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## DIGEST

### AIRPLANE CRASH—NEGLIGENCE—WELDING OF WING FITTING BY AIRCRAFT MANUFACTURERS (Ont. Canada)

Deceased, an experienced pilot, employed by General Airways (now in liquidation and insolvent) was killed in a crash on January 18, 1938. The fatal plane was purchased from Stinson Aircraft Corporation in March, 1937, and repaired by an employee of Stinson in September, 1937, by having a "gusset" welded to a wing fitting. The plane was used continuously from September to January, the time of the crash. Action by the deceased's administrator against Stinson on two grounds:

(1) It was a negligent act to perform the welding, since Stinson should have known that the plate would be weakened thereby and an accident result. In support of this contention, plaintiff presented two witnesses. One, an engineer, testified welding on heat treated steel would weaken the plate. His testimony proved worthless when the court found that the part in question was not heat treated steel. The second witness was dismissed with the remark that he spoke of "a possibility that might be a probability". He failed to answer credible defense witnesses who testified to the effect that while welding does change the structure of the part welded, it does not necessarily weaken that part so far as tension load is concerned; and that the change in structure did not extend to that part of the plate where the break occurred.

(2) Secondly it was urged that the weld itself was badly done. This, too, went unproved. The court found that the weld showed every indication of having been skillfully done.

The decision finally discussed the extension to aircraft manufacturers and repairmen of the principle of liability and the burden of proof imposed upon manufacturers of articles sold in sealed bottles, or containers.

The basis for decision in those cases, viz., that the article undoubtedly remained in the same condition from factory to consumer and, therefore, the manufacturer is responsible for defects, is lacking in the instant aircraft case. As the court says:

"The plane was in use over a period of months, and damage could happen which the defendant corporation could not possibly know about, could not possibly prove in court, and consequently could not be responsible for proving. \* \* \* \* \*

"I think it must be clearly shown that the condition which resulted in the crash was a condition which could not have been introduced by anything which occurred between the delivery of the plane, or between the performing of the welding operation, and the accident, before that principle \* \* \* \* \* can be applied to a case such as this. The plaintiff falls far short of eliminating possible extraneous causes which might account for the defective condition which undoubtedly brought about this crash".

The action was dismissed: *McCoy, Administrator v. Stinson Aircraft Corporation*, Supreme Court of Ontario, Canada. November 23, 1939. Tried in Toronto. Decision unreported.

LEE A. FREEMAN