

No. 44.

The ADJUTANT-GENERAL, New Zealand Defence Forces, Wellington, to the Right Hon. the
MINISTER OF DEFENCE.

The Right Hon. the Minister of Defence.

Wellington, 29th January, 1910

IN accordance with your instructions, I beg to report that the Court of Inquiry reassembled at Wellington on the 27th instant, and I attach herewith its report [see Enclosure in No. 43] on the points on which you required information.

I would suggest that the file be submitted to the Solicitor-General for his opinion on the following points:—

(1.) Whether Colonel Robin was a material witness, and, if so, whether the Court was justified in refusing to allow his evidence on the grounds of irrelevancy.

(2.) Whether the Court was justified, from a legal point of view, in refusing to admit evidence in support of the allegations against the Chief of the General Staff, as thereby the accused was unable to prove "provocation by a superior" (*vide* par. 23, p. 61, and par. 5, p. 16, Manual of Military Law.)

H. D. TUSON, Colonel,
Adjutant-General.

The Solicitor-General.—For your opinion.—J. G. WARD. 31/1/10.

Hon. the Attorney-General.—I had partially dealt with this matter when the recent official changes transferred me to the Public Trust Office. I think, therefore, I should not now deal with it. Accordingly I forward the papers to you.—FRED. FITCHETT. 31/1/10.

No. 45.

The SOLICITOR-GENERAL to the Right Hon. the MINISTER OF DEFENCE.

The Right Hon. the Minister of Defence.

Law Drafting Office,
Wellington, 1st February, 1910.

Captain Knyvett's Case.

My opinion is asked as to the regularity and validity of the proceedings of the Court of Inquiry in this case. I consider that those proceedings were substantially correct and that Captain Knyvett was lawfully dismissed from his office.

In particular, I think that the Court was justified in refusing to hear the evidence of Colonel Robin, and of the other witnesses whose evidence was rejected. It is evident from the report of the inquiry that Captain Knyvett's intention in examining Colonel Robin and those other witnesses was to prove the truth of the accusations made by him against that officer. This issue was, however, as the Court rightly pointed out, irrelevant to the inquiry. The question before the Court was not whether those accusations were true or false, but whether, in making them in the manner in which they were made (and irrespective of their truth or falsehood), Captain Knyvett was guilty of an offence against military discipline which justified his dismissal. I am of opinion that the evidence is sufficient to justify, as a matter of law, the conclusion that Captain Knyvett was guilty of "insubordination" within the meaning of section 54 of the Defence Act, 1908.

That term is wide enough to include any conduct on the part of an inferior which is inconsistent with his proper relation of subordination to his superior officers, and includes therefore such an attack on the character and competence of Colonel Robin as was made in this case. Independently of section 54 of the Act, it would seem that Captain Knyvett had also committed a breach of the regulations as to the discipline of the Defence Forces: See Regulations 174 to 180. These regulations prescribe the method in which aggrieved members of the Defence Forces are to bring their complaints to the notice of the authorities, and the prescribed method was not followed by Captain Knyvett.

It is true that the charge formulated for the Court of Inquiry does not specifically refer to section 54 of the Act or to the regulations, but I think that the defendant had sufficient notice of the nature of the offence with which he was charged, and a sufficient opportunity of answering that charge.

JOHN W. SALMOND,
Solicitor-General.

I have perused the copy of the evidence supplied by Capt. Knyvett, as has the Solicitor-General. I concur in the views expressed by the Solicitor-General, assuming that the copy of the evidence supplied by Capt. Knyvett is correct.—J. G. F. 1/2/10.

Referred to the Adjutant-General.—J. G. WARD. 1/2/10.

No. 46.

The ADJUTANT-GENERAL, New Zealand Defence Forces, Wellington, to the Right Hon. the MINISTER OF DEFENCE.

The Right Hon. the Minister of Defence.

Wellington, 2nd February, 1910.

IN view of the report of the Court of Inquiry which reassembled at Wellington on the 27th ultimo, and the opinion expressed by the Solicitor-General on the regularity and validity of the proceedings, I consider,—

(1.) That all essential evidence was before me when I made my recommendation;

(2.) That the Court made no statement which could justify the accused in concluding that the charges against him were not proven.

Under these circumstances I can see no reason for reopening the case, or for altering my previous recommendation.

H. D. TUSON, Colonel,
Adjutant-General.