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# Digest of Recent Cases

# DIGEST OF RECENT CASES

*NEGLIGENCE — CORPORATE FUNCTION*

Brumett V. City of Jackson, Mississippi
— Miss. — 51 So. 2d 52 (March 12, 1951)

The city of Jackson furnished public parking space and tie down service for a stated monthly charge. The airport was negligent in using rotten rope loosely tied and as a result the plane was blown over and practically demolished. The city was held liable for this negligence notwithstanding the posting of a notice at the airport, "Not responsible for loss of property, theft, or other causes," and notwithstanding a city ordinance to the effect that the city would not be liable for accidents or injury to equipment from any cause. The decision was based on the theory that in operating the airport the city was engaged in a corporate and not a governmental function.

*RELEASE FROM LIABILITY — EQUITY*

Heuter V. Coastal Air Lines, Inc.
— N.J. — 79 Atl. 2nd 880 (March 20, 1951)

The plaintiff was allowed to recover damages for injuries received in an airplane crash even though he had signed a release. It was held that inasmuch as the plaintiff could not read and did not know what he was signing, the release had been obtained by fraud and was invalid. Although the mere failure of the signer to comprehend the effects of his act may not be sufficient to invalidate the release at law, equity can give relief where upon all the evidence it appears that unfair and inequitable advantage was taken by the company.

*INDEPENDENT CONTRACTOR — NEGLIGENCE*

Barnes et al V. Northwest Airlines, Inc.
— Minn. — 47 N.W. 2d 180 (March 22, 1951)

A civil air-carrier crashed while ferrying army personnel. Liability was claimed by certain of the injured personnel against the air carrier for negligence on the grounds that the air carrier was acting not as an employee of the government, which would limit its liability, but as an independent contractor in its performance of military services. Although negligence was not proved and the case dismissed on that ground, the court indicated that under the terms of the "overall contract" between the government and the carrier whereby the carrier agreed to perform for the United States, at its direction, military services at such time as the government would direct by "Service Orders", the cost to be paid by the United States and the carrier to be paid a fixed fee for each project, the relationship between the government and the defendant air carrier was one of employer and employee, not that of independent contractor with liability for damages incurred in the course of such operations.

*TAXES — AUTHORITY OF COUNTY*

People Ex Rel. Downs V. Scully
— Ill. — 97 N.E. 2d 829 (March 22, 1951)

An objection to a tax levied for a county airport was sustained on the grounds that where the ballot used in the election approving the tax failed to state the number of years for which the proposed tax was to be levied as required by the County's Act.

*DAMAGES — RECOVERY — BAILMENT*

Johnson Et Al V. Central Aviation Corp; Gross
— Cal. — 227 p. 2nd 114 (March 27, 1951)

Where an aviation school corporation's plane, being taxied by a student pilot collided with plaintiff's plane which was to be sold to the aviation school, damages could be collected for cost of repairs, for the loss of the use of the plane by plaintiffs (because the plaintiff would have to hold the plane for a longer time than would have otherwise been the case in order to make repairs) and for profits through the contemplated sale of the plane to the school. However, recovery can be had only against the pilot and not against the aviation corporation because the pilot as a student was a bailee and not an employee or agent of the corporation.

*CORPORATIONS — CREATION — REVENUE BONDS — SEVERABILITY*

Meisel v. Tri-State Airport Authority
— W. Va. — 64 S.E. 2d 32 (March 1, 1951)

Tri-State Airport Authority was created pursuant to an agreement among several cities by a special act of the legislature of West Virginia. In order to obtain funds, revenue bonds were issued. The plaintiff brought suit to challenge the constitutionality of the act by which the authority was created on the grounds that Article XI of the state constituion required that all corporations be created by general law and prohibited the creation of corporations by special law. Plaintiff also sought to enjoin the issuing of the revenue bonds.

The court held for the defendant, ruling that the authority was a corporation formed for a public as distinguished from a private purpose and therefore could properly be created by direct legislative action. In addition the court upheld the validity of the revenue bonds pursuant to the special legislative enactment, concluding that no general law of West Virginia was sufficient to provide the Authority with means for raising sufficient funds and that delegation by the legislature to the corporation to issue the bonds was necessary and valid. Finally, the court held that the provisions of the statute were severable so that even though a section of the Act permitting distribution of assets to members of the Authority was probably unconstitutional, the rest of the Act was nevertheless valid.

*DECLARATORY JUDGMENT — COMMON CARRIER — CROP DUSTING*

Marsh Aviation Co., Inc. V State Corporation of New Mexico
— New Mexico — 228 P. 2d 959 (March 15, 1951)

In a suit brought by plaintiff aviation company for declaratory judgment, it was held that an aviation company which is engaged solely in crop dusting services is not to be defined as a common carrier and need not obtain a license from the State Corporation Commission. The reasoning of the court was that the aviation company was engaged in the business of selling special services of crop dusting to farmers and the carrying of insecticides pursuant thereto did not make the company a common carrier.

*CONDEMNATION — LOSS OF VALUE*

City of Fresno V. Hedstrom
— Cal. App. — P 2d 809 (April 13, 1951)

Where the government condemned part of a parcel of land for an airport, the court upheld an award of $6,000 as severance damages to the remaining portion of the land because it was shown that the condemnation directly caused a loss in market value to the remaining portion due to the adverse effect of low flying aircraft.

*COLLECTIVE BARGAINING — RAILWAY LABOR ACT*

Hettenbaugh Et Al V. Airline Pilot's Association International
— Fed. — 5th Cir. (May 1, 1951)

Certain pilots employed by National Airlines who were not members of an Airline Pilots voluntary unincorporated collective bargaining association charged wrongful discrimination against them by the association. The court held that the complaint did not state a Federal question on the rationale that even though National Airlines was subject to the Railway Labor Act there was no violation of any right guaranteed by that act. The court ruled that the act does not attempt governmental regulation of working conditions, but is interested only to see that disagreement as to conditions does not reach the point of interfering with interstate commerce.

*TITLE — EMINENT DOMAIN*

Swetland v. Curry Et Al
— Fed. — 6th Cir. — (May 9, 1951)

The District Court had entered a decree against Curtiss Airports Corporation, "their agents, or successors, and all persons and corporations, private or municipal deriving title from Curtiss," enjoining them from operating an airport on a certain piece of property owned by complainant. The court held, however, that where this land was later appropriated by the county for use as an airport, the county commissioners were not in contempt of the injunction inasmuch as the county under its power of eminent domain took a completely new and original title rather than a derivative one, the county commissioners were not a party to the original injunction suit and weer not included in the District Court decree.

*CONTRACT — INSURANCE — RETURN OF TRIP INSURANCE TICKET*

Fidelity and Casualty Co. of New York v. Smith
Fed. — 10th Cir. (1951)

Mere failure to actually turn in an original return trip insurance ticket when buying a new one because of the necessity of making a return trip on a different line from the one of original transportation did not void the original policy which gave protection for the round trip as this exchange was not expressly or impliedly made a condition of the policy determining liability.