

1902.
NEW ZEALAND.

“THE PUBLIC REVENUES ACTS AMENDMENT ACT, 1900”:

(CORRESPONDENCE RELATIVE TO PAYMENT OF PENSION TO WIDOW OF LIEUT.-COLONEL
FRANCIS.)

*Laid on the Table in compliance with Section 9 of “The Public Revenues Acts Amendment
Act, 1900.”*

The CONTROLLER AND AUDITOR-GENERAL to the Hon. the SPEAKER OF THE HOUSE OF
REPRESENTATIVES.

The Controller and Auditor-General has the honour respectfully to submit to the House of Representatives, in accordance with the provisions of section 9 of “The Public Revenues Acts Amendment Act, 1900,” a copy of correspondence in a case under that section, where, the Audit Office having declined to pass the vouchers necessary to the payment of a pension under “The Military Pensions Act, 1866,” to the widow of Lieut.-Colonel Frederick Wyatt Francis, deceased, on the ground that such pension could not legally be granted under that Act, the Governor determined that the pension may be granted to Mrs. Francis, and the expenditure in respect thereof charged to the appropriations under the Act.

J. K. WARBURTON,
Controller and Auditor-General.

Audit Office, 27th August, 1902.

No. 1.

DECLARATION of CATHERINE JULIA FRANCIS in respect of Her Claim to Pension and Allowances as the Widow of Lieut.-Colonel Frederick Wyatt Francis, V.D.

Christchurch, New Zealand.

*Widows' Pensions and Allowances under “The Military Pensions Extension to Contingents
Act, 1900.”*

Name of Widow and Children.	Date of Birth of Child.	Present Age of Child.	Period.		Yearly Rate.	Amount.	Number of Cheque.	Entered in Folio
			From	To				
Catherine Julia Francis	1901. April 1	1901. June 30	£ 120	£ 50
Evelyn L. G. Francis	24/9/1881	19	"	"	20			
Alice M. G. Francis ...	13/11/1887	13	"	"	20			
Elsie L. G. Francis ...	6/1/1891	10	"	"	20			
Allen Wyatt Francis ...	3/1/1896	5	"	"	20			

I, Catherine Julia Francis, do solemnly and sincerely declare that I am entitled to the sum of £50, being the amount of my pension and allowance for the quarter ending on the last day of June, 1901; that I was the lawful wife of Frederick Wyatt Francis, V.D., late a Lieutenant-Colonel in the Fourth New Zealand Contingent, and that I have had no other pension, allowance, or provision made to me by the Government of New Zealand besides my pension as above claimed, and that I have not remarried.

And I further solemnly and sincerely declare that the abovementioned children of the late Frederick Wyatt Francis were severally alive on the 1st day of April, 1901.

And I make this declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act of the General Assembly of New Zealand intituled "The Justices of the Peace Act, 1882."

Signature of Claimant: C. J. FRANCIS.
Residing at 33, Wilson Road, near the Post-town of Christchurch, in the Provincial District or County of Canterbury.

Declared at Christchurch, this 1st day of June, 1901—J. A. Cassidy, a Solicitor of the Supreme Court, Christchurch.

No. 2.

The Under-Secretary for Defence.

Audit Office, 10th June, 1901.

Will you kindly refer me to the *New Zealand Gazette* in which will be found the date of the late Lieut.-Colonel Francis's commission under the seal of the colony as such Lieutenant-Colonel.

Will you also inform me of the date on which he was invalided in South Africa, and attach the file of papers relating thereto. The file before me appears to be incomplete.

J. C. GAVIN,
Assistant Controller and Auditor.

A. C. & A.

Gazette No. 78, October, 1895. Papers with reference to invaliding, diary of Colonel Francis, herewith.

ARTHUR DOUGLAS, U.-S. D.

12/6/01.

No. 3.

The Under-Secretary for Defence,

Audit Office, 12th June, 1901.

WHETHER the pension proposed to be given to Mrs. Francis under "The Military Pensions Act, 1866," and "The Military Pensions Extension to Contingents Act, 1900," as the widow of the late Lieut.-Colonel Francis, can be given depends upon the question whether the limitations and restrictions provided by the Act of 1866 are not a bar to the giving of such pension.

In section 7 of the Act of 1866 it is provided that, "subject to the limitations and restrictions hereinafter provided, pensions . . . may be given to the widows of officers in the following cases: . . . (b.) If the officer . . . died from illness brought on by the fatigue, privation, and exposure incident to active operation on the field before an enemy within six months after his being first certified to be ill."

