting, not in one or two cases only, but in many cases, points of no inconsiderable importance. While theoretically not impossible, it would not have been practicable, for counsel, to deal adequately in this case with every question presented by the statute and the regulations; and judicial conclusions arrived at without the assistance of argument, are not necessarily exempt from the weaknesses which often attend conclusions, so reached, elsewhere.

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In the *British Columbia Fisheries Case*, 1914, A.C., at page 162, the Lord Chancellor (Haldane) introduced his judgment, disposing of the questions submitted, with the following observations. He referred to the statutory authority under which the questions were, as he said, competently put to the Supreme Court, and he said that—

The business of the Supreme Court of Canada is to do what is laid down as its duty by the Dominion Parliament, and the duty of the Judicial Committee, although not bound by any Canadian statute, is to give to it as a Court of review such assistance as is within its power. Nevertheless, under this procedure questions may be put of a kind which it is impossible to answer satisfactorily. Not only may the question of future litigants be prejudiced by the Court laying down principles in an abstract form without any reference or relation to actual facts, but it may turn out to be practically impossible to define a principle adequately and safely without previous ascertainment of the exact facts to which it is to be applied. It has therefore happened that in cases of the present class their Lordships have occasionally found themselves unable to answer all the questions put to them, and have found it advisable to limit and guard their replies.

An illustration is to be found in the course adopted by the Privy Council in the *Fisheries Case*, 1898, A.C., 700, 717, from which it would seem that we should be careful not to declare or advise upon the rights of proprietors of lands in the provinces, they are not parties here, and cannot conveniently

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be represented in a general statutory reference, although some of these questions necessarily involve the consideration of proprietary rights. See also Lord Haldane's observations in *Attorney General for Ontario v. Attorney General for Canada*, 1916, 1.A.C., 601, 602.

I shall endeavour, in my answers, to adhere to a course which is justified by these precedents.

Under the first question it is contended, on behalf of the Attorney General of Canada, that the convention relating to the regulation of aerial navigation is a treaty within the meaning of sec. 132 of the *British North America Act*, 1867, and that the powers possessed by the Parliament and Government of Canada under that section are exclusive of any like powers which might, in its absence, have belonged to the provinces.

It is not denied, and no reason has been suggested to doubt, that the convention is a treaty; but the language of sec. 132 does not require, either expressly or by necessary implication, nor, I think, does it suggest, that a province should thereby suffer a diminution of the powers expressed in its enumerations or otherwise conferred, except to admit capacity on the part of the Dominion, which, in relation to provincial obligations, is no more than concurrent, so long as these are not performed by the province. The case of obligations to be performed for which a province has become bound by treaty to a foreign country, though perhaps difficult to realize, is expressly provided for by sec. 132; and, while, pending provincial non-performance, power is, by that section, conferred upon the Parliament and Government of Canada, I am unable to interpret the Dominion power as meant to deprive the province of authority to implement its obligations. If that had been the intention, I think it would have been expressed. For example, to put a simple case, which perhaps conceivably may be imagined, if a province were bound by treaty between the Empire and a foreign country to pay a sum of money borrowed on the sole credit of the province, and if the province, by direction of its legislature, were in due course to cause the money to be paid, I do not doubt that the obligation would thereby lawfully and constitutionally be discharged, even without any action on the part of the Parliament or Government of Canada.

I have considered question 2 with the utmost solicitude to discover its meaning, and I remain in some perplexity; but, accepting the view, which seems not unreasonable, that the necessity of legislation to sanction the obligations of the treaty is intended to be brought within the scope of the enquiry, I am met by an objection which seems successfully to challenge the validity of the reference; and it is this: Granted that under section 132 the Parliament has authority, in excess of its powers elsewhere defined, to authorize the performance of treaties, the language of the section is not the less restricted to treaty obligations towards foreign countries, and it is to such obligations that the question addresses itself. When, therefore, it is considered that the Court has no jurisdiction over a foreign sovereign, except by submission, and that the foreign States, party to the convention, have made no submission, it results, as I am disposed to think, that this Court ought not to determine, under the present procedure, a question which

involves the definition of the treaty obligations; and, especially so, seeing that the interpretation of the convention is, by Article 37, to be determined by the Permanent Court of International Justice, or, previously to the establishment of that Court, by arbitration.

10 Although the answers of the Court upon questions referred are declared by the Statute to be advisory only, and although, as said by the Judicial Committee in a passage which I shall quote more fully, they "will have no more effect than the opinions of the law officers", yet the proceedings are judicial, and the questions are referred to the court for "hearing and consideration"; and it is the statutory duty of the court to
 20 "hear" and consider. In the discharge of this duty, the Court, in ordinary course, and necessarily, as I see it, applies the principle of the maxim *audi alteram partem*, and that, I think, comports with the just intention of the statute. Moreover, Parliament has been careful to provide expressly for this procedure. By subsecs. 4 and 5 of sec. 55 of the *Supreme Court Act*, the Court may direct that any person or class of persons interested shall be notified of the hearing, and that such person or class shall be entitled to be heard; also, where there is no appearance, the court may, in its discretion, request counsel to argue the case as to any interest which is affected.
 30 These provisions strengthen the view that the section is not intended to apply to the adjudication of interests in support of which the court is not empowered to require argument at the hearing. I am not overlooking the case of the *Japanese Treaty Act*, 1924, A.C., 203, where an Act of British Columbia was held *ultra vires* for conflict with a valid Dominion statute, and which is thus quite distinguishable. And there is also the case, which should be mentioned, of the *Reference in the matter of Legislative Jurisdiction over Hours of Labour* 1925, S. C. R., 505. But I do not think that in either of these cases the reasons or answers were intended to come into conflict with the view which I am now expressing, and which, certainly, was not
 40 therein suggested or considered.

If, as would appear, it be desired to know whether Dominion legislation is *necessary*, one must ascertain what the obligation is, and that cannot judicially be declared without learning or inviting the contentions of the obligees. It may, of course, be suggested that there is no evidence of any controversy; but, on the other hand, we are not informed that the contracting parties are *ad idem* in their interpretation of the treaty obligations. It may likewise be said that foreign sovereign powers are not within the purview of the *Supreme Court Act*; that their interests are impliedly excepted and should be disregarded; but, in the *British Columbia Fisheries*
 40 Case, 1914 A. C., 153, 174, 175, reasons were advanced why their Lordships should not answer a cognate question relating to the territorial rights claimed by the Crown in the shore extending below low water mark to within three miles of the coast, and affecting the pretensions of foreign nations. And, for my part, although I do not mean to suggest that litigation might not arise in which it would be convenient or necessary that the court should construe the treaty, the view which impresses itself upon my mind is that since the foreign sovereign parties to the convention are unrepresented

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and cannot be convened, a question which looks to the ascertainment of their interests judicially, cannot, upon submission by the Governor-in-Council, be determined compatibly with the statutory requirements and procedure.

