Journal of Air Law and Commerce

Volume 2 | Issue 3 Article 8

1931

Digests

DIGESTS

AIRCRAFT—DEATH BY WRONGFUL ACT—NEGLIGENCE—COMMON CARRIERS. —[New York]—Plaintiff's intestate was killed in the crash of an airplane in which she was a passenger. On the day of the accident, the weather was clear, with a northeast wind of not over fifteen miles velocity. Just before the crash the plane was seen to turn and dip its right wing. Judgment in the trial court was for the defendant, (*Seaman* v. *Curtiss Flying Service*, [1929] U. S. Av. Rep. 48) and plaintiff appeals. *Held*, that judgment should be reversed because, in addition to other errors, there was a failure to charge the doctrine of *res ipsa loquitur*. *Seaman* v. *Curtiss Flying Service, Inc.*, (Dec. 29, 1930) 247 N. Y. S. 251 (App. Div.)

For discussions of the applicability of the doctrine of *res ipsa loquitur* to airplane accidents, consult: Kennedy, Note, (1931) 2 JOUR. OF AIR LAW, 71; Harper, Note, (1930) 1 Air L. Rev. 478; Allen, Transportation by Air and the Doctrine of Res Ipsa Loquitur, (1930) 16 A. B. A. J. 455.

AIRPORTS—EMINENT DOMAIN—JUST COMPENSATION—NECESSITY OF COMPENSATING OWNER OF LAND TAKEN FOR INJURY TO BUSINESS CONDUCTED THEREON.—[Rhode Island]—Plaintiff, acting under the authority of R. I. Pub. Laws 1929, c.1353, had condemned property belonging to defendant, on which she conducted a poultry business, for use as a state airport. Defendant, admitting that the lands were taken for a "public purpose", and admitting also that the statute under which plaintiff had acted made adequate provision for compensation to her for the value of the land taken, nevertheless refused to surrender possession on the ground that the statute was unconstitutional because it failed to provide for compensation to her for the injury thereby occasioned to the business conducted by her on the land taken. In an action of trespass and ejectment brought by plaintiff to obtain possession, it was *held*, that, since the business was not taken, but might continue to be conducted on other land, there was no constitutional requirement that compensation be made for any incidental loss. *State Airport Commission* v. *May*, (R. I. Nov. 17, 1930) 152 Atl. 225.

AIRPORTS—MUNICIPAL CORPORATIONS—TORTS—OPERATION OF A MUNICIPAL AIRPORT BY A CITY AS A PRIVATE FUNCTION.—Plaintiff was injured by a truck driven by an employee of the defendant city. At the time of the accident the employee was engaged in work relating to the building and maintenance of an airport owned by the defendant. *Held*, that the defendant was engaged in a "proprietary" function while operating the airport and was therefore liable for torts committed in its operation. *Coleman* v. *City of Oakland*, 64 Cal. App. Dec. 73, 295 Pac. 59 (Dec. 30, 1930).

It is well settled that, in the absence of a statute expressly conferring liability, a city is liable only for torts committed in a private or proprietary capacity, *Scibilia* v. *Philadelphia*, 279 Pa. 549, 124 Atl. 273, 32 A. L. R. 981 (1924); Burdick, Torts, 4th ed. 1926, 131. It has been held that the operation of an airport is a proper park function: *City of Wichita* v. *Clapp*, 125 Kan. 100, 263 Pac. 12 (1928); *McClintock* v. *City of Roseburg*, 127 Ore. 698, 273 Pac. 331 (1929); (1931) 2 JOUR. AIR LAW 104; Cal. Stats. 1927, c. 267, §1, provides that "any land previously acquired for park purposes may be used for any of the purposes owning and operating airports in this section specified, it being specifically declared that the purposes specified in this section shall constitute park purposes"; and the California rule is that the operation of parks is a "governmental" and not a "proprietary" function. *Keller* v. *City of Los Angeles*, 179 Cal. 605, 178 Pac. 505 (1919). Disregarding this line of reasoning, however, the court in the instant case took the practical viewpoint that an airport falls naturally into the same classification

