

## **I. THE USE OF ANALOGY IN LEGAL REASONING**

### **A. Analogical Reasoning in Common Law and Statutory Cases**

**ADAMS**

**v.**

**NEW JERSEY STEAMBOAT CO.**

151 N.Y. 163 (1896)

O'BRIEN, J.

On the night of the 17th of June, 1889, the plaintiff was a cabin passenger from New York to Albany on the defendant's steamer Drew, and for the usual and regular charge was assigned to a stateroom on the boat. The plaintiff's ultimate destination was St. Paul, in the state of Minnesota, and he had upon his person the sum of \$160 in money for the purpose of defraying his expenses of the journey. The plaintiff, on retiring for the night, left this money in his clothing in the stateroom, having locked the door and fastened the windows. During the night it was stolen by some person, who apparently reached it through the window of the room. The plaintiff's relations to the defendant as a passenger, the loss without negligence on his part, and the other fact that the sum lost was reasonable and proper for him to carry upon his person to defray the expenses of the journey, have all been found by the verdict of the jury in favor of the plaintiff. The appeal presents, therefore, but a single question, and that is whether the defendant is, in law, liable for this loss without any proof of negligence on its part. The learned trial judge instructed the jury that it was, and the jury, after passing upon the other questions of fact in the case, rendered a verdict in favor of the plaintiff for the amount of money so stolen. The judgment entered upon the verdict was affirmed at general term, and that court has allowed an appeal to this court.

The defendant has, therefore, been held liable as an insurer against the loss which one of its passengers sustained under the circumstances stated. The principle upon which innkeepers are charged by the common law as insurers of the money or personal effects of their guests originated in public policy. It was deemed to be a sound and necessary rule that this class of persons should be subjected to a high degree of responsibility in cases where an extraordinary confidence is necessarily reposed in them, and where great temptation to fraud and danger of plunder exists by reason of the peculiar relations of the parties. The relations that exist between a steamboat company and its passengers, who have procured staterooms for their comfort during the journey, differ in no essential respect from those that exist between the innkeeper and his guests. The passenger procures and pays for his room for the same reasons that a guest at an inn does. There are the same opportunities for fraud and plunder on the part of the carrier that was originally supposed to furnish a temptation to the landlord to violate his duty to the guest. A steamer carrying passengers upon the water, and furnishing them with rooms and entertainment, is, for all practical purposes, a floating inn, and hence the duties which the proprietors owe to the passengers in their charge ought to be the same. No good reason is apparent for relaxing the rigid rule of the common law which applies as between innkeeper and guest, since the same

considerations of public policy apply to both relations. The defendant, as a common carrier, would have been liable for the personal baggage of the plaintiff, unless the loss was caused by the act of God or the public enemies; and a reasonable sum of money for the payment of his expenses, if carried by the passenger in his trunk, would be included in the liability for loss of baggage. Carr. § 24; Ang. Carr. § 80. Since all questions of negligence on the part of the plaintiff, as well as those growing out of the claim that some notice was posted in the room regarding the carrier's liability for the money, have been disposed of by the verdict, it is difficult to give any good reason why the measure of liability should be less for the loss of the money, under the circumstances, than for the loss of what might be strictly called baggage.

It was held in *Carpenter v. Railroad Co.*, 124 N. Y. 53, 26 N. E. 277, that a railroad running sleeping coaches on its road was not liable for the loss of money taken from a passenger while in his berth, during the night, without some proof of negligence on its part. That case does not, we think, control the question now under consideration. Sleeping-car companies are neither innkeepers nor carriers. A berth in a sleeping car is a convenience of modern origin, and the rules of the common law in regard to carriers or innkeepers have not been extended to this new relation. This class of conveyances are attached to the regular trains upon railroads for the purpose of furnishing extra accommodations, not to the public at large, nor to all the passengers, but to that limited number who wish to pay for them. The contract for transportation, and liability for loss of baggage, is with the railroad, the real carrier. All the relations of passenger and carrier are established by the contract implied in the purchase of the regular railroad ticket, and the sleeping car is but an adjunct to it only for such of the passengers as wish to pay an additional charge for the comfort and luxury of a special apartment in a special car. The relations of the carrier to a passenger occupying one of these berths are quite different, with respect to his personal effects, from those which exist at common law between the innkeeper and his guest, or a steamboat company that has taken entire charge of the traveler by assigning to him a stateroom. While the company running sleeping cars is held to a high degree of care in such cases, it is not liable for a loss of this character, without some proof of negligence. The liability as insurers which the common law imposed upon carriers and innkeepers has not been extended to these modern appliances for personal comfort, for reasons that are stated quite fully in the adjudged cases, and that do not apply in the case at bar.