Dominion powers derived under sec. 132 should, I think, be liberally interpreted to include all such as are necessary or proper for achieving the purposes defined. The Dominion is, by that section, authorized to exercise these powers for performing its treaty obligations, and equally so, for performing those of a province; and this is true, irrespective of the question as to where the power would have resided if sec. 132 had not been enacted. There is ample authority for the view that, if the treaty obligations cannot legally be performed under the domestic law as it exists, legislation is necessary to justify the performance; and, in *Walker v. Baird*, 1892 A. C., 491, 497, the Attorney General of England (Sir Richard Webster)—

conceded that he could not maintain the proposition that the Crown could sanction an invasion by its officers of the rights of private individuals whenever it was necessary, in order to compel obedience to the provisions of a treaty.

But the question remains of ascertaining and interpreting the conventional obligations; and, as to that, I have endeavoured to explain my difficulty as it presents itself.

Moreover, even if the jurisdiction were held to persist, notwithstanding that the Court cannot convoke or summon the parties for hearing, I would have thought that the inexpediency or liability to miscarriage of a judicial attempt exhaustively to interpret and declare these obligations, when practical differences have not arisen and specific cases are not formulated, rests upon grounds so impressive and obvious as to justify a representation to the Governor-in-Council against the advisability of requiring an answer to a question possessing the general character and obscurity of No. 2.

It is true that a question as to the power of the Governor-in-Council to require this Court to answer questions of law or fact, in the broad terms provided by sec. 55 of the *Supreme Court Act*, was determined favourably to the legislation in *Attorney General for Ontario v. Attorney General for the Dominion*, 1912 A. C., 571; but, in pronouncing that judgment, the Lord Chancellor (Earl Loreburn) said at pages 588, 589 :—

It is difficult to resist the conclusion that the point now raised never would have been raised had it not been for the nature of the questions which have been put to the Supreme Court. If the questions to the Courts had been limited to such as are in practice put to the Judicial Committee (e.g., must justices of the peace and judges be resworn after a demise of the Crown?) no one would ever have thought of saying it was *ultra vires*. It is now suggested because the power conferred by the Canadian Act which is not and could not be wider in its terms than that of William IV., applicable to the Judicial Committee, has resulted in asking questions affecting the provinces, or alleged to do so. But the answers are only advisory

and will have no more effect than the opinion of the law officers. Perhaps another reason is that the Act has resulted in asking a series of searching questions very difficult to answer exhaustively and accurately without so many qualifications and reservations as to make the answers of little value. The Supreme Court itself can, however, either point out in its answer these or other considerations of a like kind, or can make the necessary representations to the Governor General in Council when it thinks right so to treat any question that may be put.

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- 10 And the course so suggested appears to me appropriate for the present occasion.

Questions 3 and 4 relate to specific legislation, which has been enacted by the Dominion; and, even by all the forethought and imagination which we can exercise or may possess, they cannot be comprehensively or perfectly answered, if room is to be found, as I think it must be, for the operation of provincial rights. We were told at the argument that no practical difficulties had been encountered; and, obviously, questions could be better considered and more satisfactorily determined when, or from time to time as, they practically emerge, and so become capable of being stated with
20 adequate point and precision. Meantime, in the discharge of our duty under the statute, we have certainly to face a question as to the authority of Parliament to enact these clauses under sec. 91 of the *British North America Act, 1867*; and, as to that, I am satisfied that we cannot usefully do more than indicate generally the principles to be applied for the avoidance of controversy, or for the determination of specific differences, should they practically arise.

I would reject the argument urged on behalf of the Dominion that the subject matter of either of these questions is "navigation and shipping," within the 10th enumeration of sec. 91 of the *British North America Act,*
30 1867. I see no evidence of any parliamentary intention that this was ever intended.

The earth hath in law a great extent upwards, not only of water, as hath been said, but of ayre and all other things even up to heaven; for *cujus est solum ejus est usque ad coelum*, as is holden 14 H. 8. fo. 12. 22 Hen. 6. 59. 10 E. 4, 14. *Registrum origin.* and in other bookes.

These are the words of Coke's venerable Commentary upon Littleton (4 a.), and they express, as I have been taught to believe, the common law of England, which applies in the English provinces of Canada. In the Province of Quebec, the law is not materially different, for, by Art. 414
40 of the Civil Code, it is declared that "ownership of the soil carries with it ownership of what is above and what is below it". The principle is thus established, and the courts have no authority as far as I can perceive, to explain and qualify it so as to admit of the introduction of a public right of way for the use of flying machines consequent upon the demonstrations in recent times of the practicability of artificial flight. The appropriate

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legislature may, of course, provide for airways as it has habitually done for roads and highways, notwithstanding the rights of the proprietors; but the project is legislative, not judicial.

“Navigation and shipping” are words inapt and unauthorized to connote flight or the utilization of atmospheric resistance or buoyancy for the carriage of craft or traffic. Flight is one thing, and navigation another. The way of a flying machine may in some respects be assimilated to the way of an eagle in the air, but not to that of a ship in the midst of the sea, which has been recognized as something different. Navigation consists in the exercise of a right of way, which may be enjoyed in the sea, in tidal and in non-tidal water. (Coulson & Forbes on Waters, 4th edition, by H. Stuart Moore, 437.) This meaning is emphasized for the purposes of sec. 91, where the word is associated with “shipping”. Moreover, as to tidal waters at least, the right is public, not dependent upon property. On the other hand, the right of way exercised within a province by a flying machine must, in some manner be derived from or against the owners of the property traversed; and the power legislatively to sanction such a right of way appertains *prima facie* to property and civil rights in the province, although, no doubt, it may be overborne by ancillary Dominion powers, where they exist. It was enacted by sec. 9 of the Imperial Air Navigation Act, 1920, 10–11 Geo. V., ch. 80, that, subject to its provisions, no action should lie in respect of trespass or in respect of nuisance, by reason of the flight of aircraft over any property at a reasonable height; and, if, for example, it were desired to confer similar immunity in the provinces of Canada, I see no reason to doubt that the resort would *prima facie* lie to the legislatures of the provinces. Therefore, if the subject of “navigation and shipping” is to be extended to what, in the absence of a definitive name, has been described as “aerial navigation”, that is a function to be discharged by the enactment of appropriate words, and it belongs to the Imperial Parliament, not to this court.

