

MINUTES OF EVIDENCE.

WEDNESDAY, 3RD SEPTEMBER, 1902.

JAMES KEMMIS WARBURTON, Controller and Auditor-General, examined. (No. 1.)

1. *The Chairman.*] Will you give us an epitome of the whole case, Mr. Warburton?—Yes. I may say that I have had typed several copies of the sections in “The Military Pensions Act, 1866,” with reference to the matter. [Copies produced.] Lieut.-Colonel Francis died on the 31st March, 1901 (see memorandum No. 3, paragraph 3, of the papers). Mrs. Francis, the widow, made her claim (memorandum No. 1). The Defence Department submitted the papers “with reference to invaliding diary of Colonel Francis” to us (memorandum No. 2). The diary shows that on the 19th August, 1900, Lieut.-Colonel Francis was not very well, and had been ordered rest by the medical officer. On the 20th August he was examined by a Medical Board, who advised his being sent to the Mafeking Hospital. The Medical Board appointed under the Act reported (see No. 7) that he was taken ill at Otto’s Hoop on the 19th August, 1900, and that he died on the 31st March, 1901. As between those dates more than six months had elapsed, the Audit Office judgment (see No. 10, the last two paragraphs) was that the claim of the widow did not come within the provisions of the Act for granting the pension. The Governor then determined that under section 9 of the Public Revenues Act of 1900 the pension should be charged to the Military Pensions Act. The subsequent correspondence relates to an assumption, not in accordance with fact, that the Board which reported on or about the 27th February was a Board appointed under the Act for the purposes of the Act (see Nos. 13 and 15). The Solicitor-General’s opinion, on which the order for the granting of the pension was obtained, is given in No. 5. It reads, “. . . . The Act does not say how or to whom the claim is to be made, but in my opinion it must be examined and reported on by the Board, and if the husband is dead at the time of the examination the limit of six months will not apply, and it will be a sufficient compliance with subsection (b) if the Board certifies that he died of an illness brought on by the fatigue, privation, and exposure incident to active operations in the field, without any reference to the six months at all.” I think those are the main facts of the case. I might add that our Act of 1866 appears to have been taken from the Royal Warrant of the 15th June, 1855; it appears in the addenda to the Royal Warrant, &c., of the 1st July, 1848, issued as addenda to the War Office regulations. I have had an extract of the clause made which may be useful. [Copies of extract handed in.]

2. *Hon. Sir J. G. Ward.*] I would like to ask you, Mr. Warburton, whether you consider that the New Zealand Act governing the payment of pensions is regulated under the decisions of the Medical Board in South Africa, or the Medical Board constituted in New Zealand under the New Zealand Act?—The only Board appointed under the Military Pensions Act of 1866 is the Board under section 4. There is no other provision for a Board.

3. Which Board do you recognise as governing the acts of the Audit Department?—The only Board authorised by the Act is the Board under section 4 of the Act.

4. Is that the New Zealand Board or the South African Board?—It must be a New Zealand Board, wherever it is.

5. *The Chairman.*] I take it, then—please tell me whether I am right or wrong—that the Board whose proceedings are recorded on page 4, memorandum No. 7, is the Board set up in accordance with the provisions of this Act, the sections of which you have copied out and laid before us?—Yes, that is the Board.

6. *Mr. J. Allen.*] I want to know what date this Board that you agree is the Board constituted under “The Military Pensions Act, 1866,” certified as being the date on which Lieut.-Colonel Francis was taken ill?—19th August, 1900.

7. Now, when did six months expire after the 19th August, 1900?—On the 19th February, 1901.

8. And when did he die?—On the 31st March, 1901.

9. Is that more than six months?—It is more than six months; the judgment of the Audit Office is that it is more than six months.

10. *Hon. Sir J. G. Ward.*] Subsection (b) of section 7 of “The Military Pensions Act, 1866,” says, “If the officer, native chief, non-commissioned officer, or private died from illness brought on by the fatigue, privation, and exposure incident to active operations in the field before an enemy within six months after his being first certified to be ill, the special pension fixed in the annexed scale may be allowed.” Do you interpret the reading of the words “after his being first certified to be ill” to mean the certificate given by the Board?—No.

11. Then, what do you interpret it to mean?—That provision is copied from the Royal Warrant of the 15th June, 1855, and in the Royal Warrant it says—and this seems to me to afford an explanation—“In case the officer died from illness brought on by the fatigue, privation, and exposure incident to active operations in the field before an enemy within six months, such six months being duly certified by the medical officer who attended him.” And at the end of that Warrant are the words, “Provided that it shall be clearly proved by medical certificate that the officer so disabled by illness died within six months of his being incapacitated from duty by illness contracted aforesaid.”