

1893.
NEW ZEALAND.

PUBLIC ACCOUNTS COMMITTEE.

(LAND SCRIP, CANTERBURY DISTRICT: REPORT ON THE QUESTION OF, TOGETHER WITH MINUTES OF PROCEEDINGS AND EVIDENCE, AND APPENDIX.

Report brought up 22nd August, 1893, and ordered to be printed.

ORDER OF REFERENCES.

Extracts from the Journals of the House of Representatives.

WEDNESDAY, THE 28TH DAY OF JUNE, 1893.

Ordered, "That a Committee be appointed to examine into and report upon such questions relating to the Public Accounts as they may think desirable, or that may be referred to them by the House or by the Government, and also into all matters relating to the finances of the colony which the Government may refer to them; five to be a quorum. The Committee to consist of Mr. Guinness, Hon. Sir John Hall, Mr. G. Hutchison, Mr. J. Mills, Dr. Newman, Mr. Saunders, Hon. Mr. Seddon, Mr. Shera, Mr. Tanner, and the mover."—(On the motion of Hon. Mr. WARD.)

WEDNESDAY, THE 5TH DAY OF JULY, 1893.

Ordered, "That the names of Hon. Sir R. Stout and Mr. Wright may be added to the Public Accounts Committee."—(On the motion of Hon. Mr. WARD.)

TUESDAY, THE 18TH DAY OF JULY, 1893.

Ordered, "That the manner in which the land-scrip has been used in the Auckland, Wellington, and Christchurch Land Offices be referred to the Public Accounts Committee for consideration and report; the Committee to have power to call for persons and papers."—(On the motion of Hon. Mr. J. McKENZIE.)

TUESDAY, THE 8TH DAY OF AUGUST, 1893.

Ordered, "That in connection with the forest lands scrip, the Public Accounts Committee have leave to call for persons and papers."—(On the motion of Hon. J. McKENZIE.)

THURSDAY, THE 10TH DAY OF AUGUST, 1893.

Ordered, "That the Public Accounts Committee have power to call for persons, papers, and records, in relation to all matters referred to them."—(On the motion of Hon. Mr. SEDDON.)

R E P O R T.

THE Public Accounts Committee have to report that they have taken evidence and considered the transactions in the Canterbury Land District which were referred to them, in which scrip was used in the purchase of land.

1. The following are the transactions and their dates:—

PARTICULARS of SCRIP exercised in Purchase of Crown Lands by Mrs. Jessie Rhodes in the Land District of Canterbury.

| To whom Scrip was originally Issued. | Total Amount. | Office of Issue. | Amount exercised. | Where Scrip exercised. | By whom Scrip exercised. | Date when Scrip tendered and exercised. |
|--------------------------------------|---------------------|------------------|---------------------|------------------------|--------------------------|---|
| C. B. Knorpp .. | £ s. d. 485 10 6 | Auckland .. | £ s. d. 485 10 6 | Canterbury .. | Jessy Rhodes .. | March 25, 1891. |
| C. B. Knorpp .. | 513 3 6 | Auckland .. | 513 3 6 | Canterbury .. | Jessy Rhodes .. | March 25, 1891. |
| | 998 14 0 | | 998 14 0 | | | |

PARTICULARS of SCRIP, used in Payment of Ellesmere Lands, District of Canterbury, by
Mr. J. G. MURRAY.

| Office of Issue, and to whom Scrip originally Issued. | Total Amount. | Amount Issued. | Where and by Whom exercised. | † When Lodged. | Total used by Mr. Murray. | Excess of Legal Limit. | Date Exercised on |
|--|---------------------|--------------------------------|--|---------------------------|------------------------------|------------------------------|----------------------|
| Auckland— J. Paterson .. | £ s. d. 544 12 0 | £ s. d. 99 0 0 445 12 0 | Auckland— J. Smith Canterbury— J. G. Murray | About 1st December, 1889. | £ s. d. 445 12 0 | £ s. d. .. | 15 Jan., 1890. |
| | 544 12 0 | 544 12 0 | | | | | |
| R. M. Paterson .. | 923 6 0 | 923 6 0 | Ditto .. | | 923 6 0 | 423 6 0 | " |
| James Fairlie .. | 682 12 0 | 94 0 0 588 12 0 | " .. | | 588 12 0 | 88 12 0 | " |
| | 682 12 0 | 682 12 0 | | | | | |
| J. Cowan .. | 663 6 0 | 490 0 0 173 6 0 | " .. | | 173 6 0 | .. | " |
| | 663 6 0 | 663 6 0 | | | | | |
| P. S. McLean .. | 716 6 6 | 490 0 0 226 6 6 | " .. | | 226 6 6 | .. | " |
| | 716 6 6 | 716 6 6 | | | | | |
| A. J. McLean .. | 604 6 0 | 356 0 0 248 6 0 | " .. | | 248 6 0 | .. | |
| | 604 6 0 | 604 6 0 | | | | | |
| F. Hubbard .. | 1,008 0 0 | 291 0 0 187 9 0 529 11 0 | " .. | | 529 11 0 | 29 11 0 | " |
| | 1,008 0 0 | 1,008 0 0 | | | | | |
| M. Noake .. | 200 0 0 | 200 0 0 | " .. | | 200 0 0 | .. | " |
| Legal limit .. | .. | .. | .. | £500 0 0 | 3,334 19 0 | 541 9 0 | |
| Noake's scrip, Naval and Military Settlers' and Volunteers' Land Act .. | .. | .. | .. | 200 0 0 | 700 0 0 | | |
| | | | | | * 2,634 19 0 | 541 9 0 | |

† NOTE.—The sale was held on the 15th November, 1889, and on the same day 25 per cent. of the purchase-money was paid in cash. About the 1st December, 1889, the scrip was tendered as part-payment of the balance of the purchase-money. The officers of the department for some time refused to accept it, but, after some controversy, the scrip was finally accepted by the department on the 15th January, 1890.

2. The scrip lodged before the 31st December, 1889, seems to have been properly used under "The New Zealand State Forests Act Amendment Act, 1888," as it bears the indorsement of the Commissioner of the Auckland Land District, with the sanction of the Minister of Lands; save that more than £500 was used by one person. The cases in which that occurs are marked with an asterisk (*), and, so far as more than £500 was used, the use was unlawful. The transferee of the scrip seems to be limited to £500, if he takes advantage of the 1888 Act.

3. The scrip that has been used after the 31st December, 1890, was, in the opinion of your Committee, unlawfully used on two grounds:—

- That so issued after the passing of the Act of 1888 was not used under that Act, as section 3 was not complied with, the scrip not having been presented to the Hon. the Minister of Lands prior to the 30th June, 1889, for his indorsement.
- The scrip was used after the 31st December, 1890. It will be seen from the perusal of the decision of the Court of Appeal, in the case of Paterson and another *versus* Humphries (New Zealand Law Reports, Vol. viii., pp. 297–307), that the scrip could only be used in the provincial district in which the tree-planting had taken place, unless the terms of the third section of "The New Zealand State Forests Act Amendment Act, 1888," had been complied with; and these provisions were not complied with by the holders of the scrip.

4. Mr. Knorpp's scrip was purchased by the Hon. Mr. Whyte, and by him sold to Mr. A. E. G. Rhodes, M.H.R., who exercised it on behalf of Mrs. Jessy Rhodes. Before Mr. Rhodes purchased the scrip, he obtained the opinion of the officers of the Lands Department in Canterbury, and he was informed that the scrip was in order and could be used in the purchase of land. Your

Committee are convinced that the scrip was tendered by Mr. Rhodes, and accepted by the Receiver of Land Revenue, in perfect good faith, under the impression that it was valid and negotiable in Canterbury for the full amount named upon it; and that no charge whatever can be made against either of them in regard to these transactions.

5. That, though the scrip could not have been used in Canterbury, it could have been used in the purchase of land in Auckland to the amount of its face-value.

6. From the evidence of Mr. Whyte the Committee find that, by a personal interview with Ministers, in Wellington, immediately after the sale of Ellesmere lands, Mr. Whyte obtained irregular and illegal concessions from Ministers as to the use of his scrip in the payment of Ellesmere lands purchased by Mr. J. G. Murray, in Christchurch, which gave illegal currency in Canterbury to a large quantity of scrip held or conditionally sold by Mr. Whyte.

7. From the evidence of the late Minister of Lands, Mr. Richardson, the Committee find that he not only put but that he still puts a construction upon the laws under which he was required to act not consistent with the provisions of the 1888 Act, and that he disregarded or misunderstood the decision of the Court of Appeal in the case of Paterson and Another *versus* Humphries.

8. By documents and dates laid before it, the Committee find that the land officers in Christchurch overlooked or disregarded their latest instructions when accepting scrip to the value of £998 14s. from Mr. A. E. G. Rhodes, M.H.R., on behalf of Mrs. Jessie Rhodes, in payment for Crown land sold to her on the 25th March, 1891.

9. The Committee find that information that scrip would be accepted in payment for the Ellesmere lands was obtained in a semi-private manner from Ministers or officials by persons who thus obtained an undue advantage over the general public. In justice to the public, and to the public revenue, there can be no doubt that, if scrip was to be accepted at all, timely notice should have been given to the public to that effect.