If it be desirable to have uniformity of regulations for the licensing, inspection, etc., of air traffic, an inference may be drawn from the judgment of the Privy Council in *City of Montreal v. Montreal Street Railway*, 1912 A. C., 333, 346, that the object should be attained by co-operation between the Dominion and the local authorities. The federal system, as it is known in the Dominion, while it has proved its adaptation to local conditions of government, is not without some disadvantages, and one apparently is that an inconvenient situation may arise requiring a legislative remedy for which notwithstanding some wayside utterances to the contrary, the concurrence or co-operation of both federal and provincial law-making bodies is necessary; but, as was said by Lord Atkinson, with relation to railways, in the *Montreal Case*, page 346:—

It cannot be assumed that either body will decline to co-operate with the other in a reasonable way to effect an object so much in the interest of both the Dominion and the Province, as the regulation of “through traffic”.

The Dominion enumerated powers must, of course, have their full effect, even when they seem to conflict with those of the provinces. This follows from the concluding paragraph of sec. 91 of the *British North America Act*, 1867 :

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And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act, assigned exclusively to the legislatures of the provinces.

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10 The meaning of this clause was explained by Lord Watson in the Prohibition Case, 1896 A. C., 359–360, as follows :—

It was apparently contemplated by the framers of the Imperial Act of 1867 that the due exercise of the enumerated powers conferred upon the Parliament of Canada by s. 91 might, occasionally and incidentally, involve legislation upon matters which are *prima facie* committed exclusively to the provincial legislatures by s. 92. In order to provide against that contingency, the concluding part of s. 91 enacts that

And his Lordship, having quoted the clause, proceeded :—

20 It was observed by this Board in *Citizens' Insurance Company of Canada v. Parsons*, 7 A.C., 108, that the paragraph just quoted “applies in its grammatical construction only to No. 16 of s. 92.” The observation was not material to the question arising in that case, and it does not appear to their Lordships to be strictly accurate. It appears to them that the language in the exception in s. 91 was meant to include and correctly describes all the matters enumerated in the sixteen heads of s. 92, as being, from a provincial point of view, of a local or private nature. It also appears to their Lordships that the exception was not meant to derogate from the legislative authority given to provincial legislatures by these sixteen sub-
30 sections, save to the extent of enabling the Parliament of Canada to deal with matters local or private in those cases where such legislation is necessarily incidental to the exercise of the powers conferred upon it by the enumerative heads of clause 91. That view was stated and illustrated by Sir Montague Smith in *Citizens' Insurance Co. of Canada v. Parsons*, 7 App. Cas., at pp. 108, 109, and in *Cushing v. Dupuy*, 5 App. Cas., 409, 415; and it has been recognised by this Board in *Tennant v. Union Bank of Canada*, 1894, A.C., 31, 46, and in *Attorney General of Ontario v. Attorney General for the*
40 *Dominion*, 1894 A.C., 189, 200.

And so, it cannot be successfully denied that the Dominion may have, maintain and operate aircraft, as part of its military or naval service, or for customs, postal or other Dominion services, and may regulate their use for these purposes; and, as well, may prohibit or regulate their use commercially for exporting or importing goods out of or into Canada;

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or for the carriage of passengers to and from Canada, or, I suggest, inter-provincially. In respect of these and other services, as to which the Dominion derives its powers from the enumerations of sec. 91, or exercises general powers not belonging to provincial subjects, the regulations in sec. 4 of the *Aeronautics Act* appear to be competent to Parliament, but, on the other hand, it is, I think, certain that there are uses for aircraft, which appertain exclusively to "property and civil rights in the province", in relation to "matters of a merely private or local nature in the province"; and, as to these, some of the regulations in question cannot be applied without entering a field exclusively reserved for provincial authority. 10
The same may be said with regard to the *Air Regulations, 1920*, respecting the matters specified in the fourth question.

A province, for example, amongst its other legislative powers, may exclusively make laws in regard to the establishment and tenure of provincial offices and the appointment and payment of provincial officers; the management and sale of public lands belonging to the province and of the timber and wood thereon, and the comprehensive subject of property and civil rights in the province (Sec. 92 (4), (5) and (13)). And if, therefore, to introduce only one illustration the province desire to provide an air service for the oversight protection and management of its Crown lands and timber, or for its mines and minerals or mining reserves, it is not, I believe, destitute of power for the institution and use of it; and so, if a legislature should sanction the appointment of officers to perform the duties of provincial air guides or pilots or operators for the conduct of that service, I am far from persuaded that these officers must qualify for the discharge of their duties by production of Dominion licences, unless the province by its legislation should so enact. 20

I have thus endeavoured briefly to state what I think may usefully be submitted in answer to the questions referred and, pursuant to the statute, I certify the above as my opinion and reasons for the information 30
of the Governor in Council.

(Sgd.) E. L. NEWCOMBE.

6th October, 1930.

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The following are the questions submitted:—

1. Have the Parliament and Government of Canada exclusive legislative and executive authority for performing the obligations of Canada, or of any province thereof, under the Convention entitled "Convention relating to the Regulation of Aerial Navigation"?

2. Is legislation of the Parliament of Canada providing for the regulation and control of aeronautics generally within Canada, including flying operations carried on entirely within the limits of a province, necessary or proper for performing the obligations of Canada, or of any province thereof, under the Convention aforementioned, within the meaning of section 132 of the British North America Act, 1867? 40

3. Has the Parliament of Canada legislative authority to enact, in whole or in part, the provisions of section 4 of the Aeronautics Act, chapter 3, Revised Statutes of Canada, 1927?

4. Has the Parliament of Canada legislative authority to sanction the making and enforcement, in whole or in part, of the regulations contained in the Air Regulations, 1920, respecting—

(a) The granting of certificates or licenses authorizing persons to act as pilots, navigators, engineers or inspectors of aircraft and the suspension or revocation of such licenses;

10 (b) The regulation, identification, inspection, certification and licensing of all aircraft; and

(c) The licensing, inspection and regulation of all aerodromes and air stations?

In my opinion, the answer to question 1 is determined by the decision in *Attorney General of British Columbia v. Attorney General of Canada* (1924), A. C., 203. In that case, a treaty was made in 1913 between His Majesty the King and the Emperor of Japan, by which it was, among other things, agreed that the subjects of each of the High Contracting Parties should have full liberty to enter, travel and reside in the territories of the other, and in all that relates to the pursuit of their industries, callings, professions and educational studies, should be placed in all respects on the same footing as the subjects or citizens of the most favoured nation.

On April 10, 1913, the Parliament of Canada, passed the Japanese Treaty Act of that year, and this Act provided that the treaty should be thereby sanctioned and declared to have the force of law in Canada.

