TORTS - ADJOINING LANDOWNERS - DUTY OF ADJACENT OWNER TO AIRPORT OPERATOR - DANGEROUS INSTRUMENTALITIES

Jerome Dick
University of Michigan Law School

Follow this and additional works at: https://repository.law.umich.edu/mlr

Part of the Property Law and Real Estate Commons, and the Torts Commons

Recommended Citation
Available at: https://repository.law.umich.edu/mlr/vol38/iss2/30

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.
TORTS — ADJOINING LANDOWNERS — DUTY OF ADJACENT OWNER TO AIRPORT OPERATOR — DANGEROUS INSTRUMENTALITIES — Plaintiff operated an airport which was adjacent to defendant public utility's uninsulated electric power transmission line. Since the airplane could not enter or leave the airport without flying low over defendant's adjacent right-of-way, the wire constituted an obstruction to their means of ingress and egress; in addition there was the danger of electrocution from contact with the wires. Plaintiff contends that this constitutes an interference with his business and seeks damages.

Held, for defendant; under the statute plaintiff is a trespasser because he interferes with the reasonable use of defendant's property and a landowner is under no obligation to keep the premises safe for a trespasser. *Capital Airways, Inc. v. Indianapolis Power & Light Co.*, (Ind. 1939) 18 N. E. (2d) 776.

1 It was contended that the uninsulated wires were a violation of the statute which requires such electric power lines to be insulated; the court found compliance with the statute, interpreting "insulation" to mean "isolation," and concluding that the general public would not come in contact with wires strung ninety feet above the ground.

2 Ind. Ann. Stat. (Burns, 1933), § 14-104: "Flight in aircraft over the land and waters of this state is lawful, unless at such a low altitude as interferes with the then existing use to which the land or water, or the space over the land or water, is put by the owner. . . ." [Italics ours.]
The law recognizes the landowner's right of exclusive control over his property, which is qualified only by legislation and the law of nuisance; thus the court is applying the well settled rules of tort and property law in finding for the defendant. Yet, it is evident that there exists a social interest in the advance of aviation and there is a tendency to adopt a method of approach which will recognize the necessity of adjusting the rights of the surrounding landowners with the interest of the public. All the cases agree that the airport owner cannot interfere with the reasonable user of the adjacent property. However, some courts in recent cases have been influenced by the public interest in aviation in determining what constitutes a reasonable user of the adjoining land. Thus, in *Tucker v. United Air Lines, Inc.*, the landowner was enjoined from planting trees which grew over twenty-five feet in height, the court finding that this was an unreasonable use of the land when it was considered that the land adjoined an airport. It appears, however, that the courts will not extend this doctrine too far and the sentiment of the court is illustrated by Judge Windle's statement in *Gay v. Taylor*, "As sympathetic as we may be to foster and develop this new science we may not confer upon it and its followers authority to do things not permitted to others. That may be done by the Legislature but not by the Courts, and until the former body has acted the latter are unable to enlarge the powers referred to." Consequently it appears that the solution to the problem lies in legislation.

*Jerome Dick*

---


7 (Iowa District Court for Johnson County, Sept. 14, 1935), noted 6 J. Air Law 622, 1936 U. S. Av. R. 10 (1935). This case never went to the Supreme Court, the airport buying out Tucker at the completion of the suit.

8 Newman, "Airports and a Way of Necessity," 1 Air L. Rev. 458 (1930), suggests that the airport approach be considered as a way of necessity. However, this theory is not of much value because it is very rare that the ownership of the airport and ownership of the adjacent land can be traced to the same individual. See Rohlfing, "The Airport Approach," 4 Air L. Rev. 144 (1933).


10 For an excellent survey of the whole problem, see Sweeney, "Adjusting the