Lieut.-Colonel Francis died on the 31st March, 1901, the medical certificate being that he died of chronic gastritis, the result of enteric fever.

The following extracts have been taken from the diary of the late Lieut.-Colonel (filed in the Defence Office), which has been referred to for the purpose of ascertaining the date "of his being first certified to be ill."

"August 19th, 1900.—I was not very well to-day, and have been ordered rest by the Medical Officer."

"August 20th, 1900.—I was examined to-day by a Medical Board, who advised me being sent to the Mafeking Hospital."

"August 21st, 1900.—As there was a convoy going in to-day, I was sent with them."

"August 23rd to 29th, 1900.—In the Field General Hospital, Mafeking. On the 24th I was again examined by a Medical Board, who told me they did not think I would be fit to go to the front again."

"August 30th to 6th September, 1900.—At the Victoria Hospital, Mafeking. I am sorry to say that I am not getting better, but very much weaker. I was again examined by a Medical Board, and they recommend my removal to Kimberley."

"September 8th to 21st, 1900.—At the Civil Hospital, Kimberley. I was very bad for the first ten days. . . . I was so very weak that I did not expect to get better. . . . The last week in Kimberley I improved a lot, and the doctors advised my removal to Cape Town."

"September 25th to 30th, 1900.—In the Wynberg Hospital."

"October 1st, 1900.—I am glad to say that I am feeling very much better. . . . I was examined by a Medical Board last Thursday. They told me that I would be invalided home. . . . My illness has been the result of exposure, fever, gastritis, dilatation of the stomach, and a general run-down."

Further extracts from his diary down to the time of his arrival in the colony need not be given. He was examined by a Medical Board shortly after his arrival, and thereupon was granted leave of absence from the 21st February to the 20th April, 1901. He died, as already stated, on the 31st March.

The Audit Office is of opinion that the late Lieut.-Colonel Francis's diary affords sufficient proof that he must have been "first certified to be ill" at a date antecedent to the 1st October, 1900, and, therefore, that his death did not occur within six months of the date of his being so certified. The conclusion consequently is that the proposal to give Mrs. Francis a pension is barred by the limitation imposed by the statute, and her claim being barred the children have none; for section 14, which authorises the granting of allowances to children, provides that such allowance may be given only to the children in those cases in which the widow would be entitled to be placed on the Pension List.

J. C. GAVIN,
Assistant Controller and Auditor.

No. 4.

Defence Office, Wellington, N.Z., 22nd June, 1901.

The Hon. the Minister of Defence.

THE granting of a pension to Mrs. Francis, widow of the late Lieut.-Colonel Francis, was decided by Cabinet on the 13th ultimo, and the necessary documents were prepared and sent to Audit, and that Department is of opinion that Mrs. Francis is barred from obtaining a pension on the grounds that he was first certified to be ill, according to section 7 of "The Military Pensions Act, 1866," more than six months before the date of his death.

I submit that the date of being "first certified to be ill" should be that on which Lieut.-Colonel Francis was ordered to proceed to England upon the advice of the Medical Board.

The matter is a very important one, and I beg to recommend that it should be submitted to the Solicitor-General for his opinion.

ARTHUR P. DOUGLAS.

25/6/01.

The Solicitor-General.—Please advise.

R. J. S.

3/7/01.

No. 5.

OPINION.

Re "*The Military Pensions Act, 1866*," and *Claim of Mrs. Francis*.

THE Act is very loosely drawn, but on the whole I am of opinion that the expression "certified" in section 7, (b), means certified by a Medical Board appointed under the Act.

Section 4 provides for the appointment of Medical Boards by the Governor "for the purpose of examining every officer and man who is an applicant for a pension or gratuity." The section further directs the Board "to report upon his case, which report with a certificate of examination must be signed by each member of the Board in every instance before any pension or gratuity is granted."

The section in terms applies to "every officer and man who is an applicant for a pension or gratuity"; but, having regard to the scheme and purpose of the Act, I do not think these words confine the functions of the Board to cases where the officer or man is himself personally an applicant.

Section 4 is one of a group of five introductory sections without any cross-heading. Then comes section 6 under the cross-heading "Pensions and Allowances to Officers and Men"; then sections 7 to 10 under the cross-heading "Pensions to Widows"; then sections 11 to 16 under the cross-heading "Special Allowances to Relatives."

