

**COURT OF SESSION
SECOND DIVISION
(The Lord Justice-Clerk (Thomson)
Lords Mackay and Patrick)
11th, 12th and 27th November, 1952**

HOLLAND, JOHN v. THE MINISTER OF PENSIONS

OPINION

(27th November, 1952)

The opinion of the Court was given by the Lord Justice-Clerk (Thomson):- The appellant, who is 39 years of age, enlisted in the Lothian and Border Yeomanry as a Territorial in April 1939. On 2nd September he was mobilised and served until his release with his age and service group on 1st February, 1946. His service included the North African and Italian campaigns and he was abroad from December, 1942, until returning home on release leave. Shortly before his release he was operated on for varicose veins which had developed during service. On his discharge from hospital he was found fit for further service in medical category A1.

On 26th February, 1946, the appellant applied for a pension in respect of varicose veins. This having been refused the appellant appealed to the Tribunal. The Tribunal decided that the "disability was not attributable to war service but that it had not been proved that the disability had not been aggravated by such service". Against this refusal of attributability this appeal is taken.

A very considerable amount of medical evidence was put before the Tribunal on behalf of the Minister. This evidence was overwhelmingly in support of the view that the condition from which the appellant was suffering was due to congenital and inherited weakness which service conditions may aggravate but could not cause. No medical evidence was led on behalf of the appellant who rested on his own statements as to his history and the emergence of symptoms during service.

It seems to us therefore that the evidence wall all one way.

The case made for the appellant in argument consisted of criticisms of the evidence with a view to showing that all it pointed to was a predisposition to the disease. In our view there is no substance in these criticisms. A congenital and inherited weakness which is part of a man's make-up and which will sooner or later cause the emergence of symptoms of a disease the cause of which is already present is something quite different from a predisposition which merely provides a suitable medium in which the cause of a disease not already present may operate. In the former the disease is predestined. It is an ever present injurious process or morbid condition whose active emergence may be delayed but cannot be avoided. In the latter one cannot affirm that the disease will occur but only that if it does it will find congenial surroundings; predisposition is not in itself an injurious process or a morbid condition.

The question must be answered in the affirmative.