

**COURT OF SESSION**

**SECOND DIVISION**

**(The Lord Justice-Clerk, Lords MacKay,  
Jamieson and Stevenson)**

**19th July, 1946**

**LAIRD v. THE MINISTER OF PENSIONS**

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OPINION (19th July, 1946)

The opinion of the Court was delivered by -

THE LORD JUSTICE-CLERK (LORD COOPER):- The appellant, a merchant seaman who was in Bombay awaiting repatriation, was walking on the evening of the 26th January, 1944, in a Bombay street, when he sustained injuries as a result of the explosion of a home-made bomb apparently thrown from a passing victoria by some person unknown. It was conceded that he sustained these injuries by reason of his service in a British ship, within the meaning of the War Pensions (Mercantile Marine) Scheme, 1944, but he claims that his injury was a "war injury" within the meaning of s. 10 of the Pensions (Navy, Army, Air Force and Mercantile Marine) Act, 1939.

"War injury" is defined as -  
"a physical injury -

(a) caused by:

(i) the discharge of any missile ... or

(ii) the use of any ... explosive ... or

(iii) the doing of any other injurious act;

either by the enemy or in combating the enemy or in repelling an imagined attack by the enemy; or

(b) caused by the impact on any person or property of any enemy aircraft ... or anything dropped from such aircraft".

The Tribunal held that the Minister had discharged the onus of proving that the injury was not a "war injury" as defined. They held that "enemy" in the section cited referred to "the normal Armed Forces in uniform" and not to persons or agents hostile to the British who might be in the pay of, or in sympathy with, the enemy. The sole issue presented to us is whether they were right in giving the more limited interpretation to the word "enemy", or whether the Minister was bound to prove that the bomb was not thrown by some enemy agent or sympathiser.

In our opinion the Tribunal's conclusion was justified. The collocation in which the word "enemy" occurs in the Act indicates that the reference is to warlike operations by the organised forces of the enemy. To give the word the wider meaning claimed by the appellant would impose on the Minister the impossible onus of accounting for almost any kind of unexplained mishap which might befall a British seaman in any part of the world. We derive no aid from the special extension given to the term "enemy" in the Army Acts and the Naval Discipline Acts, in which the background and context are entirely different.

In this case, as the Tribunal point out and as was not disputed, there were no enemy forces near Bombay. The appellant's only hope of success is to show that any person, irrespective of nationality or allegiance, who is a sympathiser with the enemy is an "enemy" for the purposes of the Act and relative Pensions Scheme. Being unable to accept this view we hold that the appeal fails, the question of law being answered in the affirmative.