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CUSTOMS—UNANTICIPATED ENTRY INTO UNITED STATES—FORFEITURE OF UNDECLARED PROPERTY

United States v. 532.33 Carats, More or Less, of Cut and Polished Diamonds
2 CCH Aviation L. Rep. 17,982 (D. Mass., Jan. 19, 1955).

The claimant, an airline passenger enroute from Europe to Canada, was forced to deplane in the United States due to weather conditions, although no stop in the United States was scheduled or contemplated. While awaiting transportation to return him to Canada, he was approached by a customs official who discovered the diamonds in question, which the claimant was carrying on his person. The diamonds were seized, and the United States brings this action seeking to have its legal claim to the diamonds recognized, on the ground that, since the diamonds were not declared, they were subject to forfeiture as provided in 19 U.S.C. § 1497. The government's motion for a summary judgment was granted, the court holding irrelevant the fact that coming to the United States was contrary to the claimant's intention and reasonable anticipation. Since the traveler might take advantage of the accident or his misintended entry into the United States to make an importation that he had not originally contemplated, the government has a legitimate concern to discover what such a traveler has on his person or in his baggage. Therefore, the statutes should be strictly interpretated and every person entering the United States, regardless of his intent in entering, should declare his possessions, in order to protect them from forfeiture.

UNFAIR COMPETITION—SIMILARITY OF NAMES OF AIR CARRIERS—SUBSTANTIAL PUBLIC CONFUSION

American Airlines, Inc. v. North American Airlines, Inc.
351 U. S. 79 (April 23, 1956).

The CAB, after instituting an investigation under § 411 of the CAA, which enables the board, ". . . if it considers that action by it would be in the interest of the public . . . ," to investigate and determine whether an air carrier has been engaging in unfair methods of competition, decided that substantial public confusion had arisen between the names "North American Airlines, Inc." and "American Airlines, Inc." Since the confusion was likely to continue and constituted an unfair method of competition, the board issued a cease and desist order forbidding North American from operating under a name containing any combination of the word "American." The Court of Appeals, District of Columbia, interpreting § 411 in the light of § 5 of the Federal Trade Commission Act after which § 411 was modeled, set aside the order on the ground that the FTCA does not provide private persons with an administrative remedy for private wrongs, and that the public interest was not shown to be specific and substantial and did not demand the cease and desist order. The Supreme Court granted American Airlines certiorari and reversed the Court of Appeals, drawing a distinction between the CAA and the FTCA. The FTCA is concerned with purely private business enterprises which cover the full spectrum of economic activity, while the business conducted by air carriers is of especial and essential concern to the public. Furthermore, the CAB is an agency of special competence which deals only with the problems of the air transportation industry. For these reasons, the determination of public interest is to the judgment of the board, and the only questions for judicial review are whether, in reaching its decision, the board has stayed within its jurisdic-

tion and applied appropriate criteria. Since the board did not exceed its jurisdiction and had applied appropriate criteria, *i.e.*, high standards required of common carriers in dealing with the public, convenience of the travelling public, speed and efficiency in air transportation, and protection of reliance on a carrier's equipment, the judgment of the Court of Appeals was reversed, and the case was remanded for a determination whether the board's findings were supported by substantial evidence on the record as a whole.

In a dissenting opinion, Mr. Justice Douglas, joined by Mr. Justice Reed, argued that, to constitute a violation of § 411, there should have been a finding that the confusion arising from the use of the two names had actually caused some impairment of air service or that at least there was an immediate threat of such impairment, rather than a naked finding of "substantial public confusion."

WORKMEN'S COMPENSATION—USE OF PRIVATE AIRPLANE AS ACTING WITHIN SCOPE OF EMPLOYMENT

Indiana Steel Products Co. v. Leonard

2 CCH Aviation L. Rep. 17,998 (Ind. App. Ct., Jan. 10, 1956).

Beebe v. Horton

293 P. 2d 661 (Idaho Sup. Ct., Feb. 7, 1956).

In the *Leonard* case, the decedent was last seen alive entering his airplane and preparing to take off on an anticipated business trip. He was not seen again until his body was washed ashore some four months later on the opposite side of Lake Michigan from his intended destination. In the hearing on the application for workmen's compensation, the only evidence on the question of whether the decedent was acting within the scope of his employment at the time of his death was the testimony of a friend and fellow employee of the decedent, that the decedent had said that he was going to call on customers. Compensation was awarded. On appeal, the court, ruling that the above testimony was properly admitted under the present state of mind exception to the hearsay rule, upheld the award on the ground that using a plane to call on customers in furtherance of the master's business did not constitute a rash act on the part of the decedent, and that there was sufficient evidence to support a reasonable inference that the death arose out of and in the course of the decedent's employment. If the circumstances are such that a reasonable inference can be drawn that there was something connected with the employment which was responsible, then compensation can be given.

In the *Beebe* case, on the other hand, the Idaho Supreme Court, although purporting to give a liberal construction to the Workmen's Compensation Act, held that each case must be decided on its own facts. In this case the decedent, immediately before going to the airport, had been acting pursuant to his customary duties as manager of a nursing home. He then departed for the airport accompanied by one of his superiors, and the two men rented a small plane, the superior taking the controls. Although the purpose of the flight was not disclosed by the evidence, the plane was seen flying in the direction of the nursing home, and the place of the crash was only 100 to 150 feet from the land on which the home was situated. While these facts would establish some connection between the employment and the accident and would undoubtedly be sufficient to support the presumption employed in the *Leonard* case, the court reversed an award on the ground that the decedent's work did not create the necessity for such an airplane flight, nor was the flight reasonably connected or incident to his occupation as manager of the nursing home.