In 1902 two minutes had been passed by the Executive Council of the Province of British Columbia, and approved by the Lieutenant Governor, which set out resolutions passed by the Legislative Assembly and recommended, in accordance with these resolutions, that all tunnel and drain licenses issued under sec. 58 of the Mineral Act and sec. 48 of the Placer Mining Act, and all leases granted under Part VII of the latter Act should contain provisos that they were granted on the express condition that no Chinese or Japanese should be employed in or about the tunnels, drains or premises to which the licenses or leases related and that a similar provision should also be inserted in all instruments relating to a number of enumerated leases and licenses which should be issued by the officers of the provincial government.

On April 2, 1921, the legislature of British Columbia passed the Oriental Orders in Council Validation Act, which statute purported to validate and confirm the two Orders in Council of the province already referred to, and passed in the form of recommendations of the Provincial Executive Council, approved by the Lieutenant Governor in May, 1902. The statute further provided that the Orders should be deemed to have been valid and effectual according to their tenor as from the dates of their approval, and that where, in any instrument referred to in the said Orders in Council, or in any instrument of a similar nature to any of those so referred to, issued by

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any minister or officer of any department of the government of the province, any provision had heretofore been inserted, or was thereafter inserted relating to or restricting the employment of Chinese or Japanese, that provision should be deemed to have been and to be valid, and always to have had the force of law according to its tenor. It was further enacted that every violation of or failure to observe any such provision on the part of any licensee, or other person in whose favour the instrument operated, should be sufficient ground for the cancellation of the instrument by the Lieutenant Governor.

Section 132 of the British North America Act is as follows:— 10

132. The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada, or of any province thereof, as part of the British Empire, towards Foreign Countries arising under treaties between the Empire and such foreign countries.

The question at issue in the case was the validity of the British Columbia statute referred to. One of the grounds urged against the validity of the Act was that it purported to deal with the status of aliens, a matter solely under the jurisdiction of the Dominion under sec. 91 of the British North America Act; and the other ground was that the provincial statute violated 20 the principle laid down in the Dominion Act of 1913.

It was held that the provincial Act was not inconsistent with sec. 91 of the British North America Act, but was void because it violated the principle laid down in the Dominion Act of 1913.

It is to be noted that it was not argued that the Dominion Act was invalid or that the provincial Act could prevail over the Dominion Act, passed pursuant to sec. 132 of the British North America Act. The whole argument was that the provincial Act did not in fact conflict with the Dominion Act.

It is argued here, on behalf of the provinces, that where there is a 30 stipulation in a treaty that something shall be done that the provinces have jurisdiction to do, it is only on failure of the provinces to discharge the provincial obligations that the Dominion has jurisdiction to intervene. This contention seems to be totally at variance with the decision of the Privy Council in the case just referred to, which holds that, apart from the question of jurisdiction over aliens, the Dominion Parliament had jurisdiction to implement the treaty by legislation and that the province could not validly enact legislation inconsistent with the principle of the Dominion legislation.

It follows, in my opinion, that the Dominion Parliament has *paramount* 40 jurisdiction to legislate for the performance of all treaty obligations, and that, while a province may effectively legislate for that purpose in regard to any matter falling within sec. 92 of the British North America Act while the field is unoccupied by the Dominion (but not otherwise), Dominion legislation, being paramount, will, when enacted, supersede that of the provinces about such matters. The answer to the first question, therefore,

substituting the word "paramount" for the word "exclusive," is in the affirmative.

I am of the opinion that, taking the words in Question 2, "regulation and control of aeronautics generally within Canada," as meaning unlimited regulations and control of aeronautics within Canada, the answer must be in the negative.

The contention on behalf of the provinces is that the international Convention applies only to aircraft operated internationally, and has no application to aircraft of any of the contracting countries which flies wholly
 10 within the territory of the country where it is owned. In some respects the Convention purports to deal only with international flying, but in others with the flying of all aircraft.

For example, article 25 is as follows:—

Each contracting State undertakes to adopt measures to ensure that every aircraft flying above the limits of *its* territory and that every aircraft, wherever it may be, carrying its nationality mark, shall comply with the regulations contained in Annex D.

Annex D lays down elaborate rules as to lights and signals, and rules for air traffic, following closely the rules of water navigation. If the
 20 contention of the provinces be sound, every province, so far as this Convention is concerned, would be entitled to establish rules of its own, as to lights and signals and air traffic, which might be entirely at variance with the international rules laid down in the Convention, and each of which might be at variance with the other. The manifest object of these rules as set out in the Convention is to secure safety in air navigation for all craft flying over the territory of the parties to the treaty; and it is unreasonable to suppose that these rules were to apply only to aircraft flying internationally and that every country and every province was at liberty to make its
 30 own rules for aircraft owned and flying within its own territory. I am of opinion, therefore, that under article 25 the Dominion is under obligation to adopt measures to ensure that every aircraft flying above the limits of Canadian territory shall comply with the regulations contained in Annex D, and has authority to enact accordingly.

Article 12 is as follows:—

" Art. 12.—The commanding officer, pilots, engineers and other members of the operating crew of *every aircraft* shall, in accordance with the conditions laid down in Annex E, be provided with certificates of competency and licenses issued or rendered valid by the State whose nationality the aircraft possesses."

40 Annex E has the following:—

" The conditions set forth in the present Annex are the minimum conditions required for the issue of certificates and licenses valid for international traffic.

" Nevertheless, each contracting State will be entitled to issue certificates and licenses, not valid for international traffic, subject

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to such less stringent conditions as it may deem adequate to ensure the safety of air traffic.

“The said certificates and licenses will not, however, be valid for flight over the territory of another State.”

Article 12 in terms refers to the operating crew of *every aircraft*, while the preceding article, 11, expressly refers to *every aircraft engaged in international navigation*.

In the portion of Annex E just quoted, we have express provision for the issue of certificates and licenses by each of the states for flying within its own territory, on such less stringent conditions as each state may deem adequate to ensure the safety of air traffic. By virtue, therefore, of article 12 and Annex E, there is imposed upon each party to the Convention an express obligation to control in this way all aircraft flying exclusively within its own territory. 10

The Articles of Convention do not explicitly provide that aircraft shall be registered; but this is necessarily implied.

