

CONGRESS ON LAWS OF AVIATION.

As our readers are aware the Seventh International Congress on the Laws of Aviation was held at Lyons, France, during the period that elapsed between September 28th and October 3rd, last year. Mr. Norman MacKenzie, a member of the staff of the International Labour Office, Geneva, represented the Canadian Bar Association at the Congress. We are privileged to make some excerpts from Mr. MacKenzie's report to the Association, and we print them below, believing that they will be of considerable interest to our readers.

... "Two rather fundamental questions were raised in regard to assurance. The first was whether the whole question of aerial assurance was one that should be dealt with by international conventions, or whether it was one for local arrangements within the individual countries or states themselves. I personally—because of temperament and training and because of the federal system of government under which we live in Canada—felt rather strongly that the question was one that *for the time at least* could be best dealt with by local measures within the country, rather than by trying to apply international conventions to the situation. However, this view was not held by the majority, although a number were of the same opinion as I.

The Congress then went on to discuss whether assurance should be made obligatory or not. After much debate a vote was taken and it was decided that, for practical reasons, assurance should be voluntary rather than obligatory. With this decision I agreed.

The discussion on assurance did not end until Thursday evening, so that the question of the laws governing the Red Cross work of aeroplanes (*l'avion sanitaire*) was limited to Friday morning.

This was discussed in some detail, but, as one delegate pointed out, it was a question that had a practical, a political and a technical side, as well as a juridical one, and while as a jurist he was prepared to discuss it he felt that neither the time nor the subject was ripe for the codification of laws relating to it.

So the matter was referred over to the Twelfth International Red Cross Congress now meeting in Geneva, which, as the enclosed press clipping will show, has accepted almost without change of any

sort the texts relating to "Red Cross Aviation" laid before our Congress by Dr. Des Gouttes and Dr. Julliot."

. . . "As to *general impressions*: The first thing that impressed itself upon me was the weakness of the Anglo-Saxon element in the Congress. There was but one English solicitor, there in his private capacity; two Americans, one from the Naval, the other from the Army Air Service (both airmen and not jurists) and myself. We four to the best of my knowledge were the sole representatives of the English speaking world, and of the four the two Americans were there only as observers.

This is perhaps natural in view of the way Anglo-American jurisprudence has developed. It seems to have rather an inborn aversion to anything that savours of codification in advance, and prefers to deal with actual circumstances as they arise. There is a weakness in this position, however, for the world in its search for some guidance in this new field of law is almost certain to use whatever it finds at hand, and if we are not "in at the making of these guides" we cannot but expect to be in a position of decided disadvantage.

In contrast to the weakness of the Anglo-Saxon representation was the strength of the French delegation. Of course the Congress was held in France and the idea behind it evolved in France and the only language spoken is French. But in spite of these facts it does provide cause for mental enquiry as to the reasons for the strength of French interest in this method of dealing with the laws of aviation and the lack of interest manifested by the Anglo-Saxon world.

On the absence of delegates from Germany, Austria and Russia I need scarcely comment.

Another thing that impressed me was the development that has already taken place in the field of "aerial jurisprudence." Since 1909, when the first congress was held in Paris under the distinguished patronage of President Millerand, the growth has been extensive and rapid. In all seven congresses of jurists have been held, and these, together with the technical congresses of experts and the conventions drawn up by the plenipotentiaries of the nations, are rapidly creating a very new and very interesting branch of private and international laws and regulations.

Another point of interest was the tendency, on the part of some members of the Congress at least, to apply to the new problems of

aviation their knowledge of maritime law. There is much in favour of this comparison, for in many points maritime and aerial traffic have features in common; but there is the danger, too, of applying methods that have grown up over a great many years in one sphere of law to a new and in some respects very different sphere.

But perhaps the thing that most strongly impressed me about the Congress was the realization that for the time being the laws of aviation, in so far as they affect Canada, are largely a matter of mutual arrangement between herself and the United States of America.

The airships and aeroplanes that have crossed either Atlantic or Pacific can be numbered on one's fingers and of these practically all have been either British or American.

And so it seems to me that for Canada to enter into any binding conventions with the European powers on matters of aerial regulations to which the United States is not a party would be very unwise—almost as if we undertook to apply to the inland shipping of the Great Lakes a maritime convention negotiated with the Baltic States for the regulation of deep sea navigation in which the United States had no share.