10. However much these irregularities are to be regretted, the colony is clearly bound by the actions or errors of its Ministers and officers, and has now no practical remedy for them. The purchasers, in all cases, have complied with the demands of our land officers, and there is no ground to justify a demand for a refund from Mrs. Jessie Rhodes, or for withholding a title for the land purchased after her agent has complied with all the conditions demanded from him by the land officers.

11. The Committee approve of the action of the present Minister of Lands in disallowing the surcharge against the late Receiver of Land Revenue at Christchurch.

22nd August, 1893.

J. M. SHERA,
Chairman, Public Accounts Committee.

MINUTES OF PROCEEDINGS.

[NOTE.—Other business than that relating to the scrip transactions is not printed, and where other business occurs it will be shown by a line of asterisks.]

TUESDAY, 1ST AUGUST, 1893.

Present: Mr. Shera (Chairman), Mr. Guinness, Hon. Sir J. Hall, Mr. G. Hutchison, Mr. J. Mills, Dr. Newman, Hon. the Premier, Mr. Saunders, Hon. Sir Robert Stout, Mr. Tanner, Hon. Mr. Ward, and Mr. Wright.

Minutes of the previous meeting read and confirmed.

Order of reference of the 26th July, 1893, read by the Clerk.

The Hon. J. B. Whyte, M.L.C., and Messrs. Rhodes and Richardson, Ms.H.R., and Mr. C. O'H. Smith, Auditor, Lands and Survey Department, attended the Committee.

The Committee took into consideration the question of the Land Scrip.

Mr. Smith and Mr. Rhodes gave evidence, which was taken down by the reporter.

The further consideration of the question was adjourned until to-morrow.

The Committee then adjourned until to-morrow at 11 o'clock.

WEDNESDAY, 2ND AUGUST, 1893.

Present: Mr. Shera (Chairman), Mr. Guinness, Hon. Sir J. Hall, Mr. G. Hutchison, Mr. Mills, Dr. Newman, Hon. the Premier, and Mr. Saunders.

Minutes of the previous meeting read and confirmed.

The Hon. Mr. Whyte, M.L.C., Mr. Rhodes, M.H.R., and Messrs. Barron and Smith attended the Committee.

Mr. Barron, Under-Secretary of the Lands and Survey Department, and the Hon. J. B. Whyte gave evidence, which was taken down by the reporter.

Resolved, on the motion of Mr. G. Hutchison, That the Hon. the Premier be asked to obtain the Law Officers of the Crown's opinion upon the following points:—

1. Was the scrip issued to C. B. Knorpp on the 28th January, 1890, under the Forest Trees Planting Encouragement Acts exercisable after the 30th June, 1889, or (with sanction and certificate given) after the 31st October, 1890?

2. Was such scrip exercisable to any value exceeding £500 whether in one or more provincial districts?

3. Was such scrip exercisable elsewhere than in the Provincial District of Auckland, within which the trees were planted; and, if so, to what extent?

The Committee then adjourned.

FRIDAY, 4TH AUGUST, 1893.

Present: Mr. Shera (Chairman), Mr. Guinness, Hon. Sir J. Hall, Dr. Newman, Mr. Saunders, Hon. Sir R. Stout, Mr. Tanner, Mr. Wright.

In consequence of Mr. Shera not being present at the commencement of the proceedings Mr. Guinness, on the motion of Hon Sir J. Hall, took the chair.

Minutes of the two previous meetings read and confirmed.

Mr. Shera at this stage of the proceedings attended and took the chair.

The Hon. Mr. Whyte, M.L.C., Mr. Rhodes, M.H.R., and Mr. C. O'H. Smith attended the meeting.

Mr. Smith handed in a return showing the analysis of Mr. Murray's scrip used in payment of the Ellesmere lands.

Mr. Smith read a further statement, which was taken down by the reporter.

The Hon. Mr. Whyte made a further statement, which was taken down by the reporter.

The Committee then adjourned until Tuesday next at 11 o'clock.

TUESDAY, 8TH AUGUST, 1893.

Present: Mr. Shera (Chairman), Mr. Guinness, Mr. G. Hutchison, Dr. Newman, Hon. the Premier, Mr. Saunders, Hon. Sir R. Stout, Mr. Tanner, and Mr. Wright.

Minutes of the previous meeting read and confirmed.

The Hons. G. F. Richardson and J. B. Whyte, and Mr. C. O'H. Smith attended the Committee.

Mr. Barron, Under-Secretary, Lands and Survey Department, attended and handed in the official file of papers, and then withdrew.

Mr. A. E. G. Rhodes attended, and handed in a written statement, and asked that it be added to his previous evidence.

Resolved accordingly.

The Hon. G. F. Richardson made a statement, which was taken down by the reporter.

After the witnesses had withdrawn, the Hon. the Premier stated in reference to the resolutions of the Committee of the 2nd August, asking for the opinion of the Law Officers of the Crown on certain points, that when the Law Officers have advised the Government on the same question it would be unfair to them to be asked to advise again, and he suggested that the previous resolutions should be withdrawn.

Resolved, on the motion of the Hon. Sir R. Stout, That the resolutions referred to be withdrawn.

Resolved, on the motion of Mr. Saunders, That a Sub-committee, consisting of the Hon. Sir R. Stout, the Chairman (Mr. Shera), and Mr. Wright, be appointed to draw up a draft report, and submit the same to the meeting on Friday next.

Resolved, on the motion of Mr. E. G. Wright, That the evidence and correspondence taken in this case be printed, and also the judgment in the Court of Appeal in the case of Patterson and another *v.* Humphries.

THURSDAY, 10TH AUGUST, 1893.

Present: Mr. Shera (Chairman), Mr. Guinness, Hon. Sir J. Hall, Mr. G. Hutchison, Dr. Newman, Hon. the Premier, Mr. Saunders, Hon. Sir R. Stout, Mr. Tanner, and Mr. Wright.

The minutes of the previous meeting read and confirmed.

Order of Reference of the 8th August read by the Clerk.

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The Chairman mentioned that at the close of last meeting the Premier had stated that the opinions of the Law Officers and the minutes of the Ministers in connection with the scrip transactions, which had been produced in evidence, were not to be printed with the evidence.

After discussion, it was *Resolved*, on the motion of Mr. Guinness, That the resolution of this Committee ordering the printing of evidence be altered by directing the printing of all the evidence except the opinions of the Law Officers of the Crown and the minutes of the Ministers, and that such opinions and minutes be printed on separate slips for the information only of members of this Committee.

TUESDAY, 15TH AUGUST, 1893.

Present: Mr. Shera (Chairman), Mr. Guinness, Hon. Sir J. Hall, Mr. G. Hutchison, Hon. the Premier, Mr. Saunders, Hon. Sir R. Stout, and Mr. Wright.

Minutes of the previous meeting read and confirmed.

Order of Reference of the 10th August read by the Clerk.

* * * * *

Resolved, on the motion of Dr. Newman, That the draft report be considered as the first business to-morrow.

FRIDAY, 18TH AUGUST 1893.

Present: Mr. Shera (Chairman), Mr. Guinness, Hon. Sir J. Hall, Dr. Newman, Hon. the Premier, Sir R. Stout, Mr. Tanner, Hon. Mr. Ward, Mr. Wright.

Minutes of the previous meeting read and confirmed.

The Chairman produced the following draft report prepared by the Sub-committee.

1. The following are the transactions and their dates [*Vide* pages 1 and 2.] :—
 2. The scrip used before the 31st December, 1889, seems to have been properly used under "The New Zealand State Forests Act Amendment Act, 1888," as it bears the indorsement of the Commissioner of the Auckland Land District, with the sanction of the Minister of Lands; save that more than £500 was used by one person. The cases in which that occurs are marked with an asterisk (*), and, so far as more than £500 was used, the use was unlawful. The transferee of the scrip seems to be limited to £500, if he takes advantage of the 1888 Act.
 3. The scrip that has been used after the 31st December, 1890, was, in the opinion of your Committee, unlawfully used on two grounds:—

- (a.) That so issued after the passing of the Act of 1888 was not used under that Act, as section 3 was not complied with, the scrip not having been presented to the Hon. the Minister of Lands prior to the 30th June, 1889, for his indorsement.
 (b.) The scrip was used after the 31st December, 1890. It will be seen from the perusal of the decision of the Court of Appeal, in the case of Paterson and another *versus* Humphries (New Zealand Law Reports, Vol. viii., pp. 297–307), that the scrip could only be used in the provincial district in which the tree-planting had taken place, unless the terms of the third section of "The New Zealand State Forests Act Amendment Act, 1888," had been complied with; and these provisions were not complied with by the holders of the scrip.

4. Part of the scrip was exercised by Mr. A. E. G. Rhodes, M.H.R., on behalf of Mrs. Jessie Rhodes. Before Mr. Rhodes purchased the scrip, he obtained the opinion of the officers of the Lands Department in Canterbury, and he was informed that the scrip was in order and could be used in the purchase of land. Your Committee are convinced that the scrip was tendered by Mr. Rhodes, and accepted by the Receiver of Land Revenue, in perfect good faith under the impression that it was valid and negotiable in Canterbury for the full amount named upon it; and that no charge whatever can be made against either of them in regard to these transactions.

