

1935

## Notes, Comments, Digests

Lorraine Arnold

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### Recommended Citation

Lorraine Arnold et al., *Notes, Comments, Digests*, 6 J. AIR L. & COM. 467 (1935)  
<https://scholar.smu.edu/jalc/vol6/iss3/11>

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maintain, operate, and regulate airports or landing fields for the use of airplanes and other aircraft either within or without the *limits of such cities, villages, and towns*, and may use for such purpose or purposes any property suitable therefor that is now or may at any time hereafter be controlled by such city, village, or town."

Section 5 of said Chapter 217 provides, in part, as follows:

"The governing body of any city, village, town, or county which has established an airport or landing field \* \* \* may construct, improve, equip, maintain, and operate the same, or may vest jurisdiction for the construction, improvement, equipment, maintenance, and operation thereof, in any suitable office, board, or body of such city, village, town, or county. The expenses of such construction, improvement, equipment, maintenance, and operation shall be a city, village, town, or county charge as the case may be. \* \* \*"

It is apparent from the above quoted portions of said Chapter 217 that any city or village in this state has the power to acquire, establish, construct, improve, equip, maintain and operate an airport or landing field either within or without the corporate limits of a city or village without submitting the proposition, as to whether such field shall be established and maintained, to a vote of the electors of such municipality. We take it that the erection and extension of poles and high lines of the corporate limits of the city to which you refer in your communication was for the purpose of lighting said airport, and we believe that the language of said Chapter 217, Laws 1929 is sufficiently broad to authorize such city or village to so erect such poles and high lines outside of the corporate limits of such municipality for the purpose of lighting such airport, without submitting such proposition to a vote of the electors.

You further inquire: Can Chapter 55, Session 1934, be construed to authorize the construction of a high line outside of the corporate limits of the municipality for the purpose of equipping a flying field with lights?"

You do not so state, but we assume that "the municipality" to which you refer in your third question is the City of Alexandria. As hereinabove indicated, said Chapter 55, Extra Session Laws 1933-34 applies only to villages coming within the class referred to in said chapter. In other words, said Chapter 55 does not apply to cities. However, we believe that said Chapter 55 is sufficiently broad to authorize a village coming within the class to which said chapter refers to construct and maintain a high line outside of the corporate limits of such village or villages for the purpose of equipping a village flying field with lights. Even if such village does not have the power to construct and maintain such high line for such purpose, under said Chapter 55, as indicated in our answer to your second question, we believe that villages throughout the state have the power to construct and maintain such line or lines for the purpose of lighting village airports, pursuant to said Chapter 217, Laws 1929. The latter act is a general act applying to all cities and villages throughout the state, except cities of the first class. (*Opinion of the Attorney General, December 27 1934*).

#### DIGESTS

AIR MAIL—CANCELLATION OF CONTRACTS—REMEDY AT LAW.—[Federal] Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia denied, April 1, 1935, by the United States Supreme Court. *Pacific Air Transport v. Farley*, 55 S. Ct. 637.

For opinion below, see — F. (2d) —; for digest of case see 6 JOURNAL OF AIR LAW 289 (1935).

LORRAINE ARNOLD.

AIR MAIL—CANCELLATION OF CONTRACTS—REMEDY AT LAW.—[Federal] This case is controlled by the opinion and decree in *National Air Transport, Inc. v. Farley*, — App. D. C. — 75 F. (2d) 765, and associated cases (see 6 JOURNAL OF AIR LAW 289) decided and filed concurrently with this case, in which the decree was affirmed with costs. *Pennsylvania Airlines, Inc. v. Farley*, 75 F. (2d) 769 (decided Feb. 4, 1935, by the United States Court of Appeals for the District of Columbia).

LORRAINE ARNOLD.

MECHANICS' LIENS—BAILMENTS—MASTER AND SERVANT.—[Oklahoma] The action was instituted by plaintiff to recover a money judgment and to establish and foreclose a lien upon a certain airplane, and to have the same sold to satisfy said judgment. An intervening petition was filed on behalf of the chattel mortgagee, claiming a first and prior lien. The defendant, owner of the airplane, had hired plaintiff to act both as pilot and mechanic. Plaintiff did, and caused to be done by other mechanics, work and labor on said plane, which was charged to him, and purchased considerable gasoline and oil, amounting in all to several hundred dollars. Judgment below for plaintiff for the sum of \$985.52 and also imposing a first and prior lien on said airplane in favor of plaintiff. *Held*: Affirmed in part, and reversed in part. The plaintiff, being the servant of defendant, was not "lawfully in possession" within the applicable statute creating the lien. Plaintiff's possession of the airplane was the possession of his employer. The gasoline and oil furnished at plaintiff's expense would not create a lien within the statute which restricts such a lien to "service by labor and skill." Since materials clearly do not fall within the latter description, the money judgment was affirmed, but the part of the judgment imposing a lien in favor of the plaintiff was reversed: *Jones v. Bodkin*, 44 P. (2d) 38 (Supreme Court of Oklahoma, April 23, 1935).

B. W. HEINEMAN.

NEGLIGENCE—INJURY TO GUEST PASSENGER—RES IPSA LOQUITUR.—[Arkansas] Plaintiff's intestate, with another, was riding as a guest in the airplane owned and piloted by W. N. Gregory and his son on a trip from Augusta, Arkansas to St. Louis, Missouri. At a point in Illinois, some distance out of St. Louis, the airplane crashed and was destroyed by fire, all four occupants therein being instantly killed. Plaintiff, as administratrix of the estate of Herndon, instituted action against defendant as executrix of the estate of W. N. Gregory and administratrix of W. N. Gregory, Jr., the complaint alleging that death was caused by the negligence of the airplane owner and pilot, and that the exact character of the negligence which caused the crash was unknown to plaintiff, but that W. N. Gregory was especially negligent in causing said death in that his son was known to him to be an unskilled pilot and this fact was not known to plaintiff's intestate. From a judgment dismissing the complaint, after sustaining the demurrer, plaintiff appeals. *Held*: affirmed. The complaint did not state a cause of action and was properly demurrable unless the doctrine of *res ipsa loquitur* applied. The doctrine was inapplicable here since no presumption of negligence arises from the mere fact of injury, when that fact is as consistent with the presumption that it was unavoidable as it is with negligence. In order to give rise to the *res ipsa* doctrine the complaint should have alleged some particular act of negligence or some fact over which human conduct had control. *Herndon v. Gregory*, 81 S. W. (2d) 849 (Supreme Court of Arkansas, decided April 22, 1935; dissent filed May 13, 1935, 82 S. W. (2d) 244).

LORRAINE ARNOLD.