I think the introductory group applies to all the subsequent sections and is not confined to cases under section 6. There is as much need for the Board to examine, report, and certify whether, under section 7, (a), a man has "died of his wounds within six months after being wounded," or, under section 7, (b), whether he has "died from illness brought on by exposure incident to active operations in the field before an enemy within six months after his being first certified to be ill," as, under section 6, (a), whether he has "received bodily injury fully equal to the loss of a limb." The only difference is that in the last-mentioned case (to which section 4 unquestionably applies) the man is alive and the Board can therefore examine him personally, whereas in the two former cases he is dead, and consequently the Board cannot examine him personally. But it appears to me that on the true construction of the Act the provisions of section 4 apply in every case, and that consequently before any pension or gratuity can be granted the Board must examine and report upon the case and furnish with the report a certificate of examination.

It would be competent for the Governor to appoint Boards to act in South Africa; but if this has not been done, then it is for the Board in New Zealand to act under section 4 by making the examination and giving the report and certificate as therein directed, and the period of six months referred to in section 7, (b), is to be computed from the date on which the Board first certifies that the officer is ill of the illness from which he died. The subsection contemplates that the officer is living on the date when the fact of his being ill is first certified to by the Board, for it speaks of him as dying within six months after that date. But obviously it is not confined to such a case. It would be most harsh and unreasonable to exclude a widow from her pension merely because her husband's illness resulted in his death before the Board could deal with her claim, as, for example, if he were to die on shipboard whilst on his way to New Zealand. The subsection in question must be read subject to section 8, which provides that the widow's pension will in general commence from the date of her husband's death; but the claim must be established by the production of satisfactory documents in support of it within one year after the death of her husband. 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.

It will be observed that I have not confined myself to the particular case submitted, but have dealt with the construction of the Act generally. I have done this because the questions involved are important, and the cases to be dealt with will no doubt be numerous.

I notice from the papers on the file that in his minute of the 2nd April the Commandant states to the Hon. the Defence Minister that I considered Mrs. Francis entitled to a pension

This is not correct. The only question submitted to me was as to the amount of the pension, having regard to the number and ages of the children. A reference to my minute of that date will show that I computed the amount, but distinctly stated that "the terms and conditions subject to which the payments might be granted were set out in the Act." I never considered or was asked to consider whether she was entitled to a pension.

FRED. FITCHETT, Solicitor-General.

Crown Law Office, 10th July, 1901.

No. 6.

The Hon. the Minister of Defence.
For your information.

ARTHUR P. DOUGLAS.
15/7/01.

After appointment Board, Christchurch, let the Board inquire and report.

R. J. S.
17/7/01.

No. 7.

PROCEEDINGS OF MEDICAL BOARD.—Assembled at Christchurch, this 16th day of September, 1901, by order of the Commandant, New Zealand, to inquire into the circumstances under which Lieut.-Colonel Frederick Wyatt Francis was invalided, and to report upon this case.—President, Thomas Wyld Pairman; members, Arthur De Renzie, John H. Deamer.

THE Board, having assembled, proceed to examine the above.

Where taken ill or wounded: Otto's Hoop.

Date: 19th August, 1900.

Hospital where treated: Field hospital, Otto's Hoop; then Mafeking General Hospital; then Civil Hospital, Kimberley; Wynburg Hospital; sent to London, and then to New Zealand.

How long: 1 month 16 days in hospital.

Description and condition of wound or complaint: Acute gastritis with loss of weight, which ultimately took a malignant form.

General condition of health: Died, 31st March, 1901.

It is recommended that a pension to the widow be allowed.

THOS. WYLD PAIRMAN, Surgeon-Captain, President.

ARTHUR C. DE RENZIE, Surgeon-Captain, N.Z.M.,

JOHN H. DEAMER, M.D.,

Members.

No. 8.

Defence Office, Wellington, New Zealand, 12th February, 1902.

Assistant Controller and Auditor.

Pension to Mrs. Francis.

THE matter is submitted to you for reconsideration. The opinion of the Solicitor-General on the matter is attached.

ARTHUR P. DOUGLAS, U.-S. D.
12/2/02.

No. 9.

The Controller and Auditor-General.

It is with great hesitancy that I venture to disagree with the opinion of the Solicitor-General in this matter. I will state wherein I think we differ.

