

HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

(Denning, J.)

6th October, 1948

DENT v. THE MINISTER OF PENSIONS

JUDGMENT

MR. JUSTICE DENNING:- This man suffered from hydronephrosis, a waterlogged kidney which is due to an inborn weakness. As a rule it is not aggravated by war service at all but just takes its course. The waterlogged kidney becomes useless, it has to be cut out, and then the man is better afterwards. In this case, however, the Minister did concede that it may have been aggravated by war service, on the ground that, owing to war service, the need for the operation arose earlier than it otherwise would. The man would have had to have the operation sooner or later, but because of his war service it might have been accelerated a little.

Mr. McQuown, for the man, says: "The cutting out and the removal" – or, in medical language, the nephrectomy – "of the kidney is separate disablement or injury which should be found to be attributable to war service." The Minister says: "No, this is all part and parcel of the original hydronephrosis. This is just an operation performed to cure the previous trouble and is not a separate disablement." I think the Minister is right. A finding of attributability on the ground of nephrectomy would mean that this man would get a pension for the rest of his days because he has only got one kidney for the rest of his days. That is not the intention of the Royal Warrant. The intention of the Royal Warrant is that he should have a pension for such time as he was disabled by the aggravation of the disease of hydronephrosis, but not for the nephrectomy.

In my judgment, this case should not be regarded as a disablement due to nephrectomy but a disablement due to hydronephrosis and its sequela. The hydronephrosis was aggravated by war service but was not attributable to it. It would be quite wrong to separate the nephrectomy from the hydronephrosis.

The treatment for a disease is different from the disease. The right approach is to see what would have happened to him apart from war service. He would have had a nephrectomy in any case. Very well, then, when he has got to the same position as he would have been, war or no war, his pension must cease. The appeal is dismissed.