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Air Law -- Application of Federal Rules to Intrastate Flight -- Injuries from Low Flying

H. L. Lobdell

NOTES AND COMMENTS

Air Law—Application of Federal Rules to Intrastate Flight—Injuries from Low Flying

Defendant's dirigible flew over plaintiff's farm at an altitude of 150 to 200 feet, frightening plaintiff's horses, and causing injury to plaintiff. One of plaintiff's allegations of negligence was violation of federal air traffic rules,[1] under which the minimum altitude for flight is 500 feet.[2] The petition failed to state whether this was an interstate or an intrastate flight. Defendant's demurrer was overruled, the court saying plaintiff had stated a case under federal law which would not be dismissed for want of jurisdiction. If the flight was intrastate, plaintiff's recovery would depend upon his proof that violation of the altitude rule would affect interstate commerce.[3]

The Air Commerce Act declares: "It shall be unlawful . . . to navigate *any* aircraft otherwise than in conformity with the air traffic rules,"[4] and the managers of the bill in congress said ". . . the air traffic rules are to apply whether the aircraft is engaged in . . . interstate or intrastate navigation."[5] The court refuses to follow these expressions and apply the federal rules to all intrastate flights, but demands that some connection or interference with interstate commerce be shown. Since flying is not sufficient *per se*, it is difficult to see how a violation of the altitude rule can possibly meet this demand, and the court, expressly recognizing the difficulty, was most liberal in overruling the demurrer.

It is possible only to surmise what connection with interstate commerce the courts will require before allowing the application of federal rules to instrastate flight. In the analogous field of railroad transportation, the Interstate Commerce Commission has been allowed to exercise authority over intrastate rates and service if interstate commerce was even remotely affected,[6] the famous Shreveport

[1] Chapter V of Air Commerce Regulations issued by Secretary of Commerce in accordance with Air Commerce Act of 1926, 44 Stat. 570, 49 U. S. C. A. (1929, Supp.) §173 (e).
[2] Air Commerce Regulations, c. V, §81 (G).
[3] Neiswonger v. Goodyear Tire & Rubber Co., 35 F. (2d) 761 (N. D. Ohio, 1929).
[4] 44 Stat. 574, 49 U. S. C. A. §181 (A) (5).
[5] Congressional Rec., May 13, 1926, p. 9390.
[6] Notes (1921) 14 A. L. R. 454; (1923) 22 A. L. R. 1100 and cases cited.

Rate Case[7] being the landmark in this field. These decisions involving railroad transportation and the liberal attitude taken in the principal case indicate that the courts will not be exacting in their requirements.[8] There seems to be good cause for Mr. W. R. McCracken's assertion[9] that ". . . the regulation of aerial navigation will ultimately be either largely or exclusively vested in the federal government. . . ."[10]

The Uniform State Law for Aeronautics, as adopted by twenty states, including North Carolina,[11] does not fix a definite minimum altitude for flight, but makes it unlawful to fly so low that existing use of the land will be interfered with. In a state court, under this statute, the present plaintiff could probably recover.

H. L. LOBDELL.

Bailments—Proof of Loss and Presumption of Negligence—Stipulations Against Negligence

The United States Lines issued specifications and requested bids for the repair of the steamship *America*. The bids received were too high. The specifications were changed and the defendant shipyard received the contract on the second bidding. Under the first set of specifications the contractor was required to carry insurance on the ship for $2,000,000, owner's benefit, and premium $5,000. By the contract agreed upon, under the second set of specifications, it was provided, ". . . The United States Lines will continue the present hull, machinery, and equipment insurance upon the vessel during the period the vessel is at the contractor's yard. . . ." While in the possession of the defendant, the ship was damaged seriously by fire.

[7] 234 U. S. 342, 34 Sup. Ct. 833, 58 L. ed. 1341 (1913). This case was characterized by Senator Glass of Virginia as the case "which practically extirpated every remaining right any state had over intrastate commerce." Associated Press dispatch of Feb. 10, 1930.

[8] Nor have the courts been exacting in determining what constitutes interstate commerce itself. The Daniel Ball, 10 Wall. 557, 19 L. ed. 999 (1871) (holding that a steamboat plying between two points in same state, but carrying goods destined for points outside the state, was engaged in interstate commerce). Philadelphia, B. & W. R. Co. v. Smith, 250 U. S. 101, 39 Sup. Ct. 396, 63 L. ed. 869 (1919) (holding that a cook for a crew repairing a railroad bridge was engaged in interstate commerce).

[9] McCracken, *Air Law* (1923) 57 AM. L. REV. 97.

[10] Dean Bogert of Cornell looks askance upon this possibility, and declares the principle of allowing federal interference with intrastate commerce "is one which should be sparingly applied." Bogert, *Problems in Aviation Law* (1921) 6 CORN. L. Q. 271.

[11] P. L. 1929, c. 190, §4; N. C. CODE (Michie, 1929 Supp.) §191 (M).