I gather from the Solicitor-General's memorandum that the words occurring in subsection (b) of section 7 of the Act—viz., "If the officer . . . died from illness . . . within six months after his being certified to be ill"—in his opinion mean, if he died within six months after the date of a report of a Medical Board appointed under the Act. Now, I submit, on the assumption that the application of a widow for a pension must go before such a Board for report, that it is not the date of the report that determines the point whether the period of six months referred to in the section had elapsed, but the date mentioned in that report as the date when the officer was first taken ill: in other words, the six months run from the date of the officer's first illness duly certified, and not from the date of such certificate. The Medical Board reported that Lieut.-Colonel Francis was first taken ill on the 19th August, 1900, and that he died on the 31st March, 1901; the period between these two days exceeds six months.

The date—the 19th August, 1900—on which Lieut.-Colonel Francis first became ill accords with the date mentioned in his diary, referred to in my memorandum of the 12th June, 1901: "I was not very well to-day, and have been ordered rest by the Medical Officer"; and it appears that he never afterwards returned to duty. It was upon the evidence afforded by the papers submitted to the Audit Office that the conclusion was arrived at that Mrs. Francis is not entitled to pension; and the same evidence seems to have been placed at the disposal of the Medical Board, which afterwards sat on the 16th September, 1901, five months and a half after Colonel Francis's death.

As affording a key to the meaning of subsection (b) of section 7 as regards the date from which the six months should run, reference may be made to the practice of the Imperial authorities

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.

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.

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.

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.

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

27th February, 1901. The report itself is not on the file, but it is referred to in a memorandum of that date from Major Owen to the Minister, stating that the Medical Board had reported that Colonel Francis would be fit to resume Volunteer duty within two months. Assuming the report to be in the usual form, it would follow that he was "first certified to be ill" within the meaning of the subsection a little more than one month before he died.

For these reasons I am of opinion that the pension may be granted.

Although it has no bearing on the legal position, it may perhaps be convenient to compare Colonel Francis's case under our Act with what it would be under the Imperial rules. Under the latter the death must occur within twelve months after having first been removed from duty; under the former, within six months after being first certified to be ill. He was first removed from duty in August, 1900, and first certified to be ill in February, 1901, and he died in March, 1901. Thus, under the Imperial rules seven months out of the twelve, and under our Act one month out of the six, had elapsed at the date of his death.

Crown Law Office, 20th March, 1902.

FRED. FITCHETT, Solicitor-General.

No. 14.

The Right Hon. the Colonial Treasurer.

Do you wish this further correspondence referred to the Audit Office, or shall a warrant be prepared and submitted to H.E.?

JAMES B. HEYWOOD.

25th March, 1902.

Prepare Warrant for submission to His Excellency.

R. J. S.

27/3/02.

No. 15.

Wellington, 5th April, 1902.

His Excellency the Governor is respectfully advised to sign the attached determination, under section 9 of "The Public Revenues Acts Amendment Act, 1900," of the question of payment of pension to the widow of Lieut.-Colonel F. W. Francis, deceased.

C. H. MILLS.

Signed R.

9/4/1902.

RANFURLY, Governor.

Whereas by section nine of "The Public Revenues Acts Amendment Act, 1900," it is provided that in case any difference of opinion arises between the Audit Office and the Treasury as to the vote, appropriation, fund, account, or other authority to which any expenditure ought to be charged, the question shall, if in the opinion of the Audit Office it involves a question of law, be determined by the Governor, having before him the opinion of the Attorney-General thereon: And whereas such difference of opinion as aforesaid has arisen as to whether the widow of Lieutenant-Colonel Frederick Wyatt Francis, deceased, may legally be granted a pension under "The Military Pensions Act, 1866," the Audit Office contending that the deceased did not die within the period of six months specified in subsection (b) of section 7 of the said Act, inasmuch as on the true construction of the subsection the period of six months is to be computed from the date on which the deceased first became ill, or was first removed from duty on account of the illness:

Now, therefore, I, Uchter John Mark, Earl of Ranfurly, the Governor of the Colony of New Zealand, in exercise of the hereinbefore-recited powers, and having before me the opinion of the Solicitor-General, do hereby determine the said question by deciding that the period of six months referred to is to be computed from the date upon which the Medical Board under the said Act first certifies the officer to be ill, and that inasmuch as he died within six months of that date the pension may be granted to Mrs. Francis, and the expenditure in respect thereof should be charged to the appropriations under the said Act.