Article 5 provides that no contracting state shall, except by a special and temporary authorization, permit the flight above its territory of an aircraft which does not possess the nationality of a contracting state. By article 6, aircraft *possess the nationality* of the state on the register of which they are entered, in accordance with the provisions of Section I (c) of Annex A; and article 10 provides that all aircraft engaged in international navigation shall bear their nationality and registration marks, as well as the name and residence of the owner, in accordance with Annex A. As nationality under these provisions can only be *possessed* by registration, the necessary inference is that there must be registration of all aircraft as provided in Annex A, except in cases where such aircraft are flying under a “special and temporary authorization.” 20

It is contended on behalf of the provinces that article 5 refers only to aircraft engaged in international navigation; but the language of the article has no such limitation; and, in view of the general intention to be gathered from the whole tenor of the Convention, and particularly from the provisions of Annex E quoted above, to provide for the safety of air navigation, there would seem to be no good reason for introducing such a limitation. If the argument on behalf of the provinces were sustained, then every state, and each province of Canada, so far as the Convention is concerned, might allow aircraft of all descriptions, uninspected, unregistered, and of any nationality, to fly within its own borders, which, in my opinion, would be contrary to the express language of article 5 and the general intent and provisions of the Convention. 30 40

It is to be noted, however, that article 37 provides that, in case of a disagreement between two or more states relating to the interpretation of the Convention, the question in dispute shall be determined by the Permanent Court of International Justice to be established by the League of Nations, and until its establishment by arbitration. This Court, therefore, has no jurisdiction to give an opinion binding upon the various parties

to the Convention on disputes as to interpretation, whereas a decision under article 37 would be binding on all parties to the Convention, and the obligation of the Dominion and the jurisdiction to legislate would thereafter accord with the interpretation thus arrived at.

It is admitted on behalf of the provinces that, independently of the Convention, the Parliament of Canada has jurisdiction over aircraft and air navigation, by virtue of sec. 91 of the British North America Act, in connection with various matters thereby assigned to the Dominion, such as Military and Naval Service and Defence, Customs, Postal Service, Control of Aliens, and, possibly, to some extent, for the regulation of Trade and Commerce.

On behalf of the Dominion it is argued that the whole subject comes within Navigation and Shipping, under clause (10) of sec. 91.

I am of opinion that Navigation and Shipping, as used in sec. 91, refers only to the navigation of water and shipping plying on or in water. This is the definition of navigation and shipping in the "New English Dictionary," and there can be little doubt that it was the meaning attached to these terms at the time the Act was passed. In my opinion, jurisdiction over aeronautics belongs to the provinces under the heading "Property and Civil Rights in the Province," section 92 (13) of the British North America Act, subject to the jurisdiction of the Dominion under s.91, as indicated, and to the provisions of the Convention referred to and of s.132 of the British North America Act.

Question 3 is apparently construed by the majority of the members of the Court as an enquiry as to whether or not sec. 4 of the Aeronautics Act, as it now stands in the Revised Statutes, is *intra vires* and valid. On that view it is contended that, as the statute was passed long before the treaty came into effect, no jurisdiction under sec. 132 of the British North America Act by virtue of the treaty can be invoked to sustain the validity of the Act, and that the re-enactment of this statute in the Revised Statutes of 1927 does not alter the matter because of the provisions of sec. 8 of 14-15 Geo. V., Chap. 65, which provides that the Revised Statutes shall not be held to operate as new laws.

In my view, the question relates to the present legislative authority of the Dominion Parliament, including legislative authority under the various headings in sec. 91 of the British North America Act and under sec. 132, by virtue of the treaty. Interpreting the question in this way, it follows from what has been already said that Parliament has authority to enact the provisions of sec. 4 of the Aeronautics Act in relation to the matters set out in sec. 91 of the British North America Act, and, so far as necessary and proper, within the meaning of sec. 132 of that Act, for carrying out the provisions of the treaty. Sec. 4, however, goes beyond this, and purports to assume unlimited regulation and control of aeronautics in Canada.

It is difficult, therefore, to answer categorically question 3, but, interpreting the question as indicated, it follows from what has been said that, as to a great part of the provisions of sec. 4, the answer is "Yes." Clause (d) refers not only to the carrying of mails, but to the carrying of goods and passengers, and the operation of any commercial service whatsoever, and

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jurisdiction as to these matters, independently of the Convention, would depend on whether or not they are of such a nature as to amount to Regulation of Trade and Commerce as set out in sec. 91 of the British North America Act. The same remarks would apply to transport of goods and passengers over part of the territories of Canada, as set out in clause (e).

Question 4 (a) and (b) should be answered in the affirmative.

Question 4 (c) should be answered in the affirmative as to all aerodromes and air stations described in the Convention, and, as to others, so far as may be necessary to prevent air navigators being confused or misled in locating and landing at aerodromes and air stations referred to in the Convention or in reading ground markings made in pursuance of the Convention. 10

I certify the foregoing to be my opinion and reasons therefor upon the four questions herein submitted for hearing and consideration by the Court by His Excellency the Governor in Council.

(Sgd.) R. SMITH, J.

Ottawa, October 7, 1930.

(f) Cannon, J. (f) CANNON, J.,

The Governor General in Council, on the 15th of April, 1929, referred the following questions to this court for hearing and consideration pursuant to the provisions of section 55 of the Supreme Court Act, R.S.C., 1927, chapter 35 :— 20

1. Have the Parliament and Government of Canada exclusive legislative and executive authority for performing the obligations of Canada, or any province thereof, under the Convention entitled " Convention relating to the Regulation of Aerial Navigation ? "

2. Is legislation of the Parliament of Canada providing for the regulation and control of aeronautics generally within Canada, including flying operations carried on entirely within the limits of a province, necessary or proper for performing the obligations of Canada, or of any province thereof, under the Convention aforementioned, within the meaning of section 132 of the British North America Act, 1867 ? 30

3. Has the Parliament of Canada legislative authority to enact, in whole or in part, the provisions of section 4 of the Aeronautics Act, chapter 3, Revised Statutes of Canada, 1927 ?

4. Has the Parliament of Canada legislative authority to sanction the making and enforcement, in whole or in part, of the regulations contained in the Air Regulations, 1920, respecting—

(a) The granting of certificates or licenses authorizing persons to act as pilots, navigators, engineers or inspectors of aircrafts and the suspension or revocation of such licenses ; 40

- (b) The regulation, identification, inspection, certification and licensing of all aircrafts; and
 (c) The licensing, inspection and regulation of all aerodromes and air stations?

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The Minister of Justice, in his report to Council, apprehends—

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10 that this legislation was enacted by Parliament by reason not only of the expediency of making provision for the regulation of a service essentially important in itself as touching closely the national life and interests, but also of the necessity of making provision for performing the obligations of Canada, as part of the British Empire under the Convention relating to the regulation of Aerial Navigation which, drawn up by a Commission constituted by the Peace Conference at Paris in 1919, was, on 13th October of that year, signed by the representatives of 26 of the allied and Associated Powers including Canada.

This convention was ratified by His Majesty on behalf of the British Empire on 1st June, 1922, and is now in force, as the Minister is informed, as between the British Empire and 17 other States.