5. That, though the scrip could not have been used in Canterbury, it could have been used in the purchase of land in Auckland to the amount of its face-value.

6. That the Crown grants should be issued for the lands in respect of which the said scrip was received.

7. That the officers of the Land Department did wrong in accepting the scrip from Mr. Rhodes, and in disregarding instructions issued to them in June, 1890. They seem to have overlooked these later instructions, and to have been guided by memoranda and telegrams sent to them in December, 1889. At that period the Hon. the Minister of Lands seems to have come to the conclusion that the scrip should be allowed to be used in any part of the colony, and to have disregarded or misunderstood the decision of the Court of Appeal in the case of Paterson and Another *versus* Humphries, already referred to.

Resolved, in the first line of the report, to insert the words "taken evidence and" before the word "considered," and to insert the word "were" in lieu of the word "was" after the first word "which" in the second line thereof.

Paragraph 1, 2, and 3 agreed to.

Paragraph 4.—*Resolved*, on the motion of the Hon. the Premier, To strike out the first words "Part of the scrip was exercised by Mr. A. E. G. Rhodes, M.H.R.," and insert in lieu thereof the words "Mr. Knorpp's scrip was purchased by the Hon. Mr. Whyte, and by him sold to Mr. A. E. G. Rhodes, M.H.R., who exercised it."

Mr. Guinness moved, To strike out the words "he obtained the opinion of the officers" in the second line of the 4th paragraph, and insert in lieu thereof the words "he was informed by him."

Upon the question being put, a division was called for, and the names were taken down as follow:—

Ayes, 3: Mr. Guinness, Hon. Mr. Seddon, Hon. Mr. Ward.

Noes, 5: Hon. Sir J. Hall, Dr. Newman, Mr. Saunders, Hon. Sir R. Stout, Mr. Wright.

Motion lost. Words retained.

Mr. Saunders moved, To strike out the words "in perfect good faith" in line 5 of paragraph 4.

Upon the question being put, That the words as printed be retained, a division was called for, and the names were taken down as follow:—

Ayes, 5: Mr. Guinness, Hon. Sir J. Hall, Dr. Newman, Hon. Sir R. Stout, Mr. Wright.

Noes, 3: Mr. Saunders, Hon. Mr. Seddon, Hon. Mr. Ward.

Words retained.

Resolved, on the motion of the Hon. the Premier, to insert the words "under the impression" after the word "faith."

Clause as amended agreed to.

Clause 5 agreed to.

Clauses 6 and 7.—Mr. Saunders moved, that clauses 6 and 7 be struck out.

Upon a division being called for, that the clauses as printed stand part of the Report, the names were taken down as follow:—

Ayes, 4: Hon. Sir J. Hall, Dr. Newman, Hon. Sir R. Stout, Mr. Wright.

Noes, 5: Mr. Guinness, Hon. the Premier, Mr. Saunders, Mr. Tanner, Hon. Mr. Ward.

Clauses struck out.

Mr. Saunders proposed the following new clauses as clauses 6, 7, 8, 9, 10, and 11 of the Report:—

6. From the evidence of Mr. Whyte we find that, by a personal interview with Ministers, in Wellington, immediately after the sale of Ellesmere lands, on the 15th January, 1890, Mr. Whyte obtained irregular and illegal concessions from Ministers as to the use of his scrip in the payment of Ellesmere lands purchased by Mr. J. G. Murray, in Christchurch, which increased the value of a large quantity of scrip held or conditionally sold by Mr. Whyte.

7. From the evidence of the late Minister of Lands, Mr. Richardson, we find that he not only has done, but that he still puts a construction upon the laws under which he was required to act not consistent with the plain reading of the Acts, and that he disregarded or misunderstood the decision of the Court of Appeal in the case of Paterson and Another *versus* Humphries.

8. By documents and dates laid before us we find that the land officers in Christchurch overlooked or disregarded their latest instructions when accepting scrip to the value of £998 14s. from Mr. A. E. G. Rhodes, M.H.R., on behalf of Mrs. Jessie Rhodes, in payment for Ellesmere land sold to her on the 25th March, 1891.

9. In the sales of Ellesmere lands at Christchurch we find that certain individuals have competed for those lands with a knowledge, obtained from Ministers or land officers, that scrip would be accepted in payment for them, whilst the general public were still left under the impression that cash only would be received. In justice to the public, and to the public revenue, there can be no doubt that, if scrip was to be accepted at all, timely notice should have been given to the public to that effect.

10. However much these irregularities are to be regretted, the colony is clearly bound by the actions or errors of its Ministers and officers, and has now no practical remedy for them. The purchasers, in all cases, have complied with the demands of our land officers, and there is no ground to justify a demand for a refund from Mrs. Jessie Rhodes,

or for withholding a title for the land purchased after her agent has complied with all the conditions demanded from him by the land officers.

11. Nor would there be any justification for singling out any one Government officer as a scapegoat for prosecution where his superior officers have been so clearly implicated.

Clause 6.—*Resolved*, on the motion of the Hon. Sir R. Stout, to strike out all the words after the word "Christchurch" in the fourth line.

Resolved, on the motion of Mr. Tanner, to insert the words "which gave illegal currency in Canterbury to a large quantity of scrip held or conditionally sold by Mr. Whyte," in lieu of the words struck out.

Clause as amended agreed to.

Clause 7.—*Resolved*, on the motion of the Hon. Sir R. Stout, to strike out the words "has done," in lines 1 and 2, and insert the word "put" in lieu thereof.

Hon. Sir R. Stout moved, That the words "plaiif reading of the Acts," in line 3, be struck out.

Upon the question being put, That the words proposed to be struck out stand part of the question, a division was called for, and the names were taken down as follow :—

Ayes, 4 : Hon. the Premier, Mr. Saunders, Mr. Tanner, and Hon. Mr. Ward.

Noes, 5 : Mr. Guinness, Hon. Sir J. Hall, Dr. Newman, Hon. Sir R. Stout, and Mr. Wright.

Words struck out.

Resolved, on the motion of the Hon. Sir R. Stout, to insert the words "provisions of the 1888 Act," in lieu of the words struck out.

Clause as amended agreed to.

Clause 8.—Hon. Sir J. Hall moved to strike out the words "or disregarded" in line 2.

Upon the question being put, that the words as printed stand part of the clause, a division was called for, and the names were taken down as follow :—

Ayes, 5 : Mr. Guinness, Hon. the Premier, Mr. Saunders, Mr. Tanner, and Hon. Mr. Ward.

Noes, 4 : Hon. Sir J. Hall, Dr. Newman, Hon. Sir R. Stout, and Mr. Wright.

Words retained.

Resolved, on the motion of Mr. Tanner, to insert the word "Crown" after "Ellesmere," struck out.

Clause as amended agreed to.

Clause 9.—*Resolved*, on the motion of Mr. Tanner, to strike out all the words down to the word "received."

Mr. Tanner proposed to insert the following words in lieu of the words struck out—viz. : "The sales of Ellesmere and other Crown lands at Christchurch, we find that certain persons have used scrip on an understanding, obtained directly or indirectly, from Ministers or land officers, that it would be accepted in payment for them, whilst the general public were left under the impression that cash only would be received."

Upon a division being called for, that the words proposed to be inserted be so inserted, the names were taken down as follow :—

Ayes, 4 : Mr. Guinness, Hon. the Premier, Mr. Saunders, and Mr. Tanner.

Noes, 5 : Hon. Sir J. Hall, Dr. Newman, Hon. Sir R. Stout, Hon. Mr. Ward, and Mr. Wright.

Motion lost.

Resolved, on the motion of Mr. Tanner, to insert the following words in lieu of the words struck out : "We find that information that scrip would be accepted in payment for the Ellesmere lands was obtained in a semi-private manner from Ministers or officials by persons who thus obtained an undue advantage over the general public."

The Hon. Mr. Seddon moved to insert the words "and other Crown lands" after the word "Ellesmere."

Upon the Question being put, a division was called for, and the names were taken down as follow :—

Ayes, 4 : Mr. Guinness, Hon. the Premier, Mr. Saunders, Hon. Mr. Ward.

Noes, 5 : Hon. Sir J. Hall, Dr. Newman, Hon. Sir R. Stout, Mr. Tanner, Mr. Wright.

Motion lost.

Clause as amended agreed to.

Clause 10 agreed to.

Clause 11 : On the motion of Mr. Wright struck out.

Resolved, on the motion of the Hon. Sir R. Stout, to insert the following in lieu of the clause struck out : "The Committee approve of the action of the present Minister of Lands in disallowing the surcharge against the late Receiver of Land Revenue at Christchurch."

Resolved, on the motion of the Hon. Sir R. Stout, "That the report as amended be agreed to, and that the Chairman report the same to the House."

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The Committee then adjourned till Tuesday next.

