

**HIGH COURT OF JUSTICE**

**KING'S BENCH DIVISION**

**(Denning, J)**

**6<sup>th</sup> October, 1948**

**PILBEAM v. THE MINISTER OF PENSIONS**

**JUDGMENT**

MR. JUSTICE DENNING:- In this case the Tribunal very carefully stated the facts and the point of law to which it gives rise. This is a case where the man had stomach trouble before the war – a duodenal ulcer – but it was aggravated by his war service. In the course of his war service there was a perforation of this ulcer and he had to have a life-saving operation. His life was saved by the operation for the duodenal ulcer but unfortunately complications arose (which, with the best skill in the world, may set in after an operation of this kind) namely, he had phlebitis and an incisional hernia.

The question for determination is what is the right finding: Were those complications attributable to war service or were they only aggravated by war service? In cases of this kind the test to be applied is this: On the one hand if the disease which is aggravated by war service would, in any event, apart from war service, sooner or later have necessitated an operation, then these other complications are only accelerated by war service; and being only accelerated by war service, the proper finding would be one of aggravation of the original disease. Then whenever the position arises when the acceleration, so to speak, is caught up with, that is, when the man is, so far as the original disease is concerned, in as good a position as he would have been apart from the war, the pension can be terminated. The complications may continue but these are due to the operation and not to war service, and are not the subject of a pension. They might have occurred after the operation whenever performed. That is the line of cases such as we had with hydronephrosis and nephrectomy this morning (*Dent* (1)).

On the other hand, if the disease, apart from war service, might not have necessitated an operation at all, that is, if he might have gone through his whole life without an operation, so that the aggravation by war service is really the cause of the operation, then the complications which follow directly on the operation are attributable to war service. So in this case the aggravation of the original duodenal ulcer by war service was the cause of the complications of phlebitis and hernia. There might never have been any necessity for an operation but for the war. Therefore, the appeal must be allowed and the award must be one of attributability in respect of the incisional hernia and the phlebitis which are quite separate diseases from the original duodenal ulcer.