20 The Minister observes that the Air Regulations 1920, conform in essential particulars to the provisions of the said Convention, and are designed to give effect to the stipulations thereof in discharge of the obligations of Canada, as part of the British Empire, towards the other contracting States.

30 The Minister states that at the conference at Ottawa between representatives of the Dominion and the several Provincial Governments in the month of November, 1927, the representatives of the Province of Quebec raised a question as to the legislative authority of the Parliament of Canada to sanction regulations for the control of aerial navigation generally within Canada, at all events in their application to flying operations carried on within a Province; and it was agreed that the question so raised was a proper question for the determination of the Supreme Court of Canada.

At the argument, Mr. Geoffrion suggested that the order of the questions should be reversed, as it seemed logical that we should first see whether flying is federal or not. If it is federal, it is unnecessary to discuss the application of section 132. If flying is provincial, then it will become important to determine how far section 132 carries federal legislative power.

QUESTIONS 3 AND 4.

40 The impugned section 4 of The Aeronautics Act, R. S. C., 1927, ch. 3, reads as follows :

4. Subject to approval by the Governor in Council, the Minister shall have power to regulate and control aerial navigation over Canada and the territorial waters of Canada, and in particular, but not

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to restrict the generality of the foregoing terms of this section, he may, with the approval aforesaid, make regulations with respect to—

- (a) licensing pilots and other persons engaged in the navigation of aircraft, and the suspension and revocation of such licenses;
- (b) the registration, identification, inspection, certification and licensing of all aircraft;
- (c) the licensing, inspection and regulation of all aerodromes and air-stations;
- (d) the conditions under which aircraft may be used for carrying goods, mails and passengers, or for the operation of any commercial service whatsoever, and the licensing of any such services. 10
- (e) the conditions under which goods, mails and passengers may be imported and exported in aircraft into or from Canada or within the limits of the territorial waters of Canada, or may be transported over any part of such territory;
- (f) the prohibition of navigation of aircraft over such areas as may be prescribed, either at all times or at such times or on such occasions only as may be specified in the regulation, and either absolutely or subject to such exceptions or conditions as may be so specified; 20
- (g) the areas within which aircraft coming from any places outside of Canada are to land, and the conditions to be complied with by any such aircraft;
- (h) aerial routes, their use and control;
- (i) the institution and enforcement of such laws, rules and regulations as may be deemed necessary for the safe and proper navigation of aircraft in Canada or within the limits of the territorial waters of Canada; and
- (j) organization, discipline, efficiency and good government generally of the officers and men employed in the Air Force. 30

2. Any person guilty of violating the provisions of any such regulation shall be liable, on summary conviction, to a fine not exceeding one thousand dollars, or to imprisonment for any term not exceeding six months, or to both fine and imprisonment.

3. All regulations enacted under the provisions of this Act shall be published in the *Canada Gazette*, and, upon being so published, shall have the same force in law as if they formed part of this Act.

4. Such regulations shall be laid before both Houses of Parliament within ten days after the publication thereof if Parliament is sitting, and if Parliament is not sitting, then within ten days after the next meeting thereof. 40

Section 14 of the Interpretation Act, R.S.C. 1927, ch. 1, says :

The preamble of every Act shall be deemed a part thereof intended to assist in explaining the purpose and object of the Act.

I note immediately that Parliament has not deemed it desirable, when passing 9-10 Geo. V., Ch. 11, assented to on 6th June 1919, to state in a preamble the object and purport of the Act, so that we remain only with the report of the Minister of Justice who apprehends that "the legislation was enacted by Parliament on account of the expediency of making provision for the regulation of a service essentially important in itself as touching the national life and interest".

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The ratification by His Majesty was deposited on the 1st June, 1922, nearly three years after Parliament had legislated.

- 10 The latest decisions of the Privy Council on our Constitution are to be found, first, in the case of *Edwards v. Attorney General for Canada*, 1930, A.C. p. 124, where Lord Chancellor Sankey says at page 136 :

The British North America Act planted in Canada a living tree capable of growth and expansion within its natural limits. The object of the Act was to grant a Constitution to Canada. "Like all written constitutions it has been subject to development through usage and convention"; Canadian Constitutional Studies, Sir Robert Borden (1922), p. 55.

- 20 Their Lordships do not conceive it to be the duty of this board— it is certainly not their desire—to cut down the provisions of the Act by a narrow and technical construction, but rather to give it a large and liberal interpretation so that the Dominion to a great extent, but within certain fixed limits, may be mistress in her own house, as the Provinces to a great extent, but within certain fixed limits, are mistresses in theirs. "The Privy Council, indeed, has laid down that Courts of law must treat the provisions of the British North America Act by the same methods of construction and exposition which they apply to other statutes. But there are statutes and statutes; and the strict construction deemed proper in the case, for
30 example, of a penal or taxing statute or one passed to regulate the affairs of an English parish, would be often subversive of Parliament's real intent if applied to an Act passed to ensure the peace, order and good government of a British Colony": see Clement's Canadian Constitution, 3rd ed., p. 347.

- 40 The learned author of that treatise quotes from the argument of Mr. Mowat and Mr. Edward Blake before the Privy Council in *St. Catharine's Milling and Lumber Co. v. The Queen* (1888) 14 App. Cas. 46, 50: "That Act should be on all occasions interpreted in a large liberal and comprehensive spirit, considering the magnitude of the subjects with which it purports to deal in very few words." With that their Lordships agree, but as was said by the Lord Chancellor in *Brophy v. Attorney-General of Manitoba* (1895) A.C. 202, 216, the question is not what may be supposed to have been intended, but what has been said.

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The Lord Chancellor, however, restricts his observations in the following way :

It must be remembered, too, that their Lordships are not here considering the question of the legislative competence either of the Dominion or its Provinces which arise under ss. 91 and 92 of the Act providing for the distribution of legislative powers and assigning to the Dominion and its Provinces their respective spheres of Government.