TUESDAY, 22ND AUGUST, 1893.

Present: Mr. Shera (Chairman), Mr. Guinness, Hon. Sir J. Hall, Mr. G. Hutchison, Mr. J. Mills, Dr. Newman, Hon. the Premier, Hon. Sir R. Stout, Mr. Tanner, Hon. Mr. Ward, Mr. Wright.

Minutes of the previous meeting read and confirmed.

The Chairman brought down the printed report on the scrip transactions as agreed upon at the last meeting, and mentioned that it would be necessary to make some alterations therein.

After some discussion it was *Resolved*, on the motion of Hon. Sir R. Stout, that the report be recommitted, to consider verbal alterations in paragraphs 1, 2, and 6.

Resolved, That the verbal alteration as shown on the printed copy of the report be agreed to, and that the Chairman present the same to the House this afternoon. [*Vide* report as brought up.]

MINUTES OF EVIDENCE.

TUESDAY, 1ST AUGUST, 1893 (Mr. J. M. SHERA, Chairman).

Mr. CHARLES O'HARA SMITH examined.

1. *The Chairman.*] What position do you hold?—I am Auditor of Land Revenue.
2. What position did you occupy in reference to these transactions into which we are inquiring?
—I was an Inspector of the Audit Department.

3. Will you state what you know about the Canterbury scrip transactions?—Those transactions were simply as follows: When investigating accounts at Auckland, I had reason to believe that the scrip transactions in Wellington and Christchurch were not as correct as they should be. I reported this matter to the Head Office, and, after some time, I came to Wellington. I was instructed to proceed to Canterbury and make examination of the scrip transactions in Canterbury. I went there in accordance with my instructions. I brought with me the Treasury copies of cash-books which were filed in Wellington, and to which the scrip was attached. My object was to ascertain if the scrip, purporting to have been exercised by people whose names were in the cash-book, had been really so exercised; for I had found that, in other parts of the colony, it had not been so exercised. I wanted to see if the scrip so exercised had been exercised in accordance with law. I took exception to a good deal of the scrip. One was an item of £3,334 19s., which appeared to have been exercised by J. G. Murray, and was received in payment for sales under the Ellesmere Lands Act of 1888. Some of it was Forest Trees scrip, some Volunteer scrip, and Naval and Military Settlers' scrip. I objected to the receipt of this scrip on various grounds. One reason was that the scrip could not be legally exercised in the purchase of the Ellesmere lands at all.

4. Could you not state first those scrip matters with which the name of Mr. Rhodes has been connected?—Yes; I can take that first if you wish it.

5. Is Mr. Richardson's name connected with it?—Yes, indirectly.

6. With that scrip?—Yes. I found that on the 24th March, 1891, the sum of £998 14s. was paid in scrip by Mrs. Jessie Rhodes on account of sale of Lots 36 and 226—1,990 acres at £1 2s. 6d. per acre. I found, on examination, that that scrip consisted of two pieces, in favour of the same person—namely, Mr. Knorpp, of Ngaruawahia, in the Auckland District; one piece amounted to £485 10s. 6d., and the other to £513 3s. 6d., making a total of £998 14s.

7. What kind of scrip?—It was under the Forest Trees Planting and Encouragement Act Amendment Act of 1872. I found that this scrip had been sold, and came into the possession of Mr. A. E. G. Rhodes, by purchase from the Hon. J. B. Whyte. I also found that this scrip could not be legally exercised in the Canterbury Provincial District to a greater extent than £500, in consequence of the operation of the New Zealand State Forests Act of 1888.

8. *Sir Robert Stout.*] Under what Act was the limit of £500 made?—I cannot say exactly whether it was under the first or the second Act: the law was somewhat vague on the subject; but the case of Paterson and Fairlie v. Humphries, at the Court of Appeal, had decided what was the law upon the subject.

9. *Sir John Hall.*] You do not say which Act—the first or the second?—The New Zealand State Forests Act of 1888, I think. The law was somewhat confused on the subject, but I went by the decision of the Court of Appeal given in the case of Paterson and Fairlie v. Humphries. The Court in that case decided that scrip could not be exercised to a greater amount than £500 outside the provincial district in which it was issued; and, consequently, the receipt of it by the Receiver of Land Revenue was an error, for it could not be so exercised to the extent of £998 14s. I found upon inquiry that Mr. Rhodes had interviewed Mr. Baker as to the legality of the scrip he intended to purchase. Mr. Baker was Commissioner of Crown Lands in the Canterbury District.

10. What date was that?—About 25th of March, 1891. Mr. Baker is at present Assistant Surveyor-General, and Mr. Rhodes asked his opinion.

11. *The Chairman.*] How did you find out that he interviewed Mr. Baker?—I have seen the official correspondence. Mr. Rhodes interviewed him in Christchurch and in Wellington on the whole subject. It is on record; I know it officially. Mr. Baker himself will be able to give testimony as to what passed at those interviews. He assured him that, in his opinion, the scrip was valid and good, and capable of being exercised in Canterbury.

12. *Sir John Hall.*] The whole amount?—Yes, the whole amount. I believe that Mr. Williams, the Receiver at Christchurch, was of the same opinion. I interviewed Mr. Rhodes personally. He made a statement to me to that effect. I found that his statement was corroborated by the officials. Mr. Rhodes threw open his books to me for examination. I examined his books and found that he had made £20 on the transaction. Judging from what I got from the books, and from Mr. Rhodes himself, he had advanced £1,000 to Mrs. Jessie Rhodes: this £998 14s. was substituted. There is one point to which I would refer. It is quite clear that the Receiver at Christchurch, and the Com-

missioner of Crown Lands at Christchurch, were in error, when they advised Mr. Rhodes to that effect. If they had searched the correspondence of their office they would have found that instructions had been issued from the Head Office to the contrary.

13. Contrary to what?—Contrary to the decision which they gave to Mr. Rhodes.

14. *Mr. G. Hutchison.*] Who gave these instructions?—The Under Secretary.

15. *Mr. Wright.*] Were these instructions generally to all the Commissioners?—I am not sure.

16. *The Chairman.*] Are you referring to written instructions?—Yes, I have the letters here. I have a copy of the instructions.

16A. *Mr. Wright.*] What is the date?—The 17th June, 1890. This scrip was exercised on the 25th March, 1891.

17. *Sir R. Stout.*] There is a limitation in the Under Secretary's letter of the 17th June, 1890?—Had that instruction been looked up the Commissioner would have given a decision totally the reverse of the one he gave, and the Receiver would not have received the scrip. I interviewed the Receiver as to this, and I picked this out from the correspondence. When it appeared to me there had been an error made, I asked the Receiver what explanation he had to offer. I was then referred to and shown a great deal of previous correspondence in the year 1889. Both the Receiver and the Commissioner assured me that when they made that decision they had overlooked the letter of the 17th June, 1890; that they had in their mind at the time the previous correspondence, which was of a totally different nature, and was practically to the effect that Mr. Whyte's scrip was to be used in any way Mr. Whyte liked, although it was illegal, and full of irregularities.

18. What was this previous correspondence of which you speak?—I have the letters and telegrams here—from December, 1889, to January, 1890. It is this previous correspondence on which they said they were relying, and on which they based their judgment when they gave that decision to Mr. Rhodes. There is a telegram from Mr. Whyte to Mr. Baker on the 31st December, 1889—

Sir Robert Stout: We want the instructions from the central office to the Receiver and Commissioner, on which you say they relied.

The Hon. the Premier: It was on this previous correspondence that the Receiver said he acted. That was the explanation to Mr. Smith. The whole tone of it shows that at the time the Receiver and the Commissioner were acting on this previous correspondence, which they had received from Elliott and Whyte, giving Elliott's opinion. The whole tone shows that the tendency was to let Whyte off as easily as possible, and to let his scrip be used. There is nothing in this about the £500 limit. This is the correspondence that was in their mind when they gave their decision.

19. *Mr. G. Hutchison.*] Is there anything in the previous correspondence with reference to the limitation of the amount that might be exercised?—I think there is; it was after the decision of the Court of Appeal, and they had the judgment of the Court before them in the case of Paterson and Fairlie v. Humphries at the time.

20. *Mr. Tanner.*] We have this letter of the 17th June, 1890, then this correspondence?—No; correspondence first and letter of the 17th June afterwards.

21. This does not refer to the £500 limit? Did he contend that it was not regular to receive more than £500 worth?—Yes; he could not receive £3,334 19s. worth of scrip, because he was limited by the case of Patterson and Fairlie v. Humphries to £500.

22. Is there anything that bears on the knowledge on the minds of the Commissioners?—Yes.

22A. *Sir R. Stout.*] Where is there a letter from the Receiver at Christchurch saying that he is bound by the £500 limit, in which reference is made to a previous memorandum [Memorandum read. See Appendices D and I]?—To understand that you must read the memoranda of the 2nd December, to which he refers, from Mr. Elliott to the Receiver of Land Revenue at Christchurch, adverting to previous correspondence. The first relates to the scrip for Ellesmere lands, and there is another of the same date, which is contradicted by the one of the 17th June, 1890.