Given under the hand of His Excellency the Governor, at the Government House at Wellington, this ninth day of April, one thousand nine hundred and two.

C. H. MILLS.

No. 16.

THE Audit Office.—To note.

JAS. B. HEYWOOD.

22nd April, /02.

No. 17.

The Hon. the Colonial Treasurer.

THE Governor having determined, under section 9 of "The Public Revenues Acts Amendment Act, 1900," that a pension to Mrs. Francis, the widow of the late Lieut.-Colonel F. W. Francis, may be granted to her under "The Military Pensions Act, 1866," and that the expenditure in respect thereof should be charged to the appropriation under that Act, the Audit Office will now pass such expenditure so charged; and the Controller and Auditor-General will, in ordinary course, lay before Parliament, in accordance with the Public Revenues Act, the correspondence on the subject.

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

26th April, 1902.

No. 18.

Audit Office, 8th May, 1902.

The Hon. the Colonial Treasurer.

Pension to the Widow of the late Lieut.-Colonel F. W. Francis.

THE Controller and Auditor-General, advertng to the minute of the 26th ultimo in which he, on receiving the Warrant by which the Governor, under section 9 of "The Public Revenues Acts Amendment Act, 1900," intimated that the Audit Office would pass the necessary expenditure, begs to submit that he had not then seen the Solicitor-General's opinion of the 20th March, of which the following is an extract:—

"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 27th February, 1901. The report itself is not on the file, but it is referred to in a memorandum of that date from Major Owen to the Minister, stating that the Medical Board had reported that Colonel Francis would be fit to resume Volunteer duty within two months. Assuming the report to be in the usual form, it would follow that he was 'first certified to be ill' within the meaning of the subsection a little more than one month before he died.

"For these reasons I am of opinion that the pension may be granted."

It was after that opinion that the Governor issued the Warrant by which he decided "that the period of six months referred to is to be computed from the date upon which the Medical Board under the said Act first certifies the officer to be ill, and that inasmuch as he died within six months of that date the pension may be granted to Mrs. Francis"; but the date within six months of which the Warrant states that the officer died is the date when the officer was examined by the Board, whose report is stated by the Solicitor-General to have been "not on the file."

The Audit Office now finds the report on the file. It is dated the 21st February, 1901; and from the correspondence, of which a copy is appended, that report does not appear to be the report of a Medical Board under the Act. Nor is it in the form of the report of the 16th September, 1901, of the Board which was appointed under the Act.

In the circumstances the Controller and Auditor-General ventures to refer the matter again to the Colonial Treasurer, in case the Administration may consider it desirable, in the light of the facts that have come to light since the Governor's Warrant was issued, to revise what has been done.

J. K. WARBURTON,

Controller and Auditor-General.

No. 19.

COPY OF APPENDED CORRESPONDENCE.

A.

The Hon. the Minister of Defence.

Audit Office, 1st May, 1902.

Pension to Mrs. Francis, Widow of late Colonel F. W. Francis.

THE Controller and Auditor-General would be obliged by the Minister causing the Audit Office to be furnished as soon as possible with the information how the Medical Board was constituted which on the 21st February, 1901, made the report of which a copy is appended.

A verbal application was made by the Audit Office to the Defence Department yesterday for such information, and as the vouchers for payment of the pension are delayed for a reply the Controller and Auditor-General makes the present urgent application to the Minister.

J. K. WARBURTON,

Controller and Auditor-General.

B.

Christchurch, 21st February, 1901.

WE, the undersigned, duly constituted a Medical Board for the purpose of reporting upon the condition of Colonel Frederick Wyatt Francis, who returned from the South African War on the 31st January, 1901, beg to state that we have this day carefully examined him, and are of opinion that he will be unfit to return to his regiment in South Africa for at least twelve months. Though we consider him unfitted to undergo the special hardships inseparable from active service, it is our opinion that he will be capable of undertaking Volunteer duties in this colony within two months.

WALTER THOMAS, Surgeon-Major,

Chairman.

GEOFFREY C. CLAYTON, Surgeon-Captain.

RICHD. W. ANDERSON, Surgeon-Captain.

C.

Medical Board on late Lieut.-Colonel Francis, on the 21st February, 1901.

