

HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

(Denning. J.)

7th October, 1948

CONGRESS v. THE MINISTER OF PENSIONS

JUDGMENT

MR. JUSTICE DENNING:- In this case Mr. Leonard George Congress served for some years in the Army. Before the war he had suffered from gall bladder trouble and during the war he suffered from it again. He had the gall stones removed whilst he was in the Army. The operation was well and successfully done, but, unfortunately, it left him with a ventral hernia. In spite of the utmost skill, a hernia may follow an abdominal operation. That is what happened in this case. Mr. Congress applied for a pension on account of it. That has been negatived quite properly on the ground that the operation was well and skilfully performed in his own interests. It was the same operation as he would have had to have in civilian life. The sequels of it are therefore not attributable to war service at all.

Another quite different point is then made: it is said that the Tribunal did not consider whether the gall bladder trouble was aggravated by war service. The Tribunal say: "The point was never suggested by the man himself or by the British Legion representative or suggested before us and, therefore, we did not go into it". It is said on behalf of the man: "They ought to have gone into the case to see whether or not the gall bladder trouble was aggravated by war service". I think that is going too far. I do not think Tribunals are bound to search out unlikely points which no one has ever suggested before. At all events, their failure to do so is not an error of law. There must at least be shown some reasonable ground for saying that the Tribunal should have investigated the matter further before I can interfere. There is no such ground here. The man would probably have had to have an operation for gall stones, in any event, sooner or later. The gall bladder trouble has been remedied; and the hernia is not due to that source.

In any case, if there is any point on aggravation of the gall bladder trouble, a fresh application can be made by the man. I do not think I ought to encourage applications of this kind when the point was never taken before the Tribunal or even suggested and when there has not even now been shown any reasonable ground for supposing there may have been any aggravation. I therefore give leave to appeal but dismiss the appeal.