

CHARGE III: Violation of the 95th Article of War.

Specification 1: In that Second Lieutenant Thomas R. Conner, 8th Engineers, with intent to deceive Staff Sergeant James C. Rosser, Private First Class Henry L. Latimer and Private First Class William C. Brazier, all of 46th School Squadron, A.C., who were then in the execution of their duty as members of the alert crew of 46th School Squadron, A.C., did, at Randolph Field, Texas, on or about December 5, 1937, wrongfully pretend to said Staff Sergeant Rosser, Private First Class Latimer and Private First Class Brazier that he was Second Lieutenant Mell M. Stephenson, Jr., Air Corps, and that he was authorized to fly Army airplane, Type BT-9B, A.C. No. 37-153, Squadron No. 243, well knowing that said pretenses were false, and by means thereof did deceitfully obtain from said Staff Sergeant Rosser, Private First Class Latimer and Private First Class Brazier, for his own use, said Army airplane, Type BT-9B, A.C. No. 37-153, Squadron No. 243, of the value of about \$16,207.16, property of the United States, furnished for use in the military service thereof.

Specification 2: In that Second Lieutenant Thomas R. Conner, 8th Engineers, did, at Randolph Field, Texas, on or about December 5, 1937, with intent to deceive Staff Sergeant James C. Rosser, 46th School Squadron, A.C., who was then in the execution of his duty as noncommissioned officer in charge of the alert crew of 46th School Squadron, A.C., state to the said Staff Sergeant Rosser that "I have a clearance, it is in my quarters," or words to that effect, which statement was known by the said Lieutenant Conner to be untrue in that he did not have such clearance.

He pleaded not guilty to the charges and specifications, and was found guilty of Charges I and II and their specifications, guilty of Specification 1, Charge III, except the words -

"that he was Second Lieutenant Mell M. Stephenson, Jr., Air

Corps, and", and

"and by means thereof did deceitfully obtain from said Staff Sergeant Rosser, Private First Class Latimer and Private First Class Brazier, for his own use, said Army airplane, Type BT-9B, A.C. No. 37-153, Squadron No. 243, of the value of about \$16,207.16, property of the United States, furnished for use in the military service thereof", and furthermore

"pretenses were", substituting therefor the words "pretense was",

guilty of Specification 2, Charge III, and not guilty of Charge III but guilty of violation of the 95th Article of War. No evidence of previous convictions was introduced. He was sentenced to be dismissed the service. The reviewing authority approved the sentence and forwarded the record of trial for action under the 48th Article of War.

3. The evidence shows that at about 10:45 a.m., Sunday, December 5, 1937, accused drove in an automobile to a hangar at Randolph Field, Texas, and inquired as to what person was to use a certain Army airplane, Type BT-9B, Air Corps Number 37-153, Squadron Number 243, which was standing nearby. He was told that it was for a Lieutenant Stephenson. (R. 15,16,19,32) It had been prepared for a cross-country flight and was fueled with 105 gallons of gasoline (R. 21) of the value of nine and seven-tenths cents per gallon. The airplane, property of the United States, was of the value of about \$16,207.16. (Pros. Ex. I) Accused departed and shortly thereafter borrowed from an officer acquaintance at the field a set of flying equipment (R. 57,58). At about 11 a.m. he returned to the hangar wearing the flying equipment and got into the airplane. Private First Class William E. Brazier, 46th School Squadron, Air Corps, a member of the alert crew at the hangar, approached and asked accused if he had his "clearance" (R. 21-23), an authorization required for cross-country, but not for local, flights (R. 76; Pros. Ex. H). Accused stated that he did not have a clearance and suggested "How about fixing it up for me?" Accused started the motor of the airplane (R. 22), and Brazier reported to Staff Sergeant James C. Rosser, noncommissioned officer in charge

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of the alert crew, 45th School Squadron, in the hangar office. Rosser instructed Private First Class Henry L. Latimer, a member of the Squadron alert crew, to make inquiries. (R. 16,33) Latimer went to the airplane and asked accused about the clearance. Accused said he did not "have time to go by and get" it. Latimer reported to Rosser, in the hangar office, that accused did not have a clearance, and returned to the airplane. Thereupon accused told Latimer that his "clearance was in his quarters" and asked Latimer to go to his quarters and get it for him. (R. 16) In the meantime Rosser telephoned the Post Operations Office, from which he received instructions not to permit the pilot to take off without a clearance (R. 33,49,55). Rosser then went to the airplane and told accused that he must have a clearance. Accused replied, "I have a clearance. It is in my room in the Bachelor Officers Quarters" (R. 33), gave a room number (R. 37,38), and asked Rosser to send someone for it. Rosser returned to his office and telephoned further. While Rosser was talking over the telephone (R. 33,34), accused ordered Brazier to "pull the blocks" (R. 22), saying he was going to "taxi around and get ready to take off" (R. 27). Brazier started towards the office but accused called him back, gave him "another order to pull the blocks and started getting out of the ship", whereupon Brazier removed the blocks and accused took off in the airplane and left the field (R. 22,23,34). Accused had attended the Air Corps Primary Flying School at Randolph Field from September 10, 1936, to September 27, 1937 (Pros. Ex. A), but on August 31, 1937, having been disqualified for further flying training, had been suspended from duty involving flying (Pros. Ex. B), and was not thereafter authorized to pilot an Army airplane (R. 64). He did not have a clearance for a flight on December 5, 1937 (R. 48).

A short time after leaving Randolph Field, accused flew the airplane over a residential area in the suburbs of San Antonio, Texas. For ten or fifteen minutes he flew at a low altitude, diving at least twice to within about fifty feet of the housetops and making some "90 degree banks" at a very low altitude. (R. 80-83,87) An Air Corps officer who observed accused testified that in his opinion, because of low altitude, it would have been impossible "most of the time" for accused to have landed without "crashing into something" had the motor failed (R. 83), and that accused flew "dangerously low" (R. 86). By a regulation issued by the Commanding Officer, Randolph Field,