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Workmen's Compensation—Award for Disfigurement

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-

tional award for permanent disfigurement although the injured employee had received compensation for the period he was absent from work, and had been re-employed at his old wage. *Bety v. Columbia Telephone Co.* (Mo. App. 1930) 24 S. W. (2d) 224.

The Missouri Workmen's Compensation Act sec. 17 (a) enumerates 46 specific injuries causing permanent partial disability and provides that compensation, measured proportionately, shall be paid for other injuries where "such other injuries shall include permanent injuries causing a loss of earning power." The purpose of this sentence, because of its context, is obscure. In the principal case the court refuses to take the view that injuries are compensable only where there is a loss of earning power. The court bases its position on the fact that among the specific injuries set forth are some which would not necessarily result in a loss of earning power, and "where a statute enumerates various injuries which are compensable unconditionally, and is immediately followed by a provision for 'other injuries,' the last injuries provided for will be read as *ejusdem generis* with and not of a kind different from those specifically named."

The New Jersey Workmen's Compensation Act contains the following provision: "In all other cases in this class the compensation shall bear such relation to the amount stated in the . . . schedule as the resulting disabilities bear to those produced by the injuries named in the schedule." N. J. Laws 1911, p. 138. In construing this provision the word "disability" has been held to authorize compensation for injuries which do not reduce earning capacity. *De Zeng Standard Co. v. Sheridan Pressey* (1914) 86 N. J. Law 469, 92 Atl. 228; *Burbage v. Lee* (1915) 87 N. J. Law 36, 93 Atl. 859; *Hercules Powder Co. v. Morris County Court* (1919) 93 N. J. Law 93, 107 Atl. 433.

In *Centlivre Beverage Co. v. Ross* (1919) 71 Ind. App. 343, 125 N. E. 220, however, the court held that "disability" in a similar provision meant diminution of earning power. Thereupon, by amendment to the Indiana act, the word "disability" was replaced by the word "impairment." In *Edwards Iron Works v. Thompson* (1923) 80 Ind. App. 577, 141 N. E. 530, the change was held to be significant, since "disability" means inability to work while "impairment" means loss of a function, and held that compensation for a permanent partial "impairment" need not be based upon an impairment of earning power.

The construction placed on sec. 17 (a) of the Missouri act in the instant case places Missouri in line with other states in allowing awards for disfigurements. Such awards, however, are quite generally based on provisions allowing award for any serious and permanent disfigurement of the hand, head, or face. This type of provision occurs in many statutes of which the following are typical: R. S. La. (Marr, 1915) sec. 3967 sub. 1 (e), amended, La. Acts 1924, no. 216; Utah Comp. Laws (1917) sec. 3138, amended, Utah Laws 1919, c. 63; Pa. Stats. (1920) sec. 21995, amended, Pa. Acts 1921, no. 966. L. O. C., '31.