23. Then see if there is anything in them referring to the amount?—Numberless objections were taken by the Receiver to this scrip, and on various points.

24. I ask you if there is any correspondence dealing with this £500 limit?—Yes.

Mr. Wright: We have nothing yet which defines the instructions which were given on that point.

Hon. the Premier: There are two letters there?

Mr. Wright: He got his instructions that there would be no limit.

25. *Mr. Wright.*] Is there nothing between them?—Yes; there is a telegram here of the 19th December, 1889.

26. *Mr. Tanner.*] Who from?—From Mr. Elliott to the Receiver of Land Revenue, Christchurch. Then there is a memorandum of the 13th December, 1889, from Mr. Elliott to the Commissioner of Crown Lands, enclosing the judgment of the Court of Appeal.

27. *Mr. G. Hutchison.*] Does he say anything?—No, he just encloses it.

27A. Is there any other correspondence at all. I should say so, but these memoranda were only taken down for my own convenience: I have not the official papers on the subject. These confirm my statement that the Commissioner and the Receiver were acting on official instructions from Wellington.

Mr. G. Hutchison: This bears on the exercise of the scrip which arose out of Murray's application.

28. *Mr. Guinness.*] Had it any previous reference to Mr. Rhodes?—No.

An Hon. Member.] The Government had made up their mind to waive the provincial distinction. When they decided to do so, this case of Rhodes's turned up, and the Receivers acting on that waived that also.

29. *Hon. the Premier.*] You said there was a letter from Mr. Whyte to the Receiver?—Yes.

Sir Robert Stout: Better state them chronologically.

30. *Mr. Wright.*] I understood from the Chairman that you were requested to give the Committee the matter bearing on Mr. Rhodes's scrip?—There is nothing more to say on that. There is a telegram from Mr. Elliott to Mr. Williams, dated 2nd December, 1879 [read, marked "A"].

31. Any other?—There is one from Mr. Elliott to Mr. Baker, dated the 2nd December, 1889 [read, marked "B"]; another, from Mr. Whyte to Mr. Baker, dated the 3rd December, 1889 [read, marked "C"]; a telegram, dated the 6th December, 1889, from Mr. Williams to Mr. Elliott [read, marked "D"]; a telegram, dated the 7th December, 1889, from Mr. Whyte to Mr. Baker [read, marked "E"]; a telegram, dated the 7th December, 1889, from Mr. Baker to Mr. Whyte, [read, marked "F"]; a memorandum, dated 13th December, 1889, from Mr. Elliott to Mr. Baker [read, marked "G"]; a telegram, dated the 18th December, 1889, from Mr. Elliott to Mr. Williams [read, marked "H"]; a telegram, dated the 18th December, 1889, from Mr. Williams to Mr. Elliott [read, marked "I"]; a telegram, dated the 19th December, 1889, from Mr. Elliott to the Receiver of Land Revenue, Christchurch [read, marked "K"].

The Hon. the Premier: I may state that this is a very important communication.

Witness: A telegram dated the 19th December, 1889, from Mr. Williams to Mr. Elliott [read, marked "L"]; a telegram dated the 21st December, 1889, from Mr. Whyte to Mr. Baker [read, marked "M"]; a telegram, not dated, probable date 23rd December, 1889, from Mr. Baker to Mr. Elliott [read, marked "N"]; a telegram, dated the 23rd December, 1889, from Mr. Baker to Mr. Whyte [read, marked NA]; a telegram, dated the 24th December, 1889, from Mr. Whyte to Mr. Baker [read, marked "O"]; a telegram, dated the 24th December, 1889, from Mr. Whyte to Mr. Baker [read, marked "P"]; a telegram, dated the 24th December, 1889, from Mr. Elliott to Mr. Baker [read, marked "Q"]; a telegram, dated the 24th December, 1889, from Mr. Baker to Mr. Whyte [read, marked "R"]; a memorandum, dated the 24th December, 1889, from Mr. Baker to the Manager of the Bank of New Zealand, Christchurch, [read, marked "S"]; a telegram, dated the 27th December, 1889, from Mr. Whyte to Mr. Baker [read, marked "T"]; a telegram, dated the 28th December, 1889, from Mr. Baker to Mr. Whyte [read, marked "TA"]; a memorandum, dated the 17th June, 1890, from Mr. Elliott to Mr. Baker [read, marked "U"].

Mr. Tanner: Read the statement of the 17th June, 1890. It seems to me that, after all these irregularities, there should come up somewhere definite instructions.

32. *Sir R. Stout.*] Is there any correspondence between the Auditor in Christchurch and the department here?—I think there is something in relation to Mr. Wason's scrip. The Under-Secretary would have all the papers with all the connecting links in.

Mr. Tanner: I should very much like to have that letter of the 17th June, 1890, read again. [Letter read.]

33. *The Hon. the Premier.*] Do you produce the correspondence with the Auditor-General on the surcharge to Williams?—No; that is in the Auditor-General's office. I have no access to it. I am not an officer of the Audit Department.

34. *Mr. A. E. G. Rhodes.*] The scrip was good in Auckland, was it not, at the time it was issued?—Yes; your scrip was good for Auckland.

35. I am only speaking of my scrip?—Yes; it was good.

36. Could the balance have been sent back to Auckland after the taking of the £500 limit?—Yes.

37. How long before any objection was taken to them by the Government, or any objection to Mrs. Rhodes using them?—About May, 1892. It had been examined and passed as correct. It was only other discoveries that led up to this.

38. Had it become bad?—Yes, that scrip became unusable two years after the date of issue; the scrip is dated the 28th January, 1890. I presume it became invalid on 29th January, 1892, that is, two years afterwards. When I discovered the irregularity the scrip was dead. Mr. Barron, of the Lands Office, can give you the whole of the information that is obtainable on the subject.

39. *Mr. Wright.*] I should like to know whether the original reports by Baker and Williams, on the Rhodes case, are in this correspondence?—No. The Under-Secretary, with all the papers on the subject, will be here presently; he has all the office correspondence.

Mr. A. E. G. RHODES examined.

Witness: I can only say that the only scrip transaction I ever had was this: that when requested by the Hon. Mr. Whyte to buy certain scrip, I refused to do so unless it could be clearly shown that the scrip was good. Mr. Whyte was aware from the newspapers that certain of my friends had been buying land. He asked me if I would use scrip. I said I had no objection, provided the department held that it was correct.

40. *Sir Robert Stout.*] What is the date?—That was the commencement of February, 1891, just after the appointment of the present Ministers. The scrip was posted to the Bank of New Zealand, and Mr. Whyte drew upon me for the money.

41. What date was that?—It would be about the commencement of February.

42. *Sir John Hall.*] What followed after that—having refused, unless the department certified that the scrip was correct?—I beg your pardon; I am wrong. I will give you the exact date. Mrs. Jessy Rhodes was purchasing Government land for cash, and must have made this application at the end of January, 1891. They were about to sail for England. It was on the 9th February that Mr. Whyte telegraphed to me to the effect, "Have you received scrip: is purchase completed?"

43. Had you any communication with the Land Office?—I had no communication with the Land Office as yet. He told me he had sent the scrip, and he wished to know if I had received it. I telegraphed back to him. The land-orders then arrived. It was on the 9th February that he drew on me; and I borrowed scrip from the Bank of New Zealand and applied to the Commissioner.

44. *Sir R. Stout.*] What is the date of the draft?—I do not know. It was on the 11th February that I paid Mr. J. H. Latham's, the gentleman who drew on me through the Bank of New

Zealand. It would be between those dates—apparently about the 9th February, that I saw the Commissioner in Christchurch. I interviewed Mr. Baker, without any knowledge of any disputes about, or of any transactions in land-scrip at all in Canterbury. I was perfectly unaware of any correspondence with the Government about previous transactions. I saw Mr. Baker personally, and asked him whether there was any objection to using this scrip. I understood him to say that he would telegraph to Wellington or Auckland. He kept the scrip for a day or two, and when I came back to him he told me it was correct—that it was all right. I think, speaking from memory, that he sent the scrip up to Auckland to get it certified by the Commissioner in Auckland. However, he led me to believe that the scrip was perfectly good, and he raised no objection on the score of amount, or on any other ground. He never told me of any previous questions in regard to any other scrip. Unfortunately, I never looked up the Acts, or had the scrip in my possession, except to take to Mr. Baker; I thought it sufficient to apply to the department to see if the scrip was correct. Having done these things, I paid the draft and completed the sale. The date of the title I believe was some time in March. Mr. Baker knew for whom the scrip was going to be used. I was paying more moneys on other accounts; and if I wanted to conceal anything I could have exercised one scrip for Mrs. Jessie Rhodes and one for another purchase, and handed in a cheque for the balance of each purchase. I was paying £4,000, the whole of which I had to find myself. That is the end of the transaction so far as I am aware, until fourteen months afterwards, when I received certain correspondence from the department asking for a refund of the money.