But, aside from authority, it is quite obvious that the passenger has no right to expect, and in fact does not expect, the same degree of security from thieves while in an open berth in a car on a railroad as in a stateroom of a steamboat, securely locked, and otherwise guarded from intrusion. In the latter case, when he retires for the night he ought to be able to rely upon the company for his protection with the same faith that the guest can rely upon the protection of the innkeeper, since the two relations are quite analogous. In the former the contract and the relations of the parties differ at least to such an extent as to justify some modification of the common-law rule of responsibility. The use of sleeping cars by passengers in modern times created relations between the parties to the contract that were unknown to the common law, and to which the rule of absolute responsibility could not be applied without great injustice in many cases. But in the case at bar no good reason is perceived for relaxing the ancient rule, and none can be deduced from

the authorities. The relations that exist between the carrier and the passenger who secures a berth in a sleeping car or in a drawing-room car upon a railroad are exceptional and peculiar. The contract which gives the passenger the right to occupy a berth or a seat does not alone secure to him the right of transportation. It simply gives him the right to enjoy special accommodations at a specified place in the train. The carrier by railroad does not undertake to insure the personal effects of the passenger which are carried upon his person against depredation by thieves. It is bound, no doubt, to use due care to protect the passenger in this respect; and it might well be held to a higher degree of care when it assigns sleeping berths to passengers for an extra compensation than in cases where they remain in the ordinary coaches, in a condition to protect themselves. But it is only upon the ground of negligence that the railroad company can be held liable to the passenger for money stolen from his person during the journey. The ground of the responsibility is the same as to all the passengers, whether they use sleeping berths or not, though the degree of care required may be different. Some proof must be given that the carrier failed to perform the duty of protection to the passenger that is implied in the contract, before the question of responsibility can arise, whether the passenger be in one of the sleeping berths, or in a seat in the ordinary car. The principle upon which the responsibility rests is the same in either case, though the degree of care to which the carrier is held may be different. That must be measured by the danger to which the passenger is exposed from thieves, and with reference to all the circumstances of the case. The carrier of passengers by railroad, whether the passenger be assigned to the ordinary coaches or to a berth in a special car, has never been held to that high degree of responsibility that governs the relations of innkeeper and guest; and it would perhaps be unjust to so extend the liability, when the nature and character of the duties which it assumes are considered. But the traveler who pays for his passage, and engages a room, in one of the modern floating palaces that cross the sea or navigate the interior waters of the country, establishes legal relations with the carrier that cannot well be distinguished from those that exist between the hotel keeper and his guests. The carrier in that case undertakes to provide for all his wants, including a private room for his exclusive use, which is to be as free from all intrusion as that assigned to the guest at an hotel. The two relations, if not identical, bear such close analogy to each other that the same rule of responsibility should govern. We are of the opinion, therefore, that the defendant was properly held liable in this case for the money stolen from the plaintiff, without any proof of negligence.

**McBOYLE v. UNITED STATES**  
43 F.2d 273 (10<sup>th</sup> Cir. 1930)

PHILLIPS, Circuit Judge

William W. McBoyle was convicted and sentenced for an alleged violation of the National Motor Vehicle Theft Act, section 408, title 18, U.S. Code (18 U.S.C. § 408). The indictment charged that on October 10, 1926, McBoyle caused to be transported in interstate commerce from Ottawa, Ill., to Guymon, Okl., one Waco airplane, motor No. 6124, serial No. 256, which was the property of the United States Aircraft Corporation and which had theretofore been stolen; and

that McBoyle then and there knew it had been stolen.

