79 So. 61; *Lawrence v. Stone* (1909) 160 Ala. 382, 49 So. 376. But the majority of modern cases reach the opposite result. *Taylor v. Hunstead & Taylor* (Tex. Com. App. 1924) 257 S. W. 232; *Torrey v. Bruner* (1910) 60 Fla. 365, 53 So. 337. Missouri has uniformly held in contract cases that the judgment is valid against the defendants properly served. *Nations v. Beard* (1924) 216 Mo. A. 33, 267 S. W. 19; *Boyd v. Ellis* (1891) 107 Mo. A. 394, 18 S. W. 29; *Williams v. Hudson* (1887) 93 Mo. 524, 6 S. W. 261; *Lenox v. Clark* (1873) 52 Mo. 115. The question presented by the principal case is whether there is sufficient reason to reach the opposite result in tort cases.

The reason given by the Missouri court in reaching its decision is that because of the statute of contribution an injustice would be worked by the other possible result. The statute, R. S. Mo. (1919) sec. 4223, reads as follows: "Defendants in a judgment founded on an action for a private wrong shall be subject to contribution, and all other consequences of such judgment, in the same manner and to the same extent as defendant in an action founded on contract. . . ." It is evident that the purpose of the statute was to give a right of contribution in tort cases equal to the right in contract cases. But as we have seen, the Missouri court will not in a contract case declare a judgment void against all defendants merely because some are not served, notwithstanding the right of contribution among joint obligors. Why this right of contribution should be given greater importance in a tort case is difficult to see, in view of the fact that the statute creating the right declares it to be the same as in a contract action. In either case the right exists whether or not the joint obligors or tort-feasors are joined; and since it was not necessary that they be joined in the first instance, failure to serve one should not invalidate the judgment against the others.

It is true of course that no judgment against defendants improperly served should be recorded; but it does not necessarily follow that it should therefore be declared entirely void. The names of those not served should be striken from the record but the judgment alllowed to be good against those who have had their day in court. Against them the plaintiff has committed no error. J. A. G., '31.

TRESPASS BY AIRPLANE—EXTENT OF ESTATES IN LAND.—Plaintiff owned an estate next to defendant's air port, so located that planes frequently passed over plaintiff's land at low altitudes in landing and taking off. Being able to prove no actual damage, plaintiff sought to enjoin what he alleged was a technical trespass to his land. The court recognized the trespass but denied the injunction on the grounds that planes never pass twice in the same place, that there was no danger of a prescriptive easement, and that no damage was shown. *Smith v. New England Aircraft Co.* (Mass. 1930) 170 N. E. 385.

At common law, property in land was said to extend upward to infinity. *"Cujus est solum, ejus est usque ad coelum et ad infernos."* Co. Litt. 4a; 17 C. J. 391; Broom, LEGAL MAXIMS (9th ed. 1924) 260; *Hannabalson v.*

Sessions (1902) 116 Iowa 458, 90 N. W. 93; *Butler v. Frontier Tel. Co.* (1906) 186 N. Y. 486, 79 N. E. 716. In England a different rule was adopted by statute in 1920, flight being declared not to be a trespass at any height. 10 & 11 Geo. V. c. 80, sec. 9 (1920); *Roedean School v. Cornwall Av. Co., Ltd.* (1926) unreported but noted 70 SOL. J. 787; Logan, AIRCRAFT LAW MADE PLAIN (1928) 17.

The Air Commerce Act of 1926, 44 Stat. 568, forbids flight at an altitude less than 500 feet, and Massachusetts has a similar law. Mass. Laws 1928, p. 496. The holding of the court is therefore clearly correct; but in refusing to predict what it would do if the altitude were over 500 feet the court declares that the Latin maxim is not law. "It would be vain to treat property in airspace upon the same footing as property which can be seized, . . . built upon, and utilized in its every feature. The experience of mankind, although not necessarily a limitation upon rights, is the basis upon which airspace must be regarded." The doctrine of the *Smith* case may become settled law so that the air, like the sea, will be free to all navigators. D. K. B., '31.