

*As reported in New Zealand Law Reports, Vol. VIII., 1890.*

[IN THE COURT OF APPEAL.]

PATERSON AND ANOTHER v. HUMPHRIES, COMMISSIONER OF CROWN LANDS, AUCKLAND.

*"The Forest Trees Planting Encouragement Act, 1871," Sections 3, 4, 5—"The Forest Trees Planting Encouragement Act Amendment Act, 1872," Sections 4, 5, 7, and 8—"The New Zealand State Forests Act, 1885," Sections 29, 30—"The New Zealand State Forests Act Amendment Act, 1888," Sections 3 and 4—Construction—Implied Repeal.*

*"The Forest Trees Planting Encouragement Act Amendment Act, 1872," repeals by implication section 5 of the Act of 1871. The holder of an order under the Act of 1872 is not limited to any area in making his selection. If he elects to come under "The New Zealand State Forests Act Amendment Act, 1888," he is limited in value to £500, but he is not bound to do so.*

SPECIAL case stated by concurrence of the parties under the provisions of "The Supreme Court Act, 1882," and the civil code of procedure thereunder, and removed by consent from the Supreme Court to the Court of Appeal.

The plaintiff, R. M. Paterson, planted, in 1884, 284 acres 3 roods of black and golden wattle, and the other plaintiff, J. Fairlie, planted 277 acres 2 roods 24 perches about the same time (both plantations being in the Auckland Provincial District), complying in all respects with the provisions of the Forest Trees Planting Acts and regulations then in force. On the 7th of December, 1885, the plantations were inspected and reported upon, and upon the expiration of the period of two years, as mentioned in the regulations (No. 6), the Governor issued his certificate to the Auckland Waste Lands Board certifying that Paterson was entitled to a land-order for £923 6s. and Fairlie to an order for £682 12s. On the 14th of May, 1888, the Commissioner of Crown Lands at Auckland issued Paterson a land-order authorising him "to purchase of the rural lands of the Crown in the Provincial District of Auckland open for sale or selection, without payment in cash therefor, but to an extent not exceeding in the whole two hundred and fifty acres," &c. And on the 10th of July, 1889, a land-order was issued to Fairlie authorising him "to purchase to the amount of £682 12s. Crown lands, whether town, suburban, or rural lands, in any part of the colony open for sale or selection, without payment in cash therefor, subject, however, to the provisions of 'The State Forests Act, 1885,' and 'The State Forests Act Amendment Act, 1888.'"

The questions for the consideration of the Court were:—

1. Ought the restriction limiting the plaintiff Robert Norton Paterson's right to exercise the said land-order issued to him in the purchase of Crown lands in the Provincial District of Auckland to the extent only of 250 acres, to have been inserted in the said land-order?

2. Is the plaintiff, James Fairlie, entitled to a land-order enabling him to purchase Crown lands in the Provincial District of Auckland without restriction to 250 acres, and freed from the limitation in value mentioned in subsection (2) of section 3 of "The New Zealand State Forests Act Amendment Act, 1888."

3. Is the plaintiff, Robert Morton Paterson, entitled to exercise the said land-order issued to him in the purchase of Crown lands in the Provincial District of Auckland to the full amount thereof, and in accordance with the laws and regulations in force relating to the sale and disposal of rural land in the said district, or is he only entitled to a grant of such land subject to the provisions of the 5th section of "The Forest Trees Planting Encouragement Act, 1871"? If he is not restricted by the terms of the said 5th section of the said Act, is he entitled to exercise such land-order under any, and which, of the provisions of "The New Zealand State Forests Act Amendment Act, 1888"?

4. Is the plaintiff, James Fairlie, entitled to a land-order enabling him to purchase Crown lands in the Provincial District of Auckland to the full amount thereof, and in accordance with the laws and regulations in force relating to the sale and disposal of rural land in the said district, or is he, in respect of the said land-order, as issued to him as aforesaid, bound by the terms of section 4 of "The New Zealand State Forests Act Amendment Act, 1888," and only entitled to exercise the same under and subject to the conditions mentioned or referred to in the said section?

If he is not so entitled, or is not so bound, under what law and to what extent is the said James Fairlie entitled to exercise his said land-order?

*Theo. Cooper* for the plaintiffs:—

In Paterson's case, the two questions are—whether the land-order should contain words limiting the selection to 250 acres, and, if not, whether, those words being eliminated, the order is actually limited in value to £500.

"The Forest Trees Planting Encouragement Act, 1871," provides for a bonus for tree-planting in the shape of a grant of land (section 3), limited in area to 250 acres (section 5); the locality being also limited to the land district in which the planting has taken place. The grants by way of acreage were found to be unfair, owing to the difference in the value of land in different provincial districts; and the Act of 1872 was passed to substitute (section 4) a land-order not exceeding £4 for every acre planted for the land-grant under the Act of 1871. Section 8 of the Act of 1872 repeals such part of the Act of 1871 as is inconsistent with or repugnant to the Act of 1872. Therefore section 5 of the Act of 1871 is repealed. Otherwise a planter might get a land-order under section 4