The other case is *Attorney-General for Canada and Attorney-General for British Columbia* (1930) A.C. 111, where Lord Tomlin, speaking for the Board, on October 15th, 1929, lays down these four propositions relative to legislative competence in Canada as being established by decisions of the Judicial Committee :

Questions of conflict between the jurisdiction of the Parliament of the Dominion and provincial jurisdiction have frequently come before their Lordships' Board, and as the result of the decisions of the Board the following propositions may be stated :—

- (1) The legislation of the Parliament of the Dominion, so long as it strictly relates to subjects of legislation expressly enumerated in s. 91, is of paramount authority, even though it trenches upon matters assigned to the provincial legislatures by sec. 92; see *Tennant v. Union Bank of Canada* (1894) A.C. 31. 20
- (2) The general power of legislation conferred upon the Parliament of the Dominion by s. 91 of the Act in supplement of the power to legislate upon the subjects expressly enumerated must be strictly confined to such matters as are unquestionably of national interest and importance, and must not trench on any of the subjects enumerated in s. 92 as within the scope of provincial legislation, unless these matters have attained such dimensions as to affect the body politic of the Dominion; see *Attorney-General for Ontario v. Attorney-General for the Dominion* (1896) A.C. 348. 30
- (3) It is within the competence of the Dominion Parliament to provide for matters which, though otherwise within the legislative competence of the provincial legislature, are necessarily incidental to effective legislation by the Parliament of the Dominion upon a subject of legislation expressly enumerated in s. 91: see *Attorney-General of Ontario v. Attorney-General for the Dominion* (1894) A.C. 189; and *Attorney-General for Ontario v. Attorney-General for the Dominion* (1896) A.C. 348. 40
- (4) There can be a domain in which provincial and Dominion legislation may overlap, in which case neither legislation will be *ultra vires* if the field is clear, but if the field is not

clear and the two legislations meet the Dominion legislation must prevail: see *Grand Trunk Ry. of Canada vs. Attorney-General of Canada* (1907) A.C. 65.

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Applying these four tests, I find—

1st. That aviation, even if designated as aerial navigation, is not a subject enumerated in section 91 or in subsection 10 of s. 92. The works and undertakings connecting a province with another province or extending beyond the limits of the Province are “physical things, not services,” as pointed out by Lord Atkinson in *City of Montreal v. Montreal Street Railway* (1912) A.C. p. 342. The air lines cannot be assimilated to railways as physical things and this authority applies with singular force to exclude federal control of aviation, unless the latter is assimilated to interprovincial lines of navigation.

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2nd. Nothing before us shows conclusively that it is unquestionably a matter of national interest and importance and that it does not trench on any of the subjects enumerated in sec. 92 or that it has attained such dimensions as to affect the whole body politic of the Dominion.

3rd. My first finding disposes of the third test; this legislation is not necessarily incidental to effective legislation by Parliament upon a subject of legislation expressly enumerated in sec. 91, amongst others “navigation and shipping, militia, military and naval service and defence, regulation of trade and commerce.” Perhaps an all powerful national air-board and an all-inclusive national air code would be the desideratum if we were drafting *de novo* section 91, but under our peculiar dual form of government, it is difficult to see how such results can be accomplished without ignoring the federal constitution. Such legislation might be required in case of war, in time of extraordinary peril to the national life of the Dominion, but this Act was not passed for such an emergency, and it cannot be justified as an exception to the exclusive right of the Provinces to legislate concerning property and civil rights.

4th. This legislation, so far as property and civil rights are concerned, does not touch a domain where provincial and Dominion legislation may overlap. The ownership of the air space is *prima facie* a subject within the exclusive jurisdiction of the Provinces, and they alone can impose restrictions to the rights of the owners of land and to those of the owners of aircraft. Almost every Federal power could be somewhat more conveniently exercised if some portion of Provincial sovereignty were added to it. This rule for the extension of the federal power should require a strict necessity for its application. If mere convenience is to be a sufficient cause, then assuredly the reservation to the provinces of the control of property and civil rights is meaningless and futile. As pointed out by my brother Duff, *re Montreal Street Railway vs. City of Montreal*,

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43 Supreme Court Reports, p. 232, "Division of legislative authority is the principle of the B.N.A. Act, and if the doctrine of necessarily incidental powers is to be extended to all cases in which inconvenience arises from such a division, that is the end of the federal character of the Union," and paraphrasing Lord Atkinson's statement in the same case (A.C. 1912, p. 346): "It cannot be assumed that the Legislatures will decline to co-operate in a reasonable way to effect an object so much in the interest of both the Dominion and the province as the regulation of air traffic."

Although the Lord Chancellor in the Edwards case says that "the B.N.A. Act should be on all occasions interpreted in a large, liberal and comprehensive spirit, considering the magnitude of the subjects with which it purports to deal in very few words", it would seem by the above-quoted reservation that he makes that statement non-applicable to the question of the legislative competence either of the Dominion or its Provinces; judges cannot afford to give to a text which is clear a liberal and large interpretation in favour of Dominion power to the detriment of the Provinces, and vice-versa. 10

I would therefore say, with respect for those who believe that our constitution must be stretched to meet new conditions as they arise in the life of the people, that aviation was not foreseen nor considered when the enumeration of 91 was made, and that the words "property and civil rights" in section 92, are wide enough to give power to the Provinces of legislating, with the required uniformity, to ensure safe and satisfactory regulation of aircraft throughout the Dominion and conform to the new requirements of International Law since the sovereignty of each State over the air space above its territory has been proclaimed in 1919. 20

I would therefore answer question 3 in the negative.

Question 4 as framed I would answer in the negative under sections 91 and 92 of the B.N.A. Act; but, under 132, I would refer to my answers to questions 1 and 2. 30

QUESTIONS 1 AND 2.

Reaching the above conclusions with respect to the application of sections 91 and 92, I must now come to the main contention of the Dominion that section 132 of the Act validates the impugned provisions.

QUESTION 1.

Section 132 provides that—

"The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada or of any province thereof, as part of the British Empire, towards foreign countries arising under treaties between the Empire and such foreign countries. 40

As already stated, the treaty was signed on behalf of the empire on the 13th October 1919 and ratifications deposited in Paris on June 1st, 1922.

The Air Board Act was assented to on the 6th of June 1919, before the Parliament of Canada could invoke article 132 to secure the power of performing the obligations of Canada under a treaty which was not then in existence. It requires an existing treaty to give validity to legislation, not merely a prospective convention.

10 But the Act has been re-enacted as chapter 3 of the Revised Statutes of Canada (1927) which, under proclamation, came into force and have effect as law on, from and after the first day of February 1928 pursuant to the Act respecting the Revised Statutes of Canada, assented to on 19th July, 1924. At both the latter dates, the convention was in force. But at no time has the Parliament of Canada, as they had done for the Japanese Treaty, passed an Act providing that the treaty should be thereby sanctioned and declared to have the force of law in Canada.

I would therefore answer the first question as drafted in the negative. The Parliament and Government of Canada may have paramount, though not exclusive, legislative and executive authority for performing the obligations of Canada, or any province thereof, under the Convention, but
20 have not yet found it necessary or proper to exercise such legislative power.

QUESTION 2.

We have not before us the elements required to answer question 2 in the affirmative. Is Parliament or this Court to decide what legislation may be *necessary or proper* for performing the obligations of Canada under the Convention?