45. *Mr. Guinness.*] You would have settled the whole matter if you had sent a cheque?—On the 16th May I got this correspondence from the Receiver of Land Revenue and the Government asking me to call. That was the first intimation I had that any objection had been taken to the scrip at all. I then interviewed Mr. O'Hara Smith and told him that we wished to have the utmost publicity given to the transaction. I told him that my office was entirely at his disposal, and instructions were given to show him all the correspondence, the books, and anything else he wished to see. Mr. Smith showed me some of the correspondence at that time. I understood from him that I was to be allowed to see the Government correspondence on the subject, for I greatly desired to get at the bottom of the whole transaction. When, however, I went to the department to get copies of the Government correspondence, the department refused to let me see it, although they had seen all through my own. Not knowing what the history of the whole transaction was, so far as the Government was concerned, I delayed making any answer till I came to Wellington; and then I wrote to the Auditor-General the letter that appears in *Hansard* (No 8, dated 19th July, 1892, page 549). The date of the letter is 25th June, 1892. I would like to have that letter published:—

“Wellington, 25th June, 1892.

“Re *Land-orders Nos. 29 and 30.*

“SIR,—The land-orders were used by Mrs. Jessie Rhodes as payment for land in South Canterbury, and were accepted by the Crown Lands Department as good. Mr. Williams, Receiver of Land Revenue at Christchurch, now writes that you declined to admit that they are a legal tender, and that you have surcharged him with the sum of £498 14s.

“Mr. Williams has applied to me to collect this sum from Mrs. Jessie Rhodes, and, although I know of no legal or moral obligation under which it is incumbent upon Mrs. Jessie Rhodes to pay this sum, I will for your guidance state the circumstances under which these land-orders were used.

“They were bought only on condition that they would be accepted by the Lands Department, and payment was refused for them on Mrs. Rhodes's behalf until they had been handed over to Mr. Baker, the Commissioner of Crown Lands at Christchurch, and he had given his assurance that they were good, and could be legally used by Mrs. Jessie Rhodes. After this the land-orders were paid for, and handed in, together with other cheques, to Mr. Williams, who accepted them and gave a receipt for them on the ordinary provisional title. I may state that if the head of the Crown Lands Department in Christchurch had not said that these land-orders were good they would never have been bought for Mrs. Jessie Rhodes; and, if Mr. Williams had not also accepted them, the money paid for them could still have been recovered. The land-orders were used on Mrs. Jessie Rhodes's behalf in perfect good faith; and, as they were Auckland orders, they were actually given to the officials at Christchurch to certify to their correctness before they were paid for or tendered to Government as payment, just as a bank cheque is often handed over to be marked ‘Correct.’ The land-orders and balance of money were handed to Mr. Williams on the 14th of February, 1891; the cheques were cashed by Mr. Williams on the 16th February, 1891; and it was not till May, 1892, that Mrs. Jessie Rhodes, or her solicitor, had any intimation that the Government took any objection to their being used. I may also state that, if any objection had been raised by either your department or the Crown Lands Department within a reasonable time, Mrs. Jessie Rhodes could even then have used them in Auckland, but of course the time for that has now expired.

“I wish this case to be thoroughly investigated, in the full confidence that the view I take of Mrs. Rhodes's position in the matter is the correct one, and I do not intend to take any action admitting any claim against her pending such investigation, which I presume will be conducted by your department.

“I shall be glad to know if the documents in your possession are in accordance with the facts as stated above, and to afford you any information in my possession which you may require.

“I have, &c.,

“ARTHUR E. G. RHODES.

“The Controller and Auditor-General, Wellington.”

Witness: That is the whole transaction, so far as we are concerned. We asked the department, before buying, whether the scrip was good. The department without raising any objection told us it was good, and allowed us to pay £978 14s., giving us a title in which they state that the

land was sold for £1,240 cash, or £1,998 land-orders. No objection was taken until the scrip became bad in Auckland, when they asked us to repay the money. If we had repaid the money when asked, we would have been forbidden to exercise our scrip in Auckland, and thus lost our money. If at any time within the year this objection was made we could have taken the scrip back to Auckland and exercised it there, having made the refund. The Government have lost nothing by this transaction, as we could have exercised the scrip in Auckland if not in Canterbury. The Government tried to deprive us of £478 14s. The whole of this transaction came under the present Ministry, and not under the Ministry of which the Hon. G. F. Richardson was a member. I had no communication with the late Ministry.

45A. *Sir R. Stout.*] Not with either? No; not with either; they could not have any knowledge of this; I dealt entirely with the department. I dealt with the Commissioner alone.

46. With the Commissioner alone?—Yes, I paid good money for this. Mr O'Hara Smith's opinion, when he first took the evidence, will be found in this memorandum, which I will put in. [Memorandum put in and read as follows:—]

"SIR,—

"Lands Office, Christchurch, 21st May, 1892.

"I have the honour to report, for your information, that on the 25th March, 1891, Mr. A. E. G. Rhodes, acting as agent for Mrs. Jessy Rhodes, purchased from the Government rural Section 36226, Nimrod Survey District, for £2,238 15s., and tendered in payment Forest orders, £998 14s.; cash, £1,240 1s.—£2,238 15s.

"These Forest orders were originally issued by the Commissioner of Crown Lands, Auckland, to Mr. C. B. Knorpp, and sold to Mr. J. B. Whyte, and transferred to Mrs. Rhodes; but as they were originally issued in the Provincial District of Auckland they could not be used outside that district to a greater extent than £500, so that the Receiver accepted as good, and in lieu of cash, scrip to the amount of £498 14s. which was not a legal tender. He has been surcharged accordingly, and has formally called upon Mr. A. E. G. Rhodes to pay up the amount of the surcharge, as Mr. Rhodes has taken upon himself the full responsibility of the transaction.

"The Commissioner of Crown Lands has been informed of these facts, and the issue of the certificate of title will be delayed until the matter has been decided.

"Upon further inquiry it has been found that Mr. Rhodes agreed with Mr. Whyte to exercise the scrip in Canterbury, provided that the department offered no objection; and he accordingly saw the Commissioner (Mr. Baker), who undertook to communicate with either Wellington or Auckland on the subject. Mr. Baker appears to have communicated with the Commissioner of Crown Lands, Auckland, and ascertained that he had no objection to the transfer of the scrip to Mrs. Rhodes. The transfer was made accordingly, and approved of by Mr. Baker; but I cannot find that there was any further correspondence on the subject by Mr. Baker.

"Mr. Rhodes is under the impression that Mr. Baker gave him to understand that the scrip was good, and could be accepted by the department.

"Mr. Rhodes's correspondence clearly indicates that he declined to use the land-orders until he had fully satisfied himself that they were correct, and Mr. Whyte's letter to Mr. Rhodes states that Mr. Elliott had been interviewed and the matter arranged; but I cannot say if Mr. Rhodes arrived at the conclusion that the scrip was good from the statement made in Mr. Whyte's letters or from communications made to Mr. Rhodes by Mr. Baker.

"This transaction took place on the 25th March, 1891; and on 17th June, 1890, Mr. Elliott's memorandum to Mr. Baker clearly points out that no Forest orders issued in one district could be exercised outside of that district except to £500.

"About that date Mr. Rhodes, acting as agent for clients, had to pay about £4,000 to the Receiver of Land Revenue. He had about £3,000 in cash, and the balance in land-orders, and states that he did not know to which section or sections of land the scrip would be credited; but as the whole of the scrip was transferred to Mrs. Rhodes, it naturally follows that the scrip must be treated as being tendered in payment for her land.

"It is not at all clear that Mrs. Rhodes was aware that this scrip had been transferred to her, and used instead of cash in the purchase of this land.

"The nature of the transaction appears to be as follows: Mr. Rhodes advanced to Mrs. Rhodes the money for the purchase of this land, and, instead of using cash, he obliged Mr. Whyte by using these land-orders instead of cash, having first transferred them to Mrs. Rhodes.

"The nominal value of the orders amounted to £998 14s. Mr. Knorpp received £848 16s. 7d.; Mr. Whyte received £129 17s. 5d.; Mr. Rhodes received (commission) £20—£998 14s.

"It will be seen that Mr. Rhodes received £20 commission on this transaction; and this commission was not credited to Mrs. Rhodes, and the probability is that she knew nothing about the transaction, at least until afterwards. Mr. Rhodes believes he told her husband about it.

"In conclusion, I would state that it appears quite clear that Mr. Rhodes acted in good faith in tendering the scrip for cash, and the Receiver acted in good faith in receiving it in lieu of cash; nevertheless the scrip was only good for £500, and not for £998 14s.

"I have, &c.,

"C. O'HARA SMITH,

"Audit Inspector."

The Controller and Auditor-General, Wellington.

That is the original report of Mr. O'Hara Smith to his own department. I might say that my brother remembers my speaking to him about the using of scrip. I have asked him about it since, and he thought that as I had to find the money I could do it in any form I liked. He was about proceeding to England about that time. I think he had left; but I held a power of attorney from him while he was away.

47. What is the date of your application for the land?—I did not apply at all. Mrs. Jessy Rhodes applied; she stayed in New Zealand to make the application.

48. What was the date?—I think it was about the end of January. I could not exactly say. My impression is that they stayed until they actually got the land. They left about the 14th February.

