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# Compensation for Air Pressure Injury

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Chavis did not hold the legal title, nor was he entitled to call for it; hence, he could not claim the protection of a bona fide purchaser.

The court in the instant case summarily dismissed the contention of Chavis that requiring him to search the title to the property would thus put an intolerable burden upon the legal profession in their examination of the title to real property by stating that any competent and prudent title examiner would have found the deed of trust to the trustee, would have noticed that the debt secured thereby was long past due, would have seen that there was no deed of release, and that the enforcement of the trust deed was not barred by the statute of limitations. Thus, this case is important not only from the viewpoint of what constitutes record notice, but also from the viewpoint of establishing a partial standard to which a title examiner will be held.

J. R. S.

## TORT—AIR CARRIERS—COMPENSATION FOR AIR PRESSURE INJURY

This case is presented because of its unique fact situation. In *Marchant* v. *American Air Lines, Inc.*,[1] the court was faced with ruling upon a motion for judgment notwithstanding the jury's verdict, or, in the alternative, for a new trial. Such motion alleged thirty-seven grounds as a basis for the granting thereof, including excessiveness of verdict, verdict contrary to law and evidence, refusal to grant instructions, and newly-discovered evidence.

The evidence established that plaintiff while a passenger on defendant's airplane, suffered a ruptured eardrum and damage to the inner ear resulting in partial loss of hearing and tinnitus, occasioned, according to the plaintiff, by pressure differences between his middle ear cavity and that of the cabin in which he was riding. Allegations were made that defendant was negligent in permitting these pressure differences to arise and, also, in allowing, after due notice had been given to one of its stewardesses, the situation to continue to exist. The stewardess denied having been informed of the discomfort of the plaintiff without, however, ex-

[1] 146 F.Supp. 612 (D.C.D. R.I. 1956).

plaining why her accident report was unavailable. Medical evidence of the defendant was to the effect that unless there were latent disease or defect, injuries of this nature would not occur.[2] The plaintiff's medical evidence was to the effect that such an injury as was here sustained was of indefinite and lasting duration, could grow worse, and that psychiatric treatment is often necessary to rehabilitate the patient to becoming adjusted to the injury and its consequent disability.

The United States District Court, with no other guide than the testimony given and the rarity of this type of injury, felt it had no alternative but to uphold the jury's verdict in the sum of $24,500 in favor of the plaintiff and overruled the motion for judgment notwithstanding the verdict and denied a new trial.

Tinnitus is a medical term which means simply a hissing in the ear. According to Dr. Roscoe N. Gray:

> [it] quite often occurs as an occupational injury among military aviators as a result of extreme pressure changes; but it is a rarity for commercial airline pilots and passengers to be inflicted with this injury . . . [which] unless caused by an underlying physical defect or disease, will subside in most cases within a short period of time, usually within a few hours.[3]

This hissing in the ears is analogous to the back-injury cases[4] wherein little medical testimony is of aid in corroborating or disproving the existence of such injury. It is entirely possible that the hissing which is heard after the first few hours is similar to the "phantom pains"[5] associated with amputated arms and legs.

This type of injury and the opportunity it could afford to the unscrupulous to claim it exists present a problem which may be-

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[2] *Cf.* Philos v. Transcontinental & Western Air, Inc., (N.Y.City Ct.) [1951], N.Y.L.J. 2357, [1953] U.S.Av. 479, wherein the plaintiff, suffering from a ear infection at the time of flight from Rome, Italy, to Athens, Greece, sustained an ear injury due to lack of pressurized cabin, defendant's report admitting that pressurization would have prevented the injury.

[3] Gray, *Attorney's Textbook of Medicine,* (3rd Ed.), p. 3178 (1951).

[4] Although some protection is afforded the defendant defending a back injury claim by the fact that he can "shadow" and take pictures of the plaintiff in an activity which the alleged claim would render impossible and thus disprove the existence of the claim, no similar protection exists in respect to tinnitus claims.

[5] Medical terminology for this condition is Phantom Pain Syndrome.

come in the near future of great importance to the courts. It is believed that should a great influx of claims be asserted in the near future for alleged injuries of this nature, the courts would be faced with the following possible solutions:

1. Follow the decision of the instant case in allowing a recovery based upon a jury's evaluation of the evidence ascertainable in each case;

2. Adopt a policy of denying recovery for such an injury if tinnitus alone is present without other "provable" medical injury; or

3. Have court appointed physician examine the injured party and predicate recovery upon his testimony alone.

Retaining the status quo would do little to reduce the number of claims which could arise for injuries of this nature and would reduce trials to the level of "you pay your money and take your chances." Juries are inadequately prepared to deal with injuries which may or may not exist and about which the testimony is so conflicting.

Denying recovery absolutely is a very harsh way of saying that the courts are unable to find another solution. The valid as well as the invalid claim would be disallowed. This would be a hardship to the honest claimant but would correct any evils which might arise in the future.

Proposal number three attempts to reconcile the results of the above and to effectively find a means whereby a jury would be able to grant or deny recovery without being swayed by "plaintiff" medical men and "defendant" medical men.[6] Independent testimony is better calculated to attain the ends of justice. Reasonable certainty could be established by such independent physicians or recovery would be denied. Use of this method would place all parties

[6] *Cf.* Va. Linen Service v. Allen, 198 Va. 700, 707, 96 S.E.2d 86, 91, where it was stated: It would serve the interests of the medical profession and aid in maintaining its high standards if doctors who testify would heed the admonition recently given by a member of their profession, [footnote omitted] that they avoid allowing themselves to be labeled a plaintiff's doctor or a defendant's doctor, and to 'remember at all times that he is a witness and not an advocate.'

in a more equitable position, and is better calculated to deal with the problem in such a way as to better attain the furtherance of justice.

L. T. B.

## MODERN LIABILITY OF INNKEEPERS— UNDER VIRGINIA STATUTE

A recent case decided in the United States District Court for the Eastern District of Virginia[1] interpreted a Virginia statute limiting the common law liability of hotelkeepers.[2]

The plaintiff, a jewelry salesman, upon checking into the hotel of the defendant, requested that his valise, containing jewelry afterwards alleged to be of a value in excess of $100,000.00, be placed in the hotel vault which was maintained for the safe-keeping of valuables of guests in compliance with the above cited section of the Virginia Code. The plaintiff informed the clerk that the contents of the valise were valuable but did not indicate its actual value, nor did the clerk inquire as to its specific value. The clerk deposited the valise in the vault, but when the plaintiff requested his valise two days later it could not be found; whereupon plaintiff filed suit for the alleged value of its contents. The defendant filed a motion for summary judgment insisting that his liability was limited to $500.00 by the terms of the Virginia Statute in question. This contention was based on the concluding sentence of that section of the Code which states:

> The keeper of any such hotel, inn or ordinary shall not be obliged to receive from any one guest for deposit, in such office, any property hereinbefore described, exceeding a total value of five hundred dollars.[3]

Since the court entertained the matter as an original proposition, and since the Virginia Code Section in question is apparently not duplicated in any other jurisdiction, (although nearly all jurisdictions now have statutes of one form or another limiting the common law liability of innkeepers), there was a dearth of per-

[1] Sagman v. Richmond Hotels, Inc., 138 F.Supp. 407 (D.C.E.D. Va. 1956).
[2] Va. Code §35-10 (1950).
[3] *Ibid.*