

of the later Act if he had planted only nine acres, though under sections 3 and 5 of the Act of 1871 the minimum to entitle him to a grant would be ten acres. Section 7 of the Act of 1872 is also inconsistent with section 5, as under it the planter may purchase in more than one parcel, and is entitled to exercise his land-order to the full amount; whereas under section 5 the land must be taken in one parcel: *Wason v. Land Board of the Canterbury Land District*.* Assuming that section 5 of the Act of 1871 is repealed by the Act of 1872, then substituting the words "land order" for "grant" and "free grant," in the Act of 1871, the statute reads intelligibly, and still keeps the main object of the statute in view, viz., to restrict the planter to one land-order and one plantation.

"The New Zealand State Forests Act, 1885," section 30, was apparently passed without reference to the Act of 1872. It must be considered as inoperative. The 29th section repealed the Acts of 1871 and 1872, but saved rights accruing or accrued. Paterson's right was then maturing, and accrued on the 7th December, 1887, and he was then entitled under the Act of 1872 to purchase land in the Land District of Auckland to the full value of £923 6s.

"The New Zealand State Forests Act Amendment Act, 1888" (section 3), was enacted to do away with the anomaly of section 30 of the Act of 1885, which (assuming rural land to be worth 10s. per acre) enabled the planter who held a land-order for 125 acres, where there was no fairly good land in his district, to convert it into £500 cash. But the limit of value could only refer to cases coming under the repealed section 30. Our rights were independent of this section. We are not bound to come in under subsection (1), section 3, of the Act of 1888. Paterson could elect whether to do so or not. If he did so, and obtained the sanction of the Minister and the necessary indorsement enabling him to select land in any part of the colony, clearly the limitation would apply, but not otherwise. In subsection (2) the words "no land-order" must read "no such land-order." The words "to acquire Crown lands as aforesaid in any part of the colony" clearly point to the right gained by the indorsement of the Commissioner under subsection (1).

Fairlie's case. The distinction is that the order was issued after the Act of 1888—on the 10th of July, 1889; but the right vested on the 7th of December, 1887 (section 3, Act of 1871, and regulation 6). The delay of the Land Department in the issue of his order should not prejudice him. Section 4 of the Act of 1888 in terms adopts the conditions of section 3, one of those being presentation of the order and indorsement; but the holder of an order under the Act of 1872 is not bound to present his order.

Bell, for the defendant:—

The only question in Fairlie's case is, whether his order is subject to limitation of area, and in Paterson's case, whether the order is subject to the limitation of either area or value, or both.

In the Act of 1871 the words "free grant" only occur in section 4. The word "grant" is used in section 5 and section 7. Section 4 of the Act of 1872 provides that wherever there is a reference in the Act of 1871 "to a free grant of land"—that is, "to a grant"—the Act shall be read as though "land-order" were substituted for these words. Applying this, section 5 of the Act of 1871 limits the order to 250 acres. If the argument of the other side is correct, section 7 is repealed by implication, as well as section 5. The Court will only infer an implied repeal when driven to it. Sections 5 and 7 stand, and, in lieu of the free grant under section 4, the planter gets for each two acres a land-order for £4, but is limited in area to 250 acres.

[WILLIAMS, J.—So that an Auckland planter might get a land order for £500, and yet be limited to 250 acres, though Auckland land was only worth 5s. an acre?—Yes.

The limit of value was only imposed in 1888 by the State Forests Act. Paterson's order, if limited at all, is affected by section 3 of this Act. The question is, whether the subsections of section 3 are separate enactments, or is subsection (2) merely an appendix to subsection (1). It is submitted they are separate enactments. The land-orders referred to in subsection (1) are floating land-orders issued prior to the Act of 1885, not those referred to in subsection (2). In the latter subsection the words "no land-order whatever" are general, and the limit of £500 in value is imposed on all orders without distinction. The words "as aforesaid," in the last line but one of the subsection, mean whether the order be a floating land-order or not.

[WILLIAMS, J.—If that interpretation is correct, a person might, having expended money in planting on the faith of the Act of 1872, have got a land-order for an amount exceeding £500 under that Act and transferred to a *bonâ fide* purchaser for value. Then, the Legislature steps in by the Act of 1888, and repudiates its engagement under the earlier statute.]

Cooper, in reply.

cur. adv. vult.

WILLIAMS, J., delivered the judgment of the Court† as follows:—

The first question to be decided is the effect of the Act of 1872 in modifying the Act of 1871. The 3rd section of the Act of 1871 provides that a person planting land with forest trees shall be entitled to receive in respect of every acre planted a free grant of two acres of waste land of the Crown which may be open for sale within the province in which the trees are planted. The 4th section provides that the Governor may prescribe conditions, and that, upon the certificate of the Superintendent of the province, or of an officer appointed by him, of compliance with the conditions, the person to whom the certificate is granted shall be entitled, on production of it to the Commissioner of Crown Lands of the province, to receive a free grant of the amount of land to which the certificate shall prove him to be entitled.

The 5th section provides that no grant shall be issued under the provisions of the Act for less than twenty nor more than two hundred and fifty acres. The 4th section of the Act of 1872 provides that, in lieu of a free grant of two acres of land, any person who plants any land with forest trees shall be entitled to receive, in respect of every acre so planted, a land-order in the form in the schedule to the Act, which shall authorise such person to purchase, to such amount, not exceeding £4 for every acre so planted, as shall be fixed by the Superintendent and Provincial Council, any of

* N.Z.L.R., S.C. 300.

† Williams, Denniston, and Conolly, JJ.