And so I felt that while, as a representative of the Canadian Bar Association, I had perfect freedom to take part in the discussions and in the formulation of plans, I did not feel that I should vote, save on questions of principle, for my vote might mean the acceptance or rejection of some measure affecting aerial navigation and formalities here in Europe, in which Canada has little direct interest. At the same time it would place upon me at least the moral duty of attempting to carry out the views in favour of which I voted; and in face of American abstention I considered this was practically impossible.

Not that I consider that Canada should abstain from taking part in such congresses. On the contrary I feel that we have much to gain from them. It gives us a measure of recognition by continental jurists that is not to be disregarded; it keeps us in touch with the progress of the laws of aviation; and, above all, it does provide us with a ground work of experience and information that will prove invaluable in the development of our own 'Jurisprudence of Aviation.'

Of course I realize that these congresses on aviation are unofficial in character and bind no one and no government, but one has only to look over the list of delegates to realize that the diplomatic

services (i.e., the Departments of Foreign Affairs) are interested in the work done by the Congress and undertake to see that their governments are well represented.

Another point that occurred to me was the difficulty that is continually cropping up, even in the field of aviation, of undertaking international commitments that may affect the interests guaranteed to the Provinces by the B.N.A. Act. A Federation has advantages, but for effective action in external affairs it does create difficulties.

However, there are other States in much our position, and it has at least the one advantage that it is practically impossible to undertake any grave international responsibility without due consideration.

One thing, as already pointed out, did puzzle and impress me—and for it I have as yet no real reason—namely, the lack of interest in this Congress, and I believe the others as well, shown by Great Britain, officially and unofficially. There is a committee in Great Britain to deal with this whole subject, two of the members of which, Professor A. Pearce Higgins and Professor Hazeltine, I have had the pleasure of studying under and of knowing as friends; but apart from articles written and some research done there seems to have been little or no interest by representatives of Great Britain in the work of the Congress. (I except, of course, Mr. Perowne, who has been in the movement for the codification of the laws of aviation from the very beginning.)

But enough of generalizations.”

. . . “If I may be permitted to make a few suggestions:—I consider that the subject is one that is worthy of continued interest by the Canadian Bar Association and, if possible, of the continued participation of representatives in future congresses. In all cases this representative (or representatives) should have at least a working knowledge of the French language, in which all the proceedings are conducted without translations.

I would suggest, too, the appointment of a small Committee from among your members (or a single member) who may be interested in the laws of aviation. This Committee or individual might then undertake to be responsible for keeping up with the changes in the laws of aviation, and at the same time should keep in touch with other similar committees in other countries and with the international committee which is responsible for the holding of the congresses and other matters.

This would be greatly facilitated by the establishment of a small library on the jurisprudence of aviation, or even the careful cataloguing of the works on that subject. This might be done in conjunction with one of the university libraries in Canada, and it should not be very expensive, for aviation is still in its infancy.

I would suggest, too, the possibility of arranging for a young Canadian law student, who may be doing graduate work, to undertake some research in that field and eventually to write a thesis on it. I know personally that nearly every year there are one or more Canadian law students at the Harvard Law School, and one of these might undertake this.

I do not know if scholarships are within the scope of the activities of the Bar Association, but, if they are, I suggest that one might be given to some of the abler of recent law graduates to enable him to undertake this work and become an authority upon it, and thus be available for information at any time.

I write all this with the thought that ere long aviation between Canada and the United States may become a very important method of transportation, and in framing regulations to govern this traffic and to solve the difficulties that may arise, it will be of great assistance to have at hand a little group of legal experts who know all there is to know of the history and present stage of development of aviation (from a legal point of view) in other countries.

Many other suggestions I might add to these, but all are more or less of a general nature that will occur to any lawyer who considers the subject seriously—save, perhaps, the opinion I have already indicated that in these congresses, which are largely concerned with the European situation (and naturally so), the Canadian representative should confine himself to observation, to discussion of the questions arising and to voting on matters of principle—particularly as long as the United States of America sends only observers who take no part in the proceedings and do not commit themselves or their country in any way. With this in mind I explained to the officers of the Congress that the above considerations, together with the fact that it had been impossible for the Canadian Bar Association to send me any definite instructions as to what position they desired me to take, guided my participation in the discussion and voting.

I also took special pains to ensure that it was realized that I represented the Canadian Bar Association and not the Canadian Government, and incidentally to thank them personally and on your behalf for their courtesy and hospitality.

With these rather inadequate comments upon what I feel to be a very interesting and very important development in jurisprudence,

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