as such public utilities as electric light, gas, water, and transportation systems and especially docks and wharves, all of which are held to be "proprietary." Electric works: *Ruppe* v. *City of Los Angeles,* 186 Cal. 400, 199 Pac. 496 (1921); *DaVoust* v. *City of Alameda,* 149 Cal. 69, 84 Pac. 760, 5 L. R. A. [v. s.] 536 (1906); Waterworks: *South Pasadena* v. *Pasadena Land & Water Co.,* 152 Cal. 579, 93 Pac. 490 (1908) Streets: *Cleveland* v. *King,* 132 U. S. 295, 10 Sup. Ct. 90, 33 L. Ed. 334 (1889); Docks: *Seaman* v. *New York,* 80 N. Y. 239, 36 Am. Rep. 612 (1880). The only other decided case on the same specific question as that involved in the instant case used very similar reasoning and reached the same decision. *City of Mobile* v. *Lartigue,* 23 Ala. App. 479, 127 So. 257 (1930). The instant case would seem to be sound as a practical matter although perhaps inconsistent with the statute quoted, *supra,* and it fits in very well with what seems to be the modern view that governmental immunity in tort should be more limited: consult, Borchard, Governmental Liability in Tort, (1924) 34 Yale L. J. 1, 3; *see also,* Holdsworth, History of Remedies Against the Crown, (1922) 38 L. Q. Rev. 280, 295.

J. H. G.

AIRPORTS—WORKMEN'S COMPENSATION—CONFLICT OF LAWS.—[New York] —Decedent, a resident of the State of New York, was drowned while employed by the defendant in the construction of an airport in New Jersey. The contract of employment was entered into in New Jersey, and there was no evidence that decedent ever had been, or ever was to be, employed by the defendant in the State of New York. Defendant's main office was in New York. *Held,* that the New York workmen's compensation law was inapplicable, there having been no "employment within the state". *Baum* v. *New York Air Terminals, Inc., et al.,* (Nov. 13, 1930) App. Div., 245 N. Y. S. 357.

The court, in the instant case, follows an earlier decision by the Court of Appeals. *Matter of Cameron* v. *Ellis Construction Co.,* (....) 252 N. Y. defendant in the State of New York. Defendant's main office was in New 394, 169 N. E. 622. For a comprehensive discussion of the problems involved, consult: Dwan, Workmen's Compensation and the Conflict of Laws, (1927) 11 Minn. L. Rev. 329.

AVIATION—MOTOR VEHICLES—NATIONAL MOTOR VEHICLE THEFT ACT—AIRPLANES AS MOTOR VEHICLES.—The National Motor Vehicle Theft Act: Act of Oct. 29, 1919, c.89, §§1-5, 41 Stat. at L. 324, U. S. C. title 28, §408; makes the following definition: "The term 'motor vehicle' when used in this section shall include an automobile, automobile truck, automobile wagon, motor cycle, or any other self-propelled vehicle not designed for running on rails; . . ." The defendant was indicted under this statute for the transportation in interstate commerce of an airplane known by him to have been stolen. He contended that the words "motor vehicle" include only conveyances that travel on the ground; that an airplane is not a vehicle but a ship; and that, under the doctrine of *ejusdem generis,* the phrase "any other self-propelled vehicle" can not be construed to include an airplane. Affirming his conviction, the circuit court *held* that "the phrase, 'any other self-propelled vehicle,' includes an airplane, a motorboat, and any other like means of conveyance or transportation which is self-propelled, and is of the same general class as an automobile and a motor cycle." *McBoyle* v. *United States,* 43 Fed (2d) 273, 274 (C. C. A. 10th Cir. 1930). After granting certiorari: *McBoyle* v. *United States,* 51 Sup. Ct. 181, 75 L. Ed. (Adv. Ops.) 238 (1931), the Supreme Court of the United States *held:* ". . . in every day speech 'vehicle' calls up the picture of a thing moving on land. . . . The words 'any other self-propelled vehicle not designated for running on rails' still indicate that a vehicle in the popular sense, that is a vehicle running on land, is the theme." *McBoyle* v. *United States,* 51 Sup. Ct. 340, 341, 75 L. Ed. (Adv. Ops.) 433 (March 9, 1931).

The construction of statutes designating vehicles in general terms is a problem which has confronted many courts. Thus under statutes designating

