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Statutes—Construction—Airplane as Vehicle Under National Motor Vehicle Theft Act

the Court: "It is regrettable that Sweden may thus escape payment of a valid judgment against it." G. E. S., '31.

SERVICE OF PROCESS—EXEMPTIONS—NON-RESIDENT ATTORNEYS.—Following a suit brought by judgment creditors in a Federal district court in Mississippi to set aside certain fraudulent made by a debtor to his wife, one Lamb, a citizen of Illinois, was cited to show cause why he should not be punished for contempt of the Mississippi Federal court in receiving money which, it was claimed, was paid to him in the guise of legal fees, but which in fact belonged to the judgment creditor. An ancillary proceeding was filed by the receiver appointed in the original suit to recover this money as trust funds, service being had upon Lamb while he was in the district defending his client. *Held,* defendant non-resident attorney is exempt from service of civil process while in attendance upon court and during a reasonable time in coming and going. *Schmitt v. Lamb* (D. C. N. D. Miss. 1930) 43 F. (2d) 770.

The court's ruling is in accord with the general common law doctrine followed in practically all jurisdictions today. *Page v. Macdonald* (1922) 261 U. S. 446; *Read v. Neff* (D. C. Iowa 1913) 207 F. 890; *Williams v. Hatchet* (1913) 95 S. C. 49, 78 S. E. 615. However, there are some cases which hold to the contrary on the ground that any other holding would allow non-resident attorneys to practice in the state with immunity from process of the courts of that state. *Kutner v. Hodnett* (1908) 50 Misc. 21, 109 N. Y. S. 1068.

The doctrine of the immunity of non-resident witnesses and attorneys from service of civil process was established for the benefit of litigants. The principle is well founded, for otherwise witnesses would refuse to come into states in which they feared process. Furthermore, a litigant has the right to choose any attorney that he wishes to defend him. If the attorney chosen refuses to come into the state because of fear of civil action against him, the right of the litigant to universal choice of an attorney is unduly limited. The generally accepted rule allowing witnesses and attorneys immunity within a reasonable time for coming and going seems logical, for otherwise the privilege would be useless. *Greenleaf v. People's Bank of Buffalo* (1903) 133 N. C. 292, 45 S. E. 638.

But in cases under which this doctrine arose the actions under which the civil processes were sought had no relation to the suit of the litigant. However, in the instant case the suit against the non-resident attorney arose as the result of the same subject of action as was prosecuted against his client. The suit against the attorney, if successful, would have resulted only in gaining the same end sought in the suit against his client. Therefore this situation seems to be a logical exception to the general rule.

M. E. S., '31.

STATUTES—CONSTRUCTION—AIRPLANE AS VEHICLE UNDER NATIONAL MOTOR VEHICLE THEFT ACT.—Defendant was convicted under the National

Motor Vehicle Theft Act, 41 Stat. 324 (1919), 18 U. S. C. 408, for inducing another to steal an airplane and fly it from Illinois to Oklahoma "in interstate commerce." The act states that "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." On appeal by defendant, who contended that an airplane does not come within the meaning of the statute, the conviction was affirmed, one judge dissenting. The phrase "any other self-propelled vehicle not designed for running on rails" includes an airplane. *McBoyle v. United States* (C. C. A. 10, 1930) 43 F. (2d) 273. The court states that it recognizes the principle of construction that a generic phrase following an enumeration refers only to situations or things *ejusdem generis*. An airplane is compared to an automobile in that both serve the same general purpose, are propelled by gasoline motors, and both run on the ground, "an airplane partly." It is submitted that the comparison made is so fragile as to result in a virtual rejection of the doctrine in this case. In fact, an inclusive definition of "vehicle" found in the Century Dictionary is the main reliance of the majority. The decision seems in conflict with the prevailing rule that a penal statute is to be construed strictly, 1 Bl. Comm. 89; 25 R. C. L. 1081-1084; and to be limited by *ejusdem generis* whenever possible, *First National Bank of Anamoose v. United States* (C. C. A. 8, 1913) 206 F. 374.

Nor does the opinion show a common sense effort to pick out the objects which probably were in the legislative mind. Radin, *Statutory Interpretation* (1929) 43 HARV. L. REV. 863. *Ejusdem generis* as a canon of interpretation, it is true, has been worn thin by numerous decisions, mostly recent. It is well-known that it is overlooked when necessary to accomplish a desirable broadening of a statute. Section 40 of the Tariff Act of 1922, 42 Stat. 948 (1922), 19 U. S. C. Sec. 231, classes an airplane as a "vehicle," and planes used in smuggling liquor have been released under the heading of "vessels or vehicles seized under any revenue law." *In re Jackson* (N. D. N. Y. 1929) 35 F. (2d) 931. The instant decision, however, is one in which the desirability of making interstate airplane thefts punishable in Federal courts is at least questionable. The matter might well have been left to Congress, whose specific inclusion of airplanes, had such been intended, would not have been difficult in the first place. The fact that most airships are closely watched at commercial ports, are more easily identified than automobiles, and are less easily concealed, would seem to except them from the obvious purposes which rendered the statute necessary in the case of automobiles. The greater mobility, ease of transit and disposition of motor cars presented a problem too extended for the states to handle, but this can hardly be said of the airplane. F. R. R., '31.

WORKMEN'S COMPENSATION—AWARD FOR DISFIGUREMENT.—In a recent Missouri decision the loss of 31 teeth was held a proper basis for addi-