49. *Mr. G. Hutchison.*] Are you satisfied that the balance over the £500 limit could be exercised elsewhere?—They told me so.

50. But have you looked into the matter yourself? There is a provision in the Act which says that no land-order, of whatever amount, or whatever the number of persons, shall entitle such person or other persons with him, or for and on his or their behalf, by virtue thereof, or of any transfer, to acquire Crown lands in any part of the colony to any value exceeding £500?—Do you mean that nobody could get more than £500 worth?

Sir R. Stout: That was only a substitute section for section 35 in the other Act. It did not deal with land under the Act of 1872.

Mr. Wright: I might draw attention to this fact: that one is for £513. The transfer of one scrip for £513, which is over £500, is certified to by two Commissioners.

Mr. Guinness: That only shows that the Commissioners did not do their duty.

51. *Sir John Hall.*] A claim of £495 is still hanging over you?—I understand the surcharge has been dropped as far as Mr. Williams is concerned.

52. *Dr. Newman:* Have you any idea why Mr. Williams has not been surcharged for this money?

Mr. Guinness: Why, it was disallowed?

Witness: I do not know, except that it might be thought unfair to do so; but I have no knowledge on the subject.

53. *Mr. Tanner:* Has no legal proceedings been initiated to recover it?—No.

54. *Mr. Guinness.*—When you got the draft you wished to satisfy yourself that it would be all right?—Yes.

55. Did you see the Chief Commissioner and Mr. Williams together, or separately?—Not together; I saw Mr. Baker first. I do not think I saw Mr. Williams until after I paid the draft, and when I was going to use the scrip. Mr. Williams has, I believe, acknowledged that I did see him; but I do not remember the exact date. It was on Mr. Baker's authority that I paid the draft.

Hon. G. F. RICHARDSON examined.

56. *The Chairman.*] Some of these transactions, Mr. Richardson, occurred while you were in office. You might wish to have some question to ask or some observation to make to the Committee?—No; I have nothing to do with this. I only want to know what you require my attendance for. I should be glad to answer any questions if anything turns up upon which the Committee should wish for such information as I can give them. If you will send me word when you want me I shall be very happy to come.

57. My reason for asking your attendance was because the Administration of which you were a member might have some question to put to the witness.—If there is any matter which you think reflects upon that Administration, or upon myself, about which I can give you information I shall be most happy to appear, in which case I hope you will let me know in time.

WEDNESDAY, AUGUST 2ND, 1893.

ALEXANDER BARRON, Under-Secretary for Lands and Survey Department, attended and gave evidence.

58. *The Chairman.*] Will you place the documents in connection with scrip that were used in Canterbury consecutively before the Committee, giving us the instructions from the Minister of Lands to the various officers, and the communications from the officers at Wellington to the officers at Christchurch; and also any legal opinions that were furnished to the Ministers?—I produce the file. The case, apparently, commences with a statement from the Crown Solicitor of the results of the appeal in the case of Paterson and Fairlie against Humphries, the Commissioner of Crown Lands in Auckland. Mr. G. F. Richardson was then Minister of Lands. The date is the 2nd December, 1889. [The minute upon the covering-paper was read.]

59. Is that the minute?—That is the minute of Mr. G. F. Richardson.

60. *Dr. Newman.*] Have you got Mr. Bell's opinion there?—Yes, his statement of the result of the case. Then, in reply to a communication from the Receiver of Land Revenue, Christchurch, Mr. Elliott first sent a memorandum to the Commissioner of Crown Lands, dated the 2nd December, 1889:—

“2nd December, 1889.

“ADVERTING to previous correspondence relative to accepting scrip in payment for Lake Ellesmere lands, I am instructed by the Hon. the Minister of Lands to state that, having regard to all the circumstances, and to the desirability of ending the matter of the Forest Trees Planting scrip, no objection will be made to its being received as payment for Ellesmere lands, the amount being debited to the Public Works Fund.

“H. J. H. ELLIOTT,

“The Commissioner of Crown Lands, Christchurch.

“Under-Secretary.”

On the same date, the 2nd December, 1889, Mr. Elliott again sent a memorandum, as follows:—

“2nd December, 1889.

“I OMITTED to mention in my memorandum this morning, as to exercise of Forest Trees Planting scrip in acquiring Ellesmere lands, that, by the recent decision of the Court of Appeal, the scrip is exercisable for the full amount stated therein. Further, the scrip is not liable to stamp duty.

“H. J. H. ELLIOTT,

“The Commissioner of Crown Lands, Christchurch.

“Under-Secretary.”

61. *Sir J. Hall.*] We had better have Mr. Bell's opinion now?—It is rather long. [The concluding portions were read.]

62. *The Chairman.*] This is in connection with the Ellesmere transaction. There is a later transaction than that; can you give us any information about it?—There is Mr. Rhodes's case. In June, 1890, there is another minute by Mr. Elliott about scrip to the Commissioner of Crown Lands. It is dated the 17th June, 1890, and modifies the memorandum he sent on the 2nd December, 1889. It is in the case of Mr. Wason's scrip:—

“17th June, 1890.”

“In reply to your memorandum of the 10th May last, I am directed to inform you that the Government is advised that the decision of the Court of Appeal in the case *Paterson and Fairlie v. Humphries*, does affect the claim of Mr. Wason to a further grant of land under the Forest Trees Planting Acts and regulations. The case in question has practically decided that there is no limit of area or value under a land-order issued under ‘The Forest Trees Planting Encouragement Act, 1872,’ except as to value received beyond the provincial district in which the plantation was made, under the Amending Acts of 1888.

“After the decision of the Court of Appeal it is not proposed to raise any further technical objections to the settlement of Mr. Wason's claim. Will you accordingly have the plantation inspected again, and forward a recommendation for a land-order to issue for whatever area to whom may be found to be equitably entitled thereto.

“The Commissioner of Crown Lands, Christchurch.

“H. J. H. ELLIOTT.”

63. Were there any further instructions?—That memorandum was evidently written after the opinion was received from the Solicitor-General.

64. *Sir John Hall.*] Is that on the file?—Yes.

The Chairman: You might read that opinion. [Opinion read.]

65. *The Chairman.*] Is there anything else?—There is apparently nothing else until the Auditor discovered that this scrip had been exercised by Mr. Rhodes beyond the limit.

66. *Hon. R. Seddon.*] What is the date of that discovery?—The 13th May, 1892.

67. *The Chairman:* Was there any opinion from the Law Officers to guide the Ministry in 1889? We have only had the report of Mr. Bell. Was there any opinion from the Solicitor-General?—I do not see any opinion from the Solicitor-General.

68. *Sir John Hall.*] Did the officer at Christchurch, at the time the scrip was tendered, or in the early part of 1891, apply to Wellington for instructions or make any report?—There does not appear to be anything between 1890 and 1892.

69. What was the first you heard of it in 1892?—From the Audit Inspector.

70. Were there any instructions given by the present Ministers to the Christchurch officers?—No; I have the reply of the Receiver of Land Revenue when surcharged with this sum of £498. It dated 26th July, 1892.

71. What I am referring to would have been in 1891?—I do not see anything in 1891.

72. There were instructions sent on the 17th June, 1890?—I have read them. The following is the letter from the Receiver of Land Revenue:—

“*Memorandum from District Land Office, Christchurch.*

“26th July, 1892.”

“HAVING been surcharged by the Controller and Auditor-General with the sum of £498 14s., and having also been notified by him that proceedings are to be taken against me under the 88th section of “The Public Revenues Act, 1891,” to compel me to pay the said sum, I have the honour to submit for the Hon. the Minister of Lands and yourself the following statement of the case.

“In January, 1891, Mrs. Jessie Rhodes, through her agent, Mr. A. E. G. Rhodes, selected on cash system Section 36226, situate in the Nimrod Survey District, Waimate County, and comprising 1,990 acres, the total price being £2,238 15s. A deposit of one-fifth of purchase-money, viz., £447 15s., was paid in cash, and the balance in cash to the amount of £795 5s. 5d., and also by two land-orders, Nos. 29 and 30, issued in Auckland in favour of Charles Benjamin Knorpp, for £485 10s. 6d. and £513 respectively. Mr. C. O'Hara Smith can show you the land-orders which were received by me, in accordance with precedent and instructions contained in memoranda from the Under-Secretary for Lands, dated the 2nd December, 1889 (two) and the 18th June, 1890. The latter is in reply to Mr. Baker's memorandum of the 5th June. Copies of this correspondence enclosed herewith.

“The land-orders authorise persons named therein to purchase, to the amount stated in each, any of the land of the Crown in any part of the colony open for sale or selection. They have been duly transferred to Mr. A. E. G. Rhodes, and from him to Mrs. Jessie Rhodes, and were therefore accepted by me in good faith and brought to charge as revenue on the 25th March, 1891, and as such, I presume, accepted by the Treasury and Audit at that time. Now, after the lapse of sixteen months, I am threatened with a prosecution on the ground that the scrip was only exercisable to the extent of £500. I submit most respectfully that the Auditor-General's action is, under the circumstances, most unfortunate for me, inasmuch as the time for exercising the scrip (even if it could be revived) has expired. I contend, in fairness and equity, that I am not legally liable, and am certainly not in a position to pay the £498 14s., nor, on the other hand, to bear the expense of defending an action at law, with the possible result of being called upon to defray all the law costs.