THE Audit Department is asking to be furnished as soon as possible with information as to how the Medical Board was constituted which on the 21st February, 1901, reported on his then state of health. The report was signed by Surgeon-Major Thomas and Surgeon-Captains Clayton and Anderson.

There is no information whatever on the matter in this office. I shall be glad if you will furnish me with the information as soon as possible.

ARTHUR P. DOUGLAS, U.-Secy.

The Commandant, Headquarter Office, Buckle Street.

3rd May, 1902.

D.

The U.-S. Defence.

ON the arrival of the late Lieut.-Colonel Francis in New Zealand the Commandant of the Forces (Colonel Penton) issued instructions, in February, 1901, to assemble a Medical Board to report on his then state of health (see telegrams on D. 02/785). At that time whenever invalid officers and men returned to the colony the Officer Commanding District wherein they arrived or resided summoned a Medical Board consisting of three doctors on similar lines to the authority on D. 1900/2132, and this seems to have been the course followed with regard to the medical examination of the late Lieut.-Colonel Francis.

6/5/02.

NORMAN L. D. SMITH, Major, G.O.

(in absence of G.O.C).

E.

Defence Office, Wellington, 4th June, 1900.

Defence Record, 1900/2132.

Invalids returning from South Africa.

As several invalids from contingents in South Africa will arrive shortly by s.s. "Monowai" and "Westralia" and by a direct steamer from the Cape, it would be advisable to appoint a Medical Board to examine and report upon each case of disablement with a view to obtaining pecuniary assistance from patriotic and benevolent funds.

If you approve I shall issue the necessary instructions.

To the Hon. the Defence Minister.

A. P. PENTON, Colonel,

Comdt. Forces.

F.

Approved.—W. H.-J. 6/6/00.

The Hon. Minister of Defence.—For your information.—ARTHUR P. DOUGLAS. 7/5/02.

Seen.—W. H.-J. 7/5/02.

G.

Controller and Auditor-General.—Information forwarded.—ARTHUR P. DOUGLAS, U.-S. D.
8/5/02.

No. 20.

The Solicitor-General.
For any further comment.

JAS. B. HEYWOOD.

9th May, /02.

The Audit Office.

THE Solicitor-General asks if the Audit Office will point out in what way the constitution of the Medical Board was defective.

JAS. B. HEYWOOD.

9th May, /02.

No. 21.

The Hon. the Colonial Treasurer.

Pension to Widow of Colonel Francis under "The Military Pensions Act, 1866."

THE Solicitor-General, on the 10th July, 1901, gave it as his opinion that—

"The Act is very loosely drawn, but on the whole I am of opinion that the expression 'certified' in section 7, (b), means certified by a Medical Board appointed under the Act.

"Section 4 provides for the appointment of Medical Boards by the Governor for the purpose of examining every officer and man who is an applicant for a pension or gratuity.

* * * * *

"It appears to me that on the true construction of the Act the provisions of section 4 of the Act apply in every case," &c.

Now, the Medical Board which reported on the 21st February, 1901, does not appear to have been a Board appointed by the Governor under section 4.

J. K. WARBURTON,
Controller and Auditor-General.
10th May, 1902.

No. 22.

The Solicitor-General.—JAS. B. HEYWOOD. 12th May, 1902.

No. 23.

It appears that the Board in question was appointed by the Commandant with the approval of the Minister instead of by the Governor on the advice of the Minister. Seeing it referred to on the papers as the Medical Board, and not having anything before me to show how it was constituted, I naturally assumed it to be regular. Strictly speaking, it was not appointed in terms of the Act. The objection is a technical one, and the Governor could, I think, cure it by ratifying the original appointment. That course, however, is not necessary for the purpose of my opinion as to the validity of the pension. It is true that in my minute of the 20th March I referred to this Board and its report as showing that Colonel Francis died within six months after the report was made, thus complying literally with the requirements of subsection (b) of section 7. But it plainly appears

from my original minute of the 10th July, 1901, that, in my opinion, the six-months limit does not apply where the death occurs before the date of the report. In the case of Colonel Francis a Board duly appointed by the Governor under the Act reported on the 16th September, 1901, some months after the death, and the report is referred to in the Assistant-Controller's minute.

The regularity of the appointment of this Board is not questioned.

As the whole of the correspondence was before His Excellency when he issued his Warrant, I do not think that any further action is rendered necessary in consequence of the defect in the constitution of the first-mentioned Board.

