HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

(Ormerod, J.)

3rd October, 1952

DICKINSON, G. E. v. THE MINISTER OF PENSIONS

JUDGMENT.

MR. JUSTICE ORMEROD: This is an appeal by Mrs. Gladys Eleanor Dickinson against a decision of the Pensions Appeal Tribunal on the 3rd December, 1951, that the death of her husband, Major George Colleton Dickinson, was not attributable to war service.

Major Dickinson was an Army Officer who rejoined the Army from the reserve of Officers at the age of 50 on the 18th September, 1939. He served in the Army until the 7th August, 1940, and was then invalided on account of neurasthenia. He was subsequently awarded a pension on the ground that his neurasthenia had been aggravated by his war service. He died on the 22nd September, 1950, as a result of coronary thrombosis. He died more than ten years after the termination of his service, and his widow claimed that his death was substantially hastened by his war service on the ground that the stress and strain of worry caused by the neurasthenia (which in turn had been aggravated by war service) had had a serious effect upon the condition of the arteries, which finally resulted in his death from coronary thrombosis.

That, of course, is a contention which may or may not be a sound one. The matter came before the Pensions Appeal Tribunal who, having heard the whole of the evidence and having heard the arguments of Mr. McQuown on the lines which I have indicated, dismissed the appeal, using these words : "These and other points raised in connection with this matter have been fully dealt with in the two opinions of the Medical Services Division, and the Tribunal regard those opinions as medically sound." Then these are the words on which there has been so much argument to-day : "They are satisfied that it has not been shown that Major Dickinson's death from coronary thrombosis ten years after his war service ended was in any way connected with that service." In other words, the Tribunal decided this matter on the basis that, as the death of the deceased took place more than seven years after the termination of his war service, the onus of proof was upon the Claimant to satisfy the Tribunal that the death of the deceased was "due to or substantially hastened by" service, and not upon the Minister as would have been the case if Major Dickinson had died within seven years of the termination of his service.

Mr. McQuown has argued, with very great force and considerable skill, that the Tribunal misdirected itself on the question of onus of proof, and that even although the death of the deceased, Major Dickinson, occurred more than seven years after the termination of his service the burden of proof was still upon the Ministry, and that, therefore, the appeal should be allowed.

The argument which is put forward by the Appellant is based upon the provisions of Article 4 and Article 5 of the Pensions Warrant in its present form, that is to say, the Pensions Warrant of 1949. Article 4 of the present Warrant, which is the Article which deals with the question of entitlement, provides for cases where the claim is made or death takes place not more than seven years after the termination of the service in respect of which the claim is made. Paragraph (2) of Article 4 provides : "Subject to the following provisions of this Article, in no case shall there be an onus on any claimant under this Article to prove the fulfilment of the conditions set out in paragraph (1) of this Article and the benefit of any reasonable doubt shall be given to the claimant."

It is quite clear that certainly the onus of proof is not upon the Claimant to establish his claim in a case which comes under Article 4 of the Warrant, and, indeed, it has been held in Scotland in *Irving's* case[1] that the effect of paragraph (2) of Article 4 must be that the onus of proof is upon the Ministry to show that the Claimant is not entitled to a pension under the circumstances in which the pension is claimed.

Article 5 of the Warrant deals with claims which are made when a longer period than seven years has elapsed between the date of the claim, or alternatively the death of the person in respect of whom the claim is made, and the termination of the service. Article 5 provides for entitlement to pension in almost exactly the same words as Article 4 with the exception that, in the case of a claim in respect of death, Article 4 says when "the death was due to or hastened by an injury which was attributable to service" whereas Article 5 says when "the death was due to or substantially hastened by an injury which was attributable to service." It is to be assumed that the word "substantially" has been put in for a purpose, and that a greater effect of the conditions, so far as hastening death is concerned, must be proved before an award can be made under those circumstances, but that is a matter which probably does not affect the question in issue here.

There is no paragraph in Article 5 which states (as does paragraph (2) of Article 4) that in no case shall there be an onus upon the Claimant. That is omitted, and it is, I think, proper to assume that it has been expressly omitted from the wording of Article 5 of the Royal Warrant. In place of paragraph (2) of Article 4, Article 5 states in paragraph (2) : "A disablement or death shall be certified in accordance with paragraph (1) of this Article if it is shown that the conditions set out in this Article and applicable thereto are fulfilled.".

Paragraph (4) of Article 5 provides : "Where, upon reliable evidence, a reasonable doubt exists whether the conditions set out in paragraph (1) of this Article are fulfilled, the benefit of that reasonable doubt shall be given to the claimant.".