"carriages" there was some difficulty in construing that term to include auto mobiles and other previously unknown vehicles of that type. *Parker* v. *Sweet*, 60 Tex. Civ. App. 10, 127 S. W. 881 (1910) (automobile included in statute exempting to the head of a family "one carriage"); *Doherty* v. *Town of Ayer*, 197 Mass. 241, 83 N. E. 677, 14 L. R. A. [N. s.] 816, 125 Am. St. Rep. 355 (1908) (automobile not a "carriage" under a statute requiring cities to keep highways safe for "carriages"); *Mallory* v. *Saratoga Lake Bridge Co., et al.*, 53 Misc. 446, 104 N. Y. S. 1025 (1907) (automobile not included under toll franchise giving right to charge for passage of animals and "vehicles"); *Commonwealth* v. *Hawkins*, 14 Pa. Dist. Ct. 592 (1905) (automobile included under statute regulating and licensing "every description of carriage"); *O'Donoghue* v. *Moon*, 90 L. T. 843, 68 J. P. 349, 20 T. L. R. 495 (1904) (motor bicycle included in a statute designating "carriage drawn or propelled by mechanical power"). Under statutes using the words "vehicle," "motor vehicle" and "other similar conveyances" or "the like," automobiles have been held to be included therein. *People* v. *Falkovitch*, 280 Ill. 321, 323, 117 N. E. 398, 400, Ann. Cas. 1918B 1077, 1079 (1917), saying that "a Ford Automobile . . . comes clearly within the statutory definition of a motor vehicle." *Schier* v. *State*, 96 Ohio St. 245, 117 N. E. 229 (1917). The term "vehicle" also includes motorcycles. *Pope* v. *Halpern*, 193 Cal. 168, 223 Pac. 470 (1924); *Bonds* v. *State*, 16 Ga. App. 401, 85 S. E. 629 (1915); *Dunklebarger* v. *McFerran*, 149 Ill. App. 630 (1909); *People* v. *Smith*, 156 Mich. 173, 120 N. W. 581, 21 L. R. A. [N. s.] 41, 16 Ann. Cas. 607 (1909); *Printz* v. *Sewell*, [1912] 2 K. B. 511, 106 L. T. 880, 76 J. P. 295, 10 L. G. R. 665, 28 T. L. R. 396, 23 Cox C. C. 23 (1912); *Rex* v. *Dublin Jst.*, [1904] 2 Ir. Rep. 698 (1904). However, such statutes have been held not to include bicycles: *Niedzinski* v. *Coryell*, 215 Mich. 498, 184 N. W. 476 (1921); *Haynes* v. *Sprague*, 295 Pac. 964, 965 (Ore. 1931); sleds: *Terrill* v. *Virginia Brewing Co.*, 130 Minn. 46, 153 N. W. 136, L. R. A. 1915E 1078, Ann. Cas. 1917C 453 (1915); trailers attached to trucks: *Liberty Highway Co.* v. *Callahan*, 157 N. E. 708 (Ohio 1926); nor street cars. *Northern Texas Traction Co.* v. *Weed*, 297 S. W. 534 (Tex. 1927). In *Parker* v. *Sweet*, 60 Tex. Civ. App. 10, 11, 127 S. W. 881 (1910), it it said that a more liberal construction should be placed upon a term where the case is civil in nature, but that the construction should be conservative in criminal cases. *Accord: Commonwealth* v. *Goldman*, 205 Mass. 400, 91 N. E. 392 (1910) (automobile not included under statute punishing use of "carriage" with intent to cheat or defraud); *State* v. *Thurston*, 28 R. I. 265, 66 Atl. 580 (1907) (automobile included under statute punishing "every person who shall ride or drive faster than a common travelling pace"). This distinction has not been the determining feature in all of the cases cited above, but it played a large part in the decision in the instant case, and the holding can be justified on the ground of the statute being penal in nature. Mr. Justice Holmes in the opinion said: "Although it is not likely that a criminal will carfully consider the text of the law before he murders or steals, it is reasonable that a fair warning should be given to the world in language that the common world will understand, or what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear. When a rule of conduct is laid down in words that evoke in the common mind only the picture of vehicles moving on land, the statute should not be extended to aircraft simply because it may seem to us that a similar policy applies, or upon the speculation that if the legislature had thought of it, very likely broader words would have been used." *McBoyle* v. *United States*, 50 Sup. Ct. 340, 341, 75 L. Ed. (Adv. Ops.) 453 (1931).

R. L. G.

PILOTS—WORKMEN'S COMPENSATION—EMPLOYER AND EMPLOYEE.—[California]—Decedent was killed in an accident while piloting an airplane, during an attempt to set a speed record. He had been selected by, but admittedly not employed by, the designer. There was evidence that he had

been promised compensation by an official of an oil company which was backing the flight, and evidence by that official to the contrary. The Industrial Accident Commission denied an award. On writ of review, it was *held* that, the evidence being conflicting, the determination of the Commission that no employment by the oil company had existed was binding and could not be disturbed by the court. *Gale* v. *Industrial Accident Commission, et al.*, (Dec. 23, 1930) 80 Cal. Dec. 633, 294 Pac. 391.