

1937

Notes, Comments, Digests

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NOTES, COMMENTS, DIGESTS

DIGESTS

Airplane as Vehicle or Migratory Chattel—Recording.—[California]

This was an action by plaintiff as mortgagee of an airplane, against two county recorders to recover damages suffered by the plaintiff by reason of the alleged omission of the defendants, in their capacity as county recorders, to comply with the duty imposed on such officers under Section 4130 of the Political Code of California. The issue was whether an airplane was a "vehicle" or "migratory chattel" within the meaning of the statute requiring county recorders, in recording liens on such personal property, to certify such lien to the Secretary of State. *Held*: Aircraft are neither "vehicles" nor "migratory chattels" within the meaning of the Recording Act, and a county recorder is not liable when a judgment creditor attaches aircraft where such recorder has failed to send a certificate of chattel mortgage on such aircraft to the Secretary of State. *L. Di Giulio v. T. C. Rice and Edmund Godchaux* (Appellate Department, Superior Court, City and County of San Francisco, California, July 7, 1937), 235 C. C. H. 906.

This case is of interest insofar as it furnishes authority in opposition to any abortive attempts to bring aircraft within the general terminology employed in certain statutes never contemplating application to vehicles employed in air transportation. After concluding that the word "vehicle" contemplated some means of surface transportation, the court stated:

"And the statute should not by forced or broad construction be made so elastic as to subject county recorders to severe penalties upon the conjecture that the legislature intended to enwrap airplanes in the ambiguities of the expression, 'migratory chattels.' If the legislature had thought of airplanes, it is reasonable to conclude that words specific enough to identify them would have been used. The very fact that airplanes were not specifically mentioned points to an intention not to apply to them the policy applied to livestock and vehicles other than motor vehicles."

Insurance—Double Indemnity Benefits—Engaging or Participation as a Passenger in Aviation.—[Federal] In two recent cases, District Courts of the United States have denied recovery of double indemnity benefits to a fare-paying passenger on a scheduled airline by construing such person as being excluded by provisions in the insurance policy providing against the payment of double indemnity benefits if the death of the insured resulted from "participation as a passenger or otherwise in aviation or aeronautics" and "engaging, as a passenger or otherwise, in aeronautic operations." *Adele Christen v. New York Life Insurance Company* (District Court, Northern District of Illinois, Eastern Division, June 3, 1937), 19 F. Supp. 440; *National Exchange Bank and Trust Company, Trustees v. New York Life Insurance Company* (United States District Court, Western District of Pennsylvania, July 1, 1937), 19 F. Supp. 790. These cases were decided consistently with the holdings in the cases of *Goldsmith v. New York Life Insurance Company*, 69 F. (2d) 273 (C. C. A. 8th) and *Mayer v. New York Life Insurance Company*, 74 F. (2d) 118 (C. C. A. 6th).