As I understand it, Mr. McQuown puts his argument in this way : He says that Article 5 is ambiguous; that the position as it existed in 1939 was that the onus of proof was not on the Claimant, whether the claim was made within seven years or after seven years of the termination of the service, and that (although the Warrant as it at present exists is a complete repeal of the Warrant as it existed previously) the provisions of the Warrant which was in use previously must be taken into consideration; that it must be accepted that there was an alteration (or an attempted alteration) of the position, and that such alteration, if it is valid, must be in terms which admit of no ambiguity or doubt, and that, under these circumstances, as it is not stated specifically in Article 5 of the

Warrant that the onus of proof shall be upon the Claimant, by the ordinary rules of interpretation, the position must be as it was before this Warrant came into force, and, as it is in Article 4 of the Warrant, the onus of proof must still be upon the Ministry and not upon the Claimant.

He says further that paragraph 4 (which provides in paragraph (4) (b) : "where, upon reliable evidence, a reasonable doubt exists whether the conditions set out in paragraph (1) of this Article are fulfilled, the benefit of that reasonable doubt shall be given to the claimant") can mean only one thing; that it is impossible to say that the onus of proof must be upon the Claimant and at the same time, if there is a reasonable doubt, he must have the benefit of that doubt; that these words in themselves, if they do not go so far as to say in specific terms that the onus of proof is upon the Ministry, can be consistent only with that proposition.

After considering the terms of Article 5 of the Warrant, I find that I cannot accept the contentions which have been put forward by Mr. McQuown. He submits that the Pensions Warrant does not so much establish rights to be decided in a Court of law as to set out, as it were, the administrative rules by which pensions should or should not be granted as the case may be. That, I think, cannot be accepted as a proper statement of the position. The effect of the Royal Warrant is, of course, in a proper case to entitle a man, who has a proper claim, to a pension, and the relevant Articles of the Royal Warrant set out the circumstances under which he shall be entitled and the way in which that entitlement shall be established.

It is, I think, axiomatic in the administration of our law that, if a person thinks that he has a claim against another man, or against a Ministry, the duty is upon him to establish that claim. The mere fact that an Act of Parliament does not state that that duty is upon him, if it establishes a right, must, I think, automatically establish the duty upon him to prove what he thinks is his right before he can succeed in his claim. That is, I think, recognised by those who framed this Warrant because Article 4 of the Warrant, having set out the conditions under which a man may be entitled to a pension, provides specifically that the onus of proof shall in no case be upon the Claimant; in other words, the onus of proof shall be upon the Ministry or the Respondents to the claim. That has been done for the specific purpose of providing an exception to what is clearly an accepted rule.

That has not been done in Article 5. In Article 5 no exception is made, and there is no provision that there shall be no onus of proof upon the Claimant. Therefore, on the face of it, it must, I think, follow that the Claimant, in order to succeed, must satisfy the Court or the Tribunal (which ever body has to decide the matter) that the conditions which entitle him to an award have been satisfied. But Article 5 goes much further than that because it provides in paragraph (2) : "A disablement or death shall be certified … if it is shown that the conditions set out in this Article and applicable thereto are fulfilled.".

Mr. McQuown argues that there is nothing there to say who shall show that the conditions of the Article are fulfilled; that duty might be upon the Claimant, or it might be upon the Ministry, or it might be upon other unspecified persons. That, I think, again is an argument which cannot be accepted. It appears to me clear that, where it is provided that a pension shall be awarded if it is shown that the conditions set out in the Article are fulfilled, it must mean if it is shown by the person making the claim that the conditions applicable thereto are fulfilled.

Under those circumstances I am satisfied here that there is no ambiguity in the wording of Article 5 of this Warrant, and that the rules of construction which Mr. McQuown has very properly prayed in aid of this case are matters which do not fall for consideration. I am satisfied that the Article in itself leaves it quite clear that after seven years a claimant may still be entitled, under the proper conditions, to a pension provided that it is shown by him that the conditions of entitlement have been fulfilled.

A further real difficulty in this case is the wording of paragraph (4) of Article 5 which, as I have said, provides that if a reasonable doubt exists the benefit of that reasonable doubt shall be given to the claimant. Mr. McQuown argues with some authority (the authority of the Lord Justice Clerk in *Mitchell's* case[2]) that if the Claimant is to be given the benefit of the doubt in the case of a reasonable doubt, it can mean only one thing : that the onus of proof must be on the Ministry, because, if the burden of proof is put upon the Claimant to begin with and if he is then given the benefit of the doubt, that burden of proof must shift at some stage of the case.

I agree with Mr. McQuown that the wording of that paragraph is probably unfortunate, but I am satisfied that the intention of the paragraph is that it is the duty of the claimant to produce reliable evidence, to establish his claim, but if (after hearing and considering that reliable evidence and making a comparison between such evidence and other evidence which is called on behalf of the Ministry to contradict or to contravert it) the Tribunal has a reasonable doubt, then under those circumstances the plain meaning of that paragraph of the Article is that the benefit of that doubt shall be given to the Claimant.

Therefore, as I see it, the Tribunal have directed themselves properly on this question of onus. They state in their Judgment that they are satisfied that it is not shown that the death of Major Dickinson from coronary thrombosis was connected with such service. That means that they were not in any doubt, reasonable or otherwise, and there was no reasonable doubt the benefit of which could be given to the Claimant. It follows that the appeal fails and must be dismissed.