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Insurance (Life)--Participation in "Aeronautic Expedition" (Gibbs v. Equitable Life Assurance Society of United States, 256 N.Y. 208 (1931))

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but agree with this decision which proceeds along well-established legal principles.[18] Private dissent, if any, must be made on the grounds of disagreement with the opinion of the court that the fact in question is a notion commonly had.

H. H.

INSURANCE (LIFE)—PARTICIPATION IN "AERONAUTIC EXPEDITION."—Plaintiff's son in 1924 entered into a contract with the defendant for life insurance which provided for double indemnity in case of death by accident, unless it should be caused directly or indirectly by " * * * military or naval service of any kind in time of war or by engaging as a passenger or otherwise in submarine or aeronautic expeditions." While insured was traveling as a passenger from Albany to New York in an airplane operated by a large air transport company which maintained a regular passenger service, the machine fell and he sustained mortal injuries. Defendant appealed from a judgment granting double indemnity to the plaintiff, who was named beneficiary in the policy. *Held,* insured met his death while engaged in an "aeronautic expedition," hence within the exception of the policy and the plaintiff was not entitled to double indemnity. *Gibbs* v. *Equitable Life Assurance Society of United States,* 256 N. Y. 208, 176 N. E. 144 (1931).

It is a generally accepted principle that contracts of insurance will be given a construction which makes the contract fair and reasonable and that if any ambiguity exists, the interpretation will be in favor of the insured.[1] The advent of the newer modes of transportation in the air and under water and its recognized dangers has thrust upon the courts the duty of interpreting various clauses in insurance policies limiting liability where death or injury has resulted from such transportation. It has been held that a person riding in an airplane as a passenger on short trips has "participated in aeronau-

[18] Kieran v. Metropolitan Life Ins. Co., 13 Misc. Rep. 39, 34 N. Y. Supp. 95 (1895); Langdon v. Waldo, 158 App. Div. 936, 143 N. Y. Supp. 818 (2d Dept. 1913); Cavalier v. Chevrolet Motor Co. of N. Y., 189 App. Div. 412, 178 N. Y. Supp. 489 (3d Dept. 1919); Richardson v. Greenburg, 188 App. Div. 248, 176 N. Y. Supp. 651 (3d Dept. 1919); Wager v. White Star Candy Co., 217 App. Div. 316, 217 N. Y. Supp. 173 (3d Dept. 1926); Gilbert v. Klar, 223 App. Div. 200, 228 N. Y. Supp. 183 (4th Dept. 1928); Sloane v. So. Calif. Ry. Co., 111 Calif. 668, 44 Pac. 320, 322 (1896). "It is matter of general knowledge that an attack of sudden fright, or an exposure to imminent peril, has produced in individuals a complete change in their nervous system, and rendered one who was physically strong and vigorous, weak and timid." This statement, it will be seen, is a near approximation of the instant decision.

[1] Bushey & Son v. Amer. Ins. Co., 237 N. Y. 24, 142 N. E. 340 (1923).

tics" within the meaning of such an exception.[2] The purpose of the flight seems to make no difference.[3] "His presence in the plane makes him a participant in the flight which is aeronautical."[4] By the same reasoning the courts hold that a person is "engaged in aviation" or "participating in aeronautics" when he is sailing or floating in the air or flying in a machine heavier than air.[5] Although the courts in the various jurisdictions have generally construed these phrases in favor of the underwriter, it is not certain as to just how far they will go in this respect.[6] One court has called this interpretation of the terminology in such clauses, "hairsplitting distinctions."[7] In these cases, as in the instant case, the courts have taken into consideration the intention of the parties at the time of the making of the contract, and it does not appear that the added word "expedition" would change the rule.

Although in the principal case it would appear that New York will adopt the rule in other jurisdictions, it is doubtful whether this case will set any staunch precedents. This branch of the law will undoubtedly be modified frequently in the near future in order to keep pace with the greater extension and development of large air transport lines.[8]

E. H. S.

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[2] Travelers' Insurance Co. v. Peake, 82 Fla. 128, 89 So. 418 (1921); Masonic Accident Insurance Co. v. Jackson, 147 N. E. 156 (Ind. App. 1925), *aff'd*, 164 N. E. 628 (1929) (exception here was, "engaged in aviation"); Meredith v. Business Men's Accident Assn. of America, 213 Mo. App. 688, 252 S. W. 976 (1923); Bew v. Travelers' Insurance Co., 95 N. J. L. 533, 112 Atl. 859, 14 A. L. R. 983 (1921); see also notes, 14 A. L. R. 986; 40 A. L. R. 1176; 57 A. L. R. 625. *Contra:* Benefit Assn. of Railway Employees v. Hayden, 175 Ark. 565, 299 S. W. 995, 57 A. L. R. 622 (1927).

[3] Masonic Accident Insurance Co. v. Jackson; Bew v. Travelers' Insurance Co. Both *supra* note 2.

[4] Bew v. Travelers' Insurance Co., *supra* note 2, at 536, 112 Atl. at 860, 14 A. L. R. at 985. The court also says, "I think that plaintiff seeks to give too narrow a meaning to both words. 'Aeronautics' does not describe a business or occupation, like 'engineering,' or 'railroading,' but an act which may be practiced for pleasure and profit, and is indulged in by all who ride, whether as pilots or passengers."

[5] Masonic Accident Insurance Co. v. Jackson; Meredith v. Business Men's Accident Assn. of America. Both *supra* note 2.

[6] Pitman v. Lamar Life Insurance Co., 17 F. (2d) 370 (C. C. A. 5th, 1927), *certiorari* denied in 274 U. S. 750, 71 L. ed. 1331, 47 Sup. Ct. Rep. 764 (1927). Insured killed by being struck by propeller after alighting from plane held within exception of participating in an "aeronautic activity." *Contra:* Tierney v. Accidental Life Insurance Co. of California, 89 Calif. App. 779, 265 Pac. 400 (1928).

[7] Meredith v. Business Men's Accident Assn. of America, *supra* note 2.

[8] North American Accident Insurance Co. v. Pitts, 213 Ala. 102, 104 So. 21 (1925). One killed in airplane, not operating on schedule carrying no baggage, making no stops in flight, but where special arrangement was made for each trip, was not a passenger in a "public conveyance," and could not recover on accident policy insuring against death on public conveyance. It is not said what the decision would have been, however, if the airplane had been of the type in the principal case.