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## Digest of Recent Cases

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## DIGEST OF RECENT CASES

### AIR FORCE JET CANOPY—CIVILIAN ON GROUND KILLED— FEDERAL TORT CLAIMS ACT—NEGLIGENCE

#### *Bright v. United States*

149 F. Supp. 620 (E.D. Ill. Nov. 5, 1956)

While approaching an airport for a landing, the pilot of an Air Force jet plane flew into thunderstorms which were not previously reported to him by the airbase personnel. When the pilot bailed out after losing control of the plane, the ejected jet canopy fell to the ground and killed the plaintiff's intestate. In a wrongful death action under the Federal Tort Claims Act, liability was imposed upon both Scott Air Force Base and the jet pilot. The court, sitting without a jury, found that the airbase was negligent in failing to inform the pilot of the storm. Moreover, the pilot was considered negligent for his failure to fly around the storm and, once having entered the turbulence, for neglecting to prepare himself for any eventuality which would prevent him from losing control of the aircraft. Such negligence was regarded as the proximate cause of the decedent's death and the doctrine of *res ipsa loquitur* was held inapplicable.

### ANTI-TRUST LAWS—RAILWAY JOINT MILITARY PASSENGER AGREEMENT—SUPPLEMENTAL AIR CARRIERS

#### *Aircoach Transportation Assoc. v. A.T. & S.F. Ry. Co.*

5 CCH Aviation L. Rep. 17,472 (D.C. July 5, 1957)

The railroad practice of offering concerted quotations of special rates to military personnel under the Joint Military Passenger Agreement has been declared illegal *per se* as violating the anti-trust laws. In a suit brought by supplemental air carriers, the United States District Court for the District of Columbia granted a motion for summary judgment except as to the question of treble damages, and issued a preliminary injunction against the defendant railroads. It was further held that immunity from the anti-trust laws was not conferred by the Interstate Commerce Act and that primary jurisdiction over the subject matter of the suit was not exclusively vested in the Interstate Commerce Commission.

### AIRCRAFT COLLISION WITH POWER LINES— NO ABSOLUTE LIABILITY

#### *Southern California Edison Co. v. Coleman*

5 CCH Aviation L. Rep. 17,415 (Cal. Super. April 29, 1957)

While approaching an airport for landing purposes, a sudden downdraft caused the defendant's plane to collide with the plaintiff's power lines. In a suit for damages to its equipment, the power company alleged that irrespective of any negligence on the part of the pilot, as a trespasser to the power lines, the defendant was absolutely liable for damages resulting from the collision. The trial court's judgment for the defendant was grounded upon the view that any trespass which existed was unavoidable, as the downdraft was considered an act of God. In affirming this judgment, the court emphasized that there may be no liability without negligence. Whereas absolute liability was formerly imposed upon aircraft operators, flight is no longer considered an ultrahazardous activity if the airplane is being properly handled by a competent pilot.