“I have done my best to obtain from Mrs. Jessie Rhodes payment in cash for the £498 14s. scrip, but her solicitor has notified me that she absolutely declines to pay the amount.

“In the full assurance that the Hon. Mr. McKenzie will not permit an old and faithful servant of the Government to have further anxiety and distress of mind, and the possible ruin involved in such proceedings should I lose the case, I confidently appeal, under the provisions of section 32

of 'The Public Revenues Act, 1891,' through you to him to stay the proceedings, and that you will give me an assurance from him that the surcharge has been disallowed, so as to clear me from further liability and anxiety in the matter. If the Auditor-General persists in the necessity for further steps being taken to bring about the payment of the value of the scrip received in excess of £500, I would respectfully submit that this should be done by the department proceeding against the purchaser for the amount, without forcing me into the position of having to defend an action involving such serious responsibility.

"The Controller and Auditor-General, in his letter to me of the 22nd instant, states, 'I fully admit that you personally appear to have exercised proper discretion, and are fully entitled to relief from the Government or Parliament.'

"In conclusion, I desire that the special attention of the Hon. the Minister of Lands should be drawn to the phraseology used in the forms of the land-orders in question, and to the following remarks made in reference thereto by the Auditor-General in his memorandum of the 9th April last: 'I find that in stating in my former memorandum that the land-orders used by Mrs. Rhodes were not indorsed with the certificates of the Commissioner of Crown Lands, as required by the Act of 1888, I did not observe that the face of the order (different from any other which had hitherto come under my observation) authorised the holder to purchase land in any part of the colony.'

"I can find no authority of law for the issue of any such order at all. The Act of 1888 gives no power to issue orders at all, but only to indorse the orders issued under the Act of 1872. It may be said that the result is the same in both cases, but there is one important omission in this form—namely, that it does not bear on its face the last day on which it was exercisable, as the certificate under the Act of 1888 was required to do. A purchaser, therefore, would be deceived into supposing that the order had currency beyond the 31st December, 1890.'

"Blank form of land order I enclose herewith.

"The Surveyor-General, Wellington.

"J. WILLIAMS, Receiver of Land Revenue."

73. *Mr. Guinness.*] Was there any other communication from any officer to the Minister prior to that about the surcharge?—There are several other papers. I find that a case was stated by the Surveyor-General to the Minister of Lands, and that the Solicitor-General gave an opinion on the subject.

74. *The Chairman.*] Read that?—This is dated the 17th August, 1892, and is to the Minister of Lands, from the Surveyor-General. It is a statement of the case:—

"Hon. Minister of Lands.

"It is scarcely perhaps necessary to refer in detail to the scrip transactions, owing to which Mr. J. Williams, Receiver of Land Revenue at Christchurch, has been surcharged with the sum of £498 14s. by the Auditor-General; but Mr. Williams now asks that you will exercise your powers under the 32nd section of 'The Public Revenues Act, 1891,' to disallow the surcharge.

"The facts are simply these: that Mr. Williams took in payment for land two scrips, issued in Auckland for £513 3s. 6d., and £485 10s. 6d., whereas it appears that the law only allowed of the exercise of £500 worth in any district outside the district in which it was issued, a fact Mr. Williams does not appear to have been aware of. Moreover, the late Minister of Lands had caused instructions to be sent to Mr. Williams, when dealing with Lake Ellesmere lands, which, though not touching on the question of whether more than £500 worth could be exercised in any one district, nor referring to this particular case, laid down the rule that 'by the recent decision of the Court of Appeal the scrip is exercisable for the full amount stated therein.' I think, also, that the Receiver was reasonably misled by the words of the scrip, because no limitation to a district is mentioned therein. On the other hand, he was instructed that section 8 of the Amendment Act should be considered in dealing with scrip, and this section contained a limitation.

"Taking these circumstances into consideration, it would seem that Mr. Williams is hardly to blame in the matter, though he may be legally liable.

"It should be remembered that the exercise of this amount of scrip over £500 is probably not so much loss to the land revenue, for if it had not been exercised in Canterbury it might have been in Auckland; and the result to the land revenue, therefore, as a whole, remains exactly the same, whichever district it might have been exercised in.

"This being so, I think you ought to exercise your power under section 32 of "The Public Revenues Act, 1891," and disallow the surcharge.

"On the question of whether Mrs. Rhodes should be called on to pay up, I think it is very doubtful if the Government could make good her liability, for her agent took the precaution of obtaining an assurance from the highest officer of the department in the district that the scrip was good for its full value for the purchase of lands in Canterbury.

"August 17th, 1892.

"S. PERCY SMITH."

This was referred to the Cabinet on the 20th August, and the Solicitor-General was asked to give his opinion, "If the surcharge is not made against Williams, will that prejudice the Government?"

75. *Sir John Hall.*] Is there any record of the decision of the Cabinet on which the Minister acted?—No, there is no Cabinet minute on the file.

76. Is there any record whatever?—No.

77. *The Chairman:* Will you read the Solicitor-General's opinion? [Opinion read.]

78. *Sir John Hall.*] Is there an opinion from the Attorney-General on the file?—No.

79. Was it referred to the Attorney-General?—I do not find that it has been referred.

80. *Mr. Rhodes.*] I would like to hear the report from Mr. Baker?

"District Office, Lands and Survey, Wellington, 30th June, 1892.

"WITH reference to the inquiry made by the Hon. the Minister of Lands through Mr. O'Hara Smith, Audit Officer, regarding a purchase of land by Mrs. Rhodes, in which a portion was paid for by an Auckland land-order. I have the honour to inform you that I do not remember exactly

what took place, but I have no doubt that Mr. A. E. Rhodes consulted me, as he states he did, as to the Auckland land-orders he proposed to use, though I cannot call to mind if the point was raised whether he could exercise more than £500 worth or not. It was at a time when there was great press of work, owing to the large land-sales going on; but of this I am quite sure, that if I told him the Auckland scrip could be used, it was in consequence of having on my mind the previous instructions received from the Under-Secretary for Crown Lands, with reference to the purchase of the Ellesmere lands with Auckland scrip, dated the 2nd December, 1889, which stated that, 'By the recent decision of the Court of Appeal the scrip is exercisable for the full amount stated therein;' and his subsequent one of the 19th, in reply to the Receiver's of the 18th of the same month, asking definitely if it was to be taken, notwithstanding subsection (2) of section 3 of 'The New Zealand State Forests Act Amendment Act, 1888;' in which the Receiver is informed that 'having in view the decision of the Court of Appeal, Government agreed not to offer any obstacle to exercise of scrip to the full value in acquiring Ellesmere lands.' Commissioner was informed in my memorandum of the 2nd December, No. 873.

"I see, however, by a subsequent memorandum dated the 19th June, 1890, on a question relative to a Mr. Wason's claims, I was told, in reference to the decision in the Auckland case, *Paterson and Fairlie v. Humphries*, that the case in question has practically decided there is no limit of area or value under land-orders issued under 'The Forest Trees Planting Encouragement Act, 1872,' except as to value when received beyond the provincial district in which the plantation was made, under the Amending Act of 1888.

"This subsequent ruling was, on a case in which Auckland scrip was not concerned in any way, and it must have escaped both my own and the Receiver's memory, or I am quite sure I should not have told Mr. Rhodes the Auckland scrip would be received, and the Receiver would not have accepted it beyond £500 without calling the attention of the Under-Secretary for Crown Lands to the proposed transaction, and getting definite instructions, as had been previously done in connection with the Lake Ellesmere lands.

"JOHN H. BAKER,

"Commissioner of Crown Lands."

"The Under Secretary for Crown Lands, Wellington.

The Hon. J. B. Whyte examined.

The Hon. J. B. Whyte: Before I say anything, I should like you, Mr. Chairman, to get from Mr. O'Hara Smith the various amounts of the land-orders which exceed £500 in value, and which were used in the Ellesmere purchase.

Mr. O'Hara Smith: The amounts are here in the book, but it is difficult to pick them out from the residue orders. I can get them for the Committee by to-morrow.

Hon. J. B. Whyte: My object in asking for them is this: that I know there is an impression abroad that £3,300 worth were exercised where only £500 worth could be legally exercised; whereas the amount used outside the £500 limit was comparatively small. That is my reason for asking for the amounts. I desire to say that I became connected with this scrip business because it so happened that near the end of 1888 I was a purchaser of Government land myself, and I saw an advertisement in the papers offering some land-scrip for sale, and I therefore became a buyer of scrip to use myself. When, however, it became known in Auckland that I was a buyer, I was offered a large quantity at a moderate discount, and, thought, having a good deal of leisure time on my hands, with my knowledge of the colony, and the people in it, that I could go into this and make a reasonable profit out of it. This is how I got into the affair. Coming, then, to the business in hand—namely, the manner in which scrip was exercised in Canterbury—my connection with that was simply this: These land-orders passed through