

in the like case. I quote from page 145 of the Royal Warrant for the pay, &c., of the army, 1899, under the heading "Pensions to Widows, &c.": "If the deceased officer . . . died from illness . . . within twelve months after having first been removed from duty on account of such illness," &c.

J. C. GAVIN, Assistant Controller.

14/2/02.

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No. 10.

The Hon. the Minister of Defence.

Audit Office, 15th February, 1902.

*Application of Widow of late Lieut.-Colonel Francis for Pension; and Mr. Gavin's Minute of the 14th February, 1902.*

It does not appear to the Audit Office that the words of subsection (b) of section 7 of the Act—"within six months of his being first certified to be ill"—are applicable in the present case, unless such words mean within six months of the date certified to be that of the beginning of the illness of which he died—that is, within six months of the date on which he was first removed from duty on account of such illness.

Subsection (a) of the same section provides that "if the deceased died of his wounds within six months after being wounded . . . the special pension . . . may be allowed"; and in the form of the report of the proceedings of the Medical Board which assembled at Christchurch to inquire into the circumstances under which the officer was invalided a printed heading is provided for the Board's statement of the date "where taken ill or wounded."

A widow's title to a pension in the case of any officer dying from illness appears accordingly to depend, like a widow's title to a pension in the case of an officer dying of his wounds, on death resulting within six months of the cause.

The question is the provision of the statute, and the Controller and Auditor-General much regrets that the claim of the widow should, in the judgment of the Audit Office, not come within such provision.

J. K. WARBURTON, C. & A.-General.

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No. 11.

Under-Secretary for Defence.

Premier's Office, Wellington.

Has the Board that I ordered on 17/7/01 to be set up in this matter reported on the case of Mrs. Francis? It appears strange that the English Government should be paying the same pension under practically the same law and in New Zealand nothing has yet been done. If the Board has reported in terms of the Solicitor-General's advice and the Audit refuses to pass, an Order in Council will have to be prepared and put through. See Secretary to the Treasury at once, and get matter put in hand without delay.

R. J. SEDDON.

Secretary to Treasury.—For necessary action.—ARTHUR P. DOUGLAS. 28/2/02.

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No. 12.

The Under-Secretary for Defence.

THE Solicitor-General should have the opportunity of answering, if he so desires, the remark of the Audit Office, who disagree with the opinion of the Solicitor-General in this matter.

JAS. B. HEYWOOD.

28th Feb., /02.

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No. 13.

*Re Colonel Francis.*

I HAVE carefully considered the Audit Office minutes of the 14th and 15th February, but am unable to agree with them.

The words of the subsection are, "within six months after his being certified to be ill." In the minute of the 14th the Assistant-Controller construes this to mean "within six months after the commencement of the illness." In the minute of the 15th the Controller, whilst in terms agreeing with this construction, straightway proceeds to repudiate it by making it mean "within six months after removal from duty on account of illness." It is manifest that the removal from duty would take place not at the commencement of the illness, but when it had grown so serious as to incapacitate from the performance of duty. Thus the two minutes conflict with one another. Moreover, both of them conflict with the Act. The first does violence to the grammar of the subsection, for grammatically it is quite clear that the time runs from the date of the certificate, and not, as suggested by the Assistant-Controller, from the date of the commencement of the illness. As for the second, it abandons the subsection altogether, and substitutes another in entirely different language and with entirely different meaning.

It would, I think, be in every way better if, as under the Imperial rules, the time ran from the date of removal from duty. But we have to take the Act as we find it, and I am quite satisfied that on its true and grammatical construction the time runs from the date of the certificate.

The only point open to question is whether the certificate must be by the Medical Board under the Act. For reasons given in my previous minute, I think it must. Reading the Act as a whole it is, I think, impossible to escape the conclusion that "certified" in the subsection in question has the same meaning as "certified" in subsection (e) of section 6, and that both refer to the certificates of examination which by section 4 are to be given by the Medical Board under the Act "before any pension or gratuity is granted."

On examining the full file (which was not before me when my previous opinion was given) I find that Colonel Francis was first examined by a Medical Board under the Act on or about the