FRED. FITCHETT, Solicitor-General.
12/5/1902.

No. 24.

The Audit Office.

PLEASE see the further remarks of the Solicitor-General.

JAS. B. HEYWOOD.
13th May, 1902.

No. 25.

The Hon. the Colonial Treasurer.

Pension to Widow of Colonel Francis.

THE approval of the Minister for the appointment of the Medical Board in question appears to have been his approval on the 6th June, 1900, of the Commandant's recommendation that it was "advisable to appoint a Medical Board to examine and report upon each case of disablement with a view to obtaining pecuniary assistance from patriotic benevolent funds." But the Board of Medical Officers which section 4 of "The Military Pensions Act, 1866," authorises the Governor to constitute and appoint is "for the purpose of examining every officer and man who is an applicant for a pension or gratuity under this Act." Thus the Medical Board appointed only on the foregoing approval of the Minister was not appointed for the purpose for which a Board of Medical Officers may be appointed under the Act; and it would seem doubtful whether the Governor has any such power of ratification as would remove both the objection that the Board which reported on the 21st February, 1901, was appointed, neither under the Act nor for the purpose of the Act, and the objection that its report is not one for the purpose of which the Act authorises the appointment of a Board of Medical Officers.

But in any case the Controller and Auditor-General feels that he ought to ask the Administration whether it will not put in order or revise what has been done, for the Warrant of the Governor as it now stands appears to the Audit Office to give reasons which are wrong for its conclusion that the pension may be granted.

14th May, 1902.

J. K. WARBURTON,
Controller and Auditor-General.

No. 26.

Mr. Warburton.

Pension to Widow of Colonel Francis.

No reply having been received to your last minute on this subject, dated the 14th May, 1902, I think these vouchers should be returned to the Defence Department. Your minute was, however, addressed to the Colonial Treasurer.

J. C. GAVIN, A.C. & A.

7/7/02.

No. 27.

The Hon. the Colonial Treasurer.

FROM the absence of any reply to the Audit Office memorandum of the 14th May last, the Controller and Auditor-General presumes that it is not the desire of the Government that the vouchers for the proposed pension shall be passed on the Governor's determination as it stands at present.

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

7/7/02.

No. 28.

The Treasury, Wellington, New Zealand, 16th May, 1902.

The Hon. the Colonial Treasurer.

IF the point now raised by the Audit Office affected in any way the legality of the pension His Excellency might with propriety be asked to revise his Warrant; but as the Solicitor-General holds that it does not, I agree with him that no further action is necessary, and recommend that the Audit Office be informed accordingly.

So long as His Excellency's decision is in accordance with law the reason on which it purports to be based is immaterial. Moreover, in the present case it appears to me that the reason in question is not wrong as suggested by the Audit Office.

The Solicitor-General's opinion is that when the officer dies before the date of the certificate of the Medical Board under the Act the limit of six months imposed by subsection (b) of section 7 does not apply. In other words, the condition that the death must occur "within six months after" the date of the certificate means "not later than six months" after that date, and is consequently complied with when the death occurs before that date, as in Colonel Francis's case. Construed in the same way, the words in the Warrant "inasmuch as he died within six months after that date" are correct.

I may add that the original question in dispute having been determined by His Excellency in manner provided by the Act, his decision is final and should be given effect to.

JAS. B. HEYWOOD, Secretary.

Hon. Mr. Hall-Jones.—This refers to your Department. Will you kindly deal with it.—
J. G. W. 22/7/02.

Accordingly.—W. H.-J. 26/7/02.

No. 29.

The Audit Office.

His Excellency the Governor having determined the matter by the issue of his Warrant, will you be good enough to give effect to the determination.

JAS. B. HEYWOOD.

30th July, 02.

No. 30.

THE Hon. the Colonial Treasurer will oblige by submitting for audit the vouchers for the pension to which the Governor's Order applies. They were returned to him with the Audit Office memorandum of the 7th July last.

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

5th Aug., 1902.

No. 31.

The Under-Secretary for Defence.

PLEASE attach the vouchers.

JAS. B. HEYWOOD.

7th August, 1902.

No. 32.

Secretary to Treasury.

ORIGINAL voucher cannot be traced. Voucher for period 1st April, 1901, to 30th September, 1902, herewith.

ARTHUR P. DOUGLAS.

25/8/02.

No. 33.

VOUCHER for £300 passed.

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

26/8/1902.

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