The evidence of the government established the following facts: During the year 1926, McBoyle operated a commercial airport at Galena, Ill. On July 2, 1926, McBoyle hired A. J. Lacey as an aviator for a period of six months. In October, 1926, McBoyle induced Lacey to go to the field of the Aircraft Corporation at Ottawa, Ill., and steal such Waco airplane from the Aircraft Corporation. Lacey went to Ottawa, stole the airplane, and flew it to Galena, arriving there October 6th. McBoyle inquired of Lacey if any one knew the latter had taken the airplane at Ottawa. Lacey replied in the negative. Thereupon, McBoyle changed the serial number to No. 249, and painted it over in order to conceal the alteration. McBoyle and Lacey serviced the airplane and supplied it with gas and oil. McBoyle gave Lacey \$150 for expense money and instructed Lacey to fly the airplane to Amarillo, Tex., and there lease an airport for them to operate during the winter months. McBoyle arranged with Lacey to communicate with him en route by telegraphic code under the name of Pat Sullivan. Lacey left McBoyle's airport at Galena, Ill., on October 6th and flew the airplane to Guymon, Okl., stopping en route at St. Joseph, Mo., and Garden City, Kan. At Guymon, they communicated with each other by telegraph and McBoyle instructed Lacey to sell or store the stolen airplane and come back to Galena. Thereupon, Lacey returned to Galena. McBoyle then gave Lacey \$250 for expenses and instructed Lacey to take an airplane of the same kind and make belonging to McBoyle back to Guymon and substitute it for the stolen airplane. The purpose was to deceive the officers when they found the Waco plane at Guymon. Lacey started back to Guymon with the second airplane but crashed near Inman, Kan. Thereupon, Lacey returned to Galena and continued to work for McBoyle until the following December.

McBoyle denied all of the facts incriminating him except the sending and receiving of the telegrams. He testified that the telegrams did not refer to the airplane but to liquor which Lacey was supposed to have had in his possession in the airplane.

The primary question is whether an airplane comes within the purview of the National Motor Vehicle Theft Act. This act defines the term 'motor vehicle,' as follows:

'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.'

Counsel for McBoyle contend that the word 'vehicle' includes only conveyances that travel on the ground; that an airplane is not a vehicle but a ship; and that, under the doctrine of ejusdem generis, the phrase 'any other self- propelled vehicle' cannot be construed to include an airplane.

The Century Dictionary gives the derivation of the work 'vehicle' as follows: 'F. Vehicule, L. Vehiculum,' meaning a 'conveyance, carriage, ship.' It defines the word as 'Any receptacle, or means of transport, in which something is carried or conveyed, or travels.'

It will be noted that the Latin word 'vehiculum' means a ship as well as a carriage.

Webster defines the word 'vehicle' as follows:

(1) That in or on which any person or thing is or may be carried, esp. on land, as a coach, wagon, car, bicycle, etc.; a means of conveyance.

'(2) That which is used as the instrument of conveyance or communication.'

Corpus Juris, vol. 42, p. 609, Sec. 1, defines a motor vehicle, as follows:

'A 'motor vehicle' is a vehicle operated by a power developed within itself and used for the purpose of carrying passengers or materials; and as the term is used in the different statutes regulating such vehicles, it is generally defined as including all vehicles propelled by any power other than muscular power, except traction engines, road rollers, and such motor vehicles as run only upon rails or tracks.'

Both the derivation and the definition of the word 'vehicle' indicate that it is sufficiently broad to include any means or device by which persons or things are carried or transported, and it is not limited to instrumentalities used for traveling on land, although the latter may be the limited or special meaning of the word. We do not think it would be inaccurate to say that a ship or vessel is a vehicle of commerce.

An airplane is self-propelled, by means of a gasoline motor. It is designed to carry passengers and freight from place to place. It runs partly on the ground but principally in the air. It furnishes a rapid means for transportation of persons and comparatively light articles of freight and express. It therefore serves the same general purpose as an automobile, automobile truck, or motorcycle. It is of the same general kind or class as the motor vehicles specifically enumerated in the statutory definition and, therefore, construing an airplane to come within the general term, 'any other self-propelled vehicle,' does not offend against the maxim of ejusdem generis.

Furthermore, some meaning must be ascribed to the general phrase 'any other self-propelled vehicle,' which Congress wrote into the act. It specifically enumerated all of the known self-propelled vehicles designed for running on land. It used the word 'automobile,' a generic term, which includes all self-propelled motor vehicles that travel on land and are used for the transportation of passengers, except those designed for running on rails. 42 C.J. p. 609, Sec. 2.

We conclude that the phrase, 'any other self-propelled vehicle,' includes an airplane, a motorboat, and any other like means of conveyance or transportation which is self-propelled, and is of the same general class as an automobile and a motorcycle.

Counsel for McBoyle contend that the evidence failed to establish that he committed any crime in the Western District of Oklahoma, and that therefore the United States District Court for that

district, because of the provisions of section 2, art. 3 of the United States Constitution, and the Sixth Amendment to the United States Constitution, was without jurisdiction.

The Motor Vehicle Act provides that 'whoever shall transport or cause to be transported in interstate \* \* \* commerce a motor vehicle, knowing the same to have been stolen, shall be punished,' etc., and that 'any person violating this section may be punished in any district in or through which such motor vehicle has been transported or removed by such offender.'

The crime of transporting a stolen motor vehicle in interstate commerce is a continuing offense. It is committed in each state and district through which such vehicle is transported. It was not essential that McBoyle should have been physically present in the Western District of Oklahoma. The constitutional requirement is that the accused shall be tried in the state or district where the crime is committed, but not necessarily in the state and district where the accused was at the time the crime was committed. It is sufficient if the crime was committed in the Western District of Oklahoma and McBoyle caused it to be committed there.

The jury was warranted in finding, from the evidence, that McBoyle caused Lacey to undertake to transport such airplane from Ottawa, Ill., to Amarillo, Tex., that Lacey started from Ottawa and succeeded in flying as far as Guymon, Okl., and that, upon telegraphic instructions from McBoyle, Lacey stored the airplane at Guymon and returned to Galena; and in concluding that McBoyle caused the offense to be committed in the Western District of Oklahoma.

The judgment is therefore affirmed.

COTTERAL, Circuit Judge (dissenting).

I feel bound to dissent on the ground that the National Motor Vehicle Theft Act should not be construed as relating to the transportation of airplanes.

A prevailing rule is that a penal statute is to be construed strictly against an offender and it must state clearly the persons and acts denounced.

It would have been a simple matter in enacting the statute to insert, as descriptive words, airplanes, aircraft, or flying machines. If they had been in the legislative mind, the language would not have been expressed in such uncertainty as 'any other self-propelled vehicle not designed for running on rails.' The omission to definitely mention airplanes requires a construction that they were not included. Furthermore, by excepting vehicles running on rails, the meaning of the act is clarified. These words indicate it was meant to be confined to vehicles that run, but not on rails, and it did not extend to those that fly. Is it not an unreasonable view that airplanes fall within the description of self-propelled vehicles that do not run on rails? The question is its own answer.

The rule of ejusdem generis has special application to this statute. General words following a

particular designation are usually presumed to be restricted so as to include only things or persons of the same kind, class, or nature, unless there is a clear manifestation of a contrary purpose. 25 R.C.L. pp. 996, 997. The general description in this statute refers to vehicles of the same general class as those enumerated. We may assume an airplane is a vehicle, in being a means of transportation. And it has its own motive power. But is an airplane classified generally with 'an automobile, automobile truck, automobile wagon, or motor cycle?' Are airplanes regarded as other types of automobiles and the like? A moment's reflection demonstrates the contrary.

Counsel for appellant have referred us to the debates in Congress when the act was pending as persuasive of an interpretation in his favor. House, Cong. Rec., vol. 58, part 6, pp. 5470 to 5478; Senate, Id., vol. 58, part 7, pp. 6433 to 6435. The proceedings are not permissible aids, apart from the journals or committee reports. But they may be referred to as showing the history of the period. The discussions of the proposed measure are enlightening in this case from a historic standpoint, in showing that the theft of automobiles was so prevalent over the land as to call for punitive restraint, but airplanes were never even mentioned.

It is familiar knowledge that the theft of automobiles had then become a public menace, but that airplanes had been rarely stolen if at all, and it is a most uncommon thing even at this date. The prevailing mischief sought to be corrected is an aid in the construction of a statute.

I am constrained to hold that airplanes were not meant by the act to be embraced in the designation of motor vehicles, and that the indictment charged no offense against the defendant.

**McBOYLE v. UNITED STATES**  
283 U.S. 25 (1931)

Mr. Justice HOLMES delivered the opinion of the Court.

The petitioner was convicted of transporting from Ottawa, Illinois, to Guymon, Oklahoma, an airplane that he knew to have been stolen, and was sentenced to serve three years' imprisonment and to pay a fine of \$2,000. The judgment was affirmed by the Circuit Court of Appeals for the Tenth Circuit. A writ of certiorari was granted by this Court on the question whether the National Motor Vehicle Theft Act applies to aircraft. That Act provides: 'Sec. 2. That when used in this Act: (a) The term 'motor vehicle' shall include an automobile, automobile truck, automobile wagon, motor cycle, or any other self-propelled vehicle not designed for running on rails. \* \* \* Sec. 3. That whoever shall transport or cause to be transported in interstate or foreign commerce a motor vehicle, knowing the same to have been stolen, shall be punished by a fine of not more than \$5,000, or by imprisonment of not more than five years, or both.'

Section 2 defines the motor vehicles of which the transportation in interstate commerce is punished in Section 3. The question is the meaning of the word 'vehicle' in the phrase 'any other

self-propelled vehicle not designed for running on rails.' No doubt etymologically it is possible to use the word to signify a conveyance working on land, water or air, and sometimes legislation extends the use in that direction, e. g., land and air, water being separately provided for, in the Tariff Act, September 21, 1922, c. 356, § 401(b). But in everyday speech 'vehicle' calls up the picture of a thing moving on land. Thus in Rev. St. § 4 (1 U.S.C. § 4), intended, the Government suggests, rather to enlarge than to restrict the definition, vehicle includes every contrivance capable of being used 'as a means of transportation on land.' And this is repeated, expressly excluding aircraft, in the Tariff Act, June 17, 1930, c. 497, § 401(b), 46 Stat. 590, 708 (19 U.S.C. § 1401). So here, the phrase under discussion calls up the popular picture. For after including automobile truck, automobile wagon and motor cycle, the words 'any other self-propelled vehicle not designed for running on rails' still indicate that a vehicle in the popular sense, that is a vehicle running on land is the theme. It is a vehicle that runs, not something, not commonly called a vehicle, that flies. Airplanes were well known in 1919 when this statute was passed, but it is admitted that they were not mentioned in the reports or in the debates in Congress. It is impossible to read words that so carefully enumerate the different forms of motor vehicles and have no reference of any kind to aircraft, as including airplanes under a term that usage more and more precisely confines to a different class. The counsel for the petitioner have shown that the phraseology of the statute as to motor vehicles follows that of earlier statutes of Connecticut, Delaware, Ohio, Michigan and Missouri, not to mention the late Regulations of Traffic for the District of Columbia, none of which can be supposed to leave the earth.

Although it is not likely that a criminal will carefully consider the text of the law before he murders or steals, it is reasonable that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear. When a rule of conduct is laid down in words that evoke in the common mind only the picture of vehicles moving on land, the statute should not be extended to aircraft simply because it may seem to us that a similar policy applies, or upon the speculation that if the legislature had thought of it, very likely broader words would have been used.

Judgment reversed.