TAXATION—SITUS PRIOR TO FIRST INTERSTATE FLIGHT OF AIRPLANE PURCHASED FOR INTERSTATE COMMERCE NOT DETERMINATIVE OF SITUS FOR FULL TAX YEAR—RULE OF APPORTIONMENT GOVERNS

Slick Airways, Inc. v. County of Los Angeles
2 CCH Aviation L. Rep. 18,059 (Cal. D. Ct. of App., March 28, 1956).

The plaintiff, an interstate air carrier was authorized to transact business in California and conducted some of its business in the defendant county. Following the approved practice of taxation by nondomiciliary states of corporations engaged in interstate commerce, the defendant county assessed the plaintiff's fleet of airplanes on the basis of a fair allocation of time, to wit, the ratio of the time spent in Los Angeles County as compared to total time. However, the plaintiff had recently purchased a new airplane, and at the date of determining the taxable status of property, the plane had not made a flight in interstate commerce. Although the plane in question was purchased for the exclusive purpose of adding to the plaintiff's fleet of aircraft flying in interstate commerce, and although it was reasonably apparent that it would be in actual commercial operation during all of the tax year, except for that immediate period, the defendant determined that the plane was not then a part of the plaintiff's fleet, and classified it as an individual item of property, resulting in a higher assessed valuation. The plaintiff sued to recover the taxes paid under this increased valuation, and the court affirmed a judgment rendered in favor of the plaintiff. While the taxable status of property is determined in most jurisdictions as of some fixed date, the rule which allows a state in which property is physically located on a specific tax date to tax the property at full value must yield to the extent required by the due process and commerce clauses of the Federal Constitution, and the assessment of taxes on property which receives benefits in more than one state during the tax year is governed by the rule of apportionment.

CONDEMNATION—EASEMENTS—NO COMPENSATION FOR DAMAGES OR DIMINUTION IN PROPERTY VALUE RESULTING FROM FLIGHTS OVER LAND

United States v. 4.43 Acres of Land, More or Less
137 F. Supp. 567 (N.D. Texas Jan. 14, 1956).

The government brought condemnation proceedings to acquire by the right of eminent domain an easement extending outward from the ends of certain airport runways and over-lying privately owned property. The exact estate condemned, as set out in the Declaration of Taking, consisted merely of the right to remove and prohibit any obstruction from infringing upon or extending into or above the "glide angle plane." The government filed motions asking that the proceedings be referred to a commission under Rule 71A, Federal Rules of Civil Procedure, and further requested that the commissioners, if a reference were ordered, be instructed that just compensation extends only to the estate acquired and not to damages or diminution in value, if any, of the condemnees' land resulting from the flight of aircraft over such property. The court held that, because the easement and rights here condemned were unusual and presented exceptional and extraordinary circumstances, *e.g.*, the height of the "glide angle plane" above the ground varied from tract to tract, the differing degrees of development and divergent uses made of the different tracts, and the varying distances of the tracts from the airport, it was not an abuse of its discretion to refer the proceedings to a commission, even though the condemnees had demanded a jury trial.

In addition, the court held that the commissioners could not compensate for any damages occasioned or likely to be occasioned by the flight of aircraft in the airspace above the "glide angle plane." The government had not acquired in these proceedings the right to make such use of that airspace, but had merely acquired title to the exact easement or estate described in the Declaration of Taking. Although flying aircraft over the property here involved may constitute a "taking," and the land-owners may have a right to bring a separate suit against the government for damages or just compensation in such a situation, this right may not be asserted as a "counterclaim" in a condemnation suit.

TARIFF RATE—LIMITED LIABILITY OF CARRIER

New York and Honduras Rosario Mining Co. v. Riddle Airlines, Inc.
2 CCH Aviation L. Rep. 18,069 (N.Y. Sup. Ct., Trial Term, April 10, 1956).

Plaintiff, a mining company, made a shipment of bouillon from its mines in Central America to New York, the shipment being made by a foreign air carrier with the defendant as connecting and terminal carrier. In order to secure a reduced transportation rate, the plaintiff deliberately undervalued the shipment at the time of the delivery of the shipment to the initial carrier. The reduced valuation was inserted in the airway bill, which became the contract between the parties and which, by its terms, was binding on, and inured to the benefit of the defendant as connecting and terminal carrier. The initial carrier then filed with the CAB an amended tariff based upon the released value. Sometime after the shipment came into the hands of the defendant and before delivery at its destination in New York, half the bullion was lost, and the plaintiff sued to recover its loss. An award in favor of the plaintiff was limited to the value declared at the time of shipment. An agreed upon value in case of liability made for the purpose of obtaining a reduced freight rate, is binding on the shipper, even in case of loss or damage by the negligence of the carrier.

FEDERAL TORT CLAIMS ACT—CIVIL AIR PATROL NOT A FEDERAL AGENCY AS DEFINED IN THE TORT CLAIMS ACT

Pearl v. United States
230 F. 2d 243 (10th Cir., Feb. 8, 1956).

The decedent was killed while riding as a passenger on an official indoctrination flight of the Civil Air Patrol, and a complaint was filed seeking damages for the decedent's wrongful death under the Tort Claims Act. The court affirmed an order dismissing the suit, on the ground that the CAP was not a federal agency as defined in the Tort Claims Act. Because its primary objective is to promote the public welfare and not for the pecuniary profit of its members, it is clear that the CAP was chartered as an independent nongovernmental agency. Furthermore, since it is neither a wholly owned government corporation, nor a "mixed-ownership government corporation," but rather subject only to such control as Congress exerts over virtually all private corporations granted federal charters, the CAP should not be classified as a corporation "primarily acting as [an] instrumentality of the United States." The court further held that the mere fact that the plane involved in the crash was on loan from the Air Force did not constitute the pilot, a member of the CAP, an employee of the government.