

So far as material to this report, the action was brought by the personal representatives of civilian employees against Cammell, Laird and Co., Limited, the builders of the submarine Thetis, to recover damages in respect of the death of those employees in the disaster which occurred to the Thetis on June 1st, 1939.

In the course of proceedings a list of documents of which inspection was required by the plaintiffs was submitted by the defendants' solicitors to the First Lord of the Admiralty, who directed the solicitors to refuse to produce them on the ground that the production of the documents would be prejudicial to the public interest.

The Lord Chancellor stated that the question could only arise where a subpoena was issued to a Minister or department to produce a document, or where the Crown intervened in a suit between private individuals to secure that documents in the hands of one of the litigants should not be produced.

It was held that the principle to be applied in every case was that documents otherwise relevant and liable to production must not be produced if the public interest required that they should be withheld. That test might be found to be satisfied either (a) by having regard to the contents of the particular document or (b) by the fact that the document belonged to a class which, on grounds of public interest, must as a class be withheld from production.

The question arose as to whether objection to production of a document by a Minister should be treated by the Court as conclusive, or whether there were circumstances in which the Judge should look at the documents before ruling as to their production.

The essential matter was that the decision to object should be taken by the Minister who was the political head of the department, and that he should have seen and considered the contents of the documents and himself have formed the view that on grounds of public interest they ought not be produced, either because of their actual contents or because of the class of documents--for example, departmental minutes--to which they belonged.

The practice in Scotland, as in England, might have varied, but the approved practice in both countries was to treat a Ministerial objection taken in proper form as conclusive. The rule that the interest of the State must not be put in jeopardy by producing documents which would injure it was a principle to be observed in administering justice, quite unconnected with the interests or claims of the particular parties in litigation, and indeed was a rule on which the Judge should, if necessary, insist, even though no objection was taken at all.