By inserting the words "or of any province thereof" in clause 132, the Fathers of Confederation seem to imply that some of the Treaty obligations might, as an internal matter, be considered as within the jurisdiction of Canada as a whole, and others as within the provincial competence.

30 If the Provinces, or any of them, refuse or neglect to do their share within their legislative ambit with sufficient uniformity to honour the signature of the Dominion, then the question may come before Parliament which might, in a preamble explain why it had become either necessary or proper, to legislate and make regulations under the special powers given by 132. This has not yet been done and, with the data submitted, I cannot answer the question in the affirmative. Moreover, if the words "generally" in the question are equivalent to "in every respect", the answer is in the negative.

40 Pursuant to the statute, I certify the above as my opinion and reasons for the information of the Governor in Council.

Ottawa, October 3rd, 1930.

(Sgd.) L. A. CANNON, J.

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*In the
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Order in Council granting Special leave to Appeal to His Majesty in Council.

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Order in
Council
granting
special leave
to appeal to
His Majesty
in Council,
20th March
1931.

AT THE COURT AT BUCKINGHAM PALACE

The 20th day of March 1931.

PRESENT :

THE KING'S MOST EXCELLENT MAJESTY.

* * * * *
WHEREAS there was this day read at the Board a Report from the
Judicial Committee of the Privy Council dated the 17th day of March 1931
in the words following, viz. :—

“ WHEREAS by virtue of His late Majesty King Edward the 10
Seventh's Order in Council of the 18th day of October 1909 there
was referred unto this Committee a humble Petition of Your
Majesty's Attorney-General of Canada in the matter of an Appeal
from the Supreme Court of Canada in the matter of a reference as
to the respective legislative powers under the British North America
Act 1867 of the Parliament of Canada and the legislatures of the
Provinces in relation to the regulation and control of aeronautics in
Canada between the Petitioner Appellant and Your Majesty's
Attorney-General of the Province of Ontario Your Majesty's Attorney- 20
General of the Province of Quebec and Your Majesty's Attorney-
General of the Province of Manitoba Respondents setting forth
(amongst other matters) that the Petitioner desires special leave to
appeal to Your Majesty in Council from the Judgment of the
Supreme Court dated the 7th October 1930 answering questions
referred to the Court for hearing and consideration by Order of His
Excellency the Governor-General in Council dated the 15th April
1929 P.C. 367 pursuant to the provisions of section 55 of the Supreme
Court Act touching the respective legislative powers under the
British North America Act 1867 of the Parliament of Canada and 30
of the legislatures of the Provinces in relation to the regulation and
control of aeronautics in Canada : that the questions so referred
were : (1) have the Parliament and Government of Canada exclusive
legislative and executive authority for performing the obligations of
Canada or of any Province thereof under the Convention entitled
' Convention relating to the Regulation of Aerial Navigation ' ?
(2) is legislation of the Parliament of Canada providing for the
regulation and control of aeronautics generally within Canada
including flying operations carried on entirely within the limits of a
Province necessary or proper for performing the obligations of Canada
or of any Province thereof under the Convention aforementioned 40
within the meaning of s. 132 of the British North America Act

1867? (3) has the Parliament of Canada legislative authority to enact in whole or in part the provisions of s. 4 of the Aeronautics Act chapter 3 Revised Statutes of Canada 1927? (4) has the Parliament of Canada legislative authority to sanction the making and enforcement in whole or in part of the regulations contained in the Air Regulations 1920 respecting (a) the granting of certificates or licenses authorizing persons to act as pilots navigators engineers or inspectors of aircraft and the suspension or revocation of such licenses (b) the regulation identification inspection certification and licensing of all aircraft and (c) the licensing inspection and regulation of all aerodromes and air stations? : that the facts are set forth in the Petition : that on the hearing of argument upon the questions before the Full Court (composed of Anglin C.J. and Duff Newcombe Rinfret Lamont Smith and Cannon JJ.) Counsel were heard on behalf of the Petitioner and the Respondents: that on the 7th October 1930 the Court delivered judgment as follows: 'To Question No. 1 as framed the Court unanimously answers "No"; 'to Question No. 2 the answer of the majority of the Court (the Chief Justice and Duff Rinfret Lamont Smith and Cannon JJ.) is construing the word "generally" in the question as equivalent to "in every respect" the answer is "No"; to Question No. 3 the answer of the majority of the Court (the Chief Justice and Duff Newcombe Rinfret Lamont and Cannon JJ.) is construing the question as meaning "Is the section mentioned as it stands validly enacted?" the answer is "No"; but if the question requires the Court to consider the matters in the enumerated sub-heads of s. 4 of the Statute as severable fields of legislative jurisdiction then the answers are to be ascertained from the individual opinions or reasons certified by the Judges; as to Question No. 4 the answers are to be ascertained from the individual opinions or reasons certified by the Judges': that the reasons for Judgment delivered by the Judges of the Supreme Court are reported in (1930) S.C.R. pp. 663 to 720 and in them the Judges respectively dealt with the questions referred as set out in the Petition: that the Petitioner argued in the Supreme Court and desires to submit to Your Majesty in Council that the questions so referred to the Supreme Court ought to be answered severally in the affirmative: And humbly praying Your Majesty in Council to order that the Petitioner shall have special leave to appeal from the Judgment of the Supreme Court dated the 7th October 1930 or that Your Majesty in Council may be pleased to make such further or other Order as to Your Majesty may appear fit :

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"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to

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enter and prosecute his Appeal against the Judgment of the Supreme Court of Canada dated the 7th day of October 1930 :

“ AND Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondents) as the Record proper to be laid before Your Majesty on the hearing of the Appeal.”

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution. 10

Whereof the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

M. P. A. HANKEY.

In the Privy Council.

No. 38 of 1931.

On Appeal from the Supreme Court of Canada.

IN THE MATTER OF A REFERENCE AS TO THE
RESPECTIVE LEGISLATIVE POWERS UNDER THE
BRITISH NORTH AMERICA ACT, 1867, OF THE
PARLIAMENT OF CANADA AND THE LEGISLA-
TURES OF THE PROVINCES IN RELATION TO
THE REGULATION AND CONTROL OF AERONAUTICS
IN CANADA.

BETWEEN

THE ATTORNEY-GENERAL OF CANADA

Appellant

AND

THE ATTORNEY-GENERAL OF THE PRO-
VINCE OF ONTARIO, THE ATTORNEY-
GENERAL OF THE PROVINCE OF QUEBEC
AND THE ATTORNEY-GENERAL OF THE
PROVINCE OF MANITOBA *Respondents.*

RECORD OF PROCEEDINGS.

CHARLES RUSSELL & Co.,

37, Norfolk Street,

Strand, W.C.2.

For the Appellant.

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