cerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment regardless of whether or not the disputants stand in the proximate relation of employer and employee."[11]

This section would clearly seem to include the case under discussion, since there is present here an interest and an association organized to participate in this particular business. This opinion would seem to go back to the trend of strictly limiting the rights of labor, which trend preceded the passage of the Norris-LaGuardia Act.

Since there is conflict of authority among the Circuit Courts, the Supreme Court will probably be called upon to rule on the constitutionality of the act and the actual intentions of Congress. At this time it appears as if the Norris-LaGuardia Act meant that a controversy between a labor union and an employer not employing members of the union should be deemed a "labor dispute." N. K. '38.

NEGLIGENCE—RES IPSA LOQUITUR—AVIATION.—The applicability of the res ipsa loquitur doctrine to airplane accidents will possibly receive new consideration as a result of the litigation likely to grow out of the recent epidemic of air crashes. One of the latest cases involving this question is *Parker et al v. Granger et al.*[1] The Fox Film Company was engaged in producing a picture which involved the making of a parachute jump. The film company contracted with James Granger, Inc., for three planes, two of which were furnished by the Tanner Motor Livery. Two of these planes were equipped with cameras and dual controls and two licensed pilots were furnished for them by the livery company. Kenneth Hawks and Max Gold, director and assistant director of the movie company took places at the remaining controls and the planes took off. The plans for the flight had been very carefully mapped out by Hawks and he was to give the signals for the various maneuvers by wiggling the wings of the plane which he was helping to pilot. There was every indication that Hawks and Gold were to have a large share in the control of the planes during the flight. In a maneuver on a turn one of the planes side-slipped into the other, there was a crash, an explosion, and the ten persons in the two planes were carried to an ocean grave. The heirs and representatives of the persons killed, with the exception of those of the licensed pilots, brought suit against Granger and the Tanner Livery Company for damages resulting from negligence. The verdict for the defendants was affirmed. The court held it not error for the trial court to refuse to apply the res ipsa loquitur doctrine on the ground that the planes were not in the complete control of the defendants.

There are at least three factors which are basic to any application of the res ipsa loquitur doctrine.[2] (1) The accident must have been of the type

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[11] 29 U. S. C. A. Section 113 (c).

[1] (1935) 52 P. (2d) 226, aff. (1934) 39 P. (2d) 833.

[2] Byrne v. Boadle (1863) 2 H. & C. 722, 159 Eng. Rep. 299; Kearney v. London, etc. R. R. Co. (1870) L. R. 5 Q. B. 411; McCloskey v. Koplar (1932) 329 Mo. 527, 46 S. W. (2d) 557, 92 A. L. R. 641.

that ordinarily does not happen unless someone has been negligent; (2) the cause of the injury must have been in the sole control of the defendants; and (3) supplementary to the second proposition, the defendants must have been in a better position to explain the probable cause of the accident than the plaintiff. As a general rule it must be said that air travel corporations are in the sole control of their planes and are in a better position to explain the causes of accidents than are the passengers or their representatives. But as to the first prerequisite the matter is not so clear. There has been an honest difference of opinion about the matter. Men who are learned in the ways of aviation state emphatically that any accidents which happen to aircrafts, barring ice on the wings and fog at the landing field, are directly the result of actionable negligence on the part of the pilot or those preparing the plane for flight. Opposing this view are men who are not so certain that every air accident infers negligence. "While experts claim to be able to analyze each airplane accident at the present time, segregate the different acts contributing thereto and assign a definite cause for the occurrence, the writer doubts whether granting this, enough is now generally and scientifically known to draw such a universal conclusion."[3] "To apply the doctrine of res ipsa loquitur to this type of acident at the present stage of the development of air travel would seem to ignore the pragmatic basis of the principle and subject those who operate aircraft to unduly severe liability."[4] The opinions in several fairly recent cases involving this question reflect the same thought.[5]

Most of the courts which have held that the doctrine should apply have not given words to their reasoning. It would appear that the doctrine has been applied because of the analogy which exists between air travel and train travel without proper regard for the differences between these two modes of transportation. It would, of course, be unfair to say that the courts have not considered the fundamental questions involved, but the fact remains that the logic and reasoning is not apparent in the decisions. Although this method of bluntly applying the doctrine instead of logically showing the reasons why it should apply works well enough in the individual case (and there is little quarrel with the decisions), it does not present a line of reasoning which can be followed, distinguished, or overruled in subsequent cases.

The question then arises as to what has been and what should be the principle which determines whether the doctrine is to be applied in the particular case. It certainly should not be applied with the machine-like regularity with which it is applied to railroad accidents.[6] The court in a recent

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[3] Osterhout, The Doctrine of Res Ipsa Loquitur as Applied to Aviation (1931) 2 Air Law Rev. 9, at 23.

[4] (1930) 1 Air Law Rev. 478.

[5] Allison v. Standard Air Lines (1933) 65 F. (2d) 668; Wilson v. Colonial Air Transport Inc. (1932) 278 Mass. 420, 180 N. E. 212; Rochester Gas & Electric Corp. v. Dunlop (1933) 266 N. Y. Supp. 469; Herndon v. Gregory (1935 Ark.) 81 S. W. (2d) 849.

[6] Denver Tramway Corp. v. Kuttner (1934) 95 Colo. 312, 35 P. (2d) 852; Hurley v. Mo. Pac. Trans. Co. (1933 Mo. App.) 56 S. W. (2d) 620.

case, in an attempt to conciliate the decisions, threw out a hint which may not only reconcile past decisions but may act as a guiding principle in future decisions.[7] The court stated that where the doctrine has been applied something more than the bare accident and injury has been alleged. Always some affirmative act of the defendant has been alleged which, coupled with the injury, has served to raise the inference of negligence. Whatver may be said of this principle as an operative rule, it does come close to harmonizing the opinions which has gone before. All of the cases applying the doctrine contained allegations of affirmative acts by the defendants which suggested negligence, as where a turn was made at too low and unsafe a speed and altitude, or where planes crashed in mid-air.[8] With one exception,[9] the cases where the doctrine was refused did not contain allegations over and above the accident and injury.[10] The exception refused the doctrine although all the circumstances seemed to demand it, but the plaintiff did not rely a great deal on the doctrine and failed to save his exceptions when it was not applied.

It would not seem unfair to put this burden on the plaintiff. In most cases the plaintiff would be capable of inserting allegations of this sort in his petition, where he would not be capable of alleging sufficient specific acts to enable him to win the case under the general rules of negligence. The allgations would have to be made with caution, the amount of caution depending on the jurisdiction, because allegations of too specific a nature may cause the plaintiff to lose the advantages of the doctrine altogether. A Texas court refused the plaintiff the use of the doctrine on the ground that he had alleged too many specific facts and therefore would have to stand on the specific allegations.[11] B. T. '38.

PHYSICIANS AND SURGEONS—"REPUTABLE" MEDICAL COLLEGE—DUE PROCESS—ADMINISTRATIVE ORDERS.—A Wisconsin statute authorizes the State Board of Medical Examiners to "license without examination a person holding a license to practice medicine and surgery . . . in another state, . . . upon presentation of the license and a diploma from a reputable professional college."[1] The statute does not specify any procedure whereby the Board can determine whether a particular medical college is in fact reputable. In that state of the law, the Board refused a license to an applicant who had graduated from a school not recognized by the Board as fulfilling the statutory requirements of reputability. In arriving at that decision, the

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[7] Herndon v. Gregory (1935 Ark.) 81 S. W. (2d) 849.

[8] Seaman v. Curtis Wright Flying Service (1930) 247 N. Y. Supp. 251; McClusker v. Curtis Wright Flying Service (1933) 269 Ill. App. 502; Smith v. O'Donnell (1932) 215 Calif. 714, 12 P. (2d) 933; Stoll v. Curtis Wright Flying Service Inc. (1930) U. S. Aviation Rep. 148.

[9] Allison v. Standard Air Lines, supra note 5.

[10] Wilson v. Colonial Air Lines, supra note 5; Herndon v. Gregory, supra note 5.

[11] English v. Miller (1931 Tex.) 43 S. W. (2d) 642. For Missouri rule Kennedy v. Metropolitan St. Ry. Co. (1907) 128 Mo. App. 297, 107 S. W. 16.

[1] Wis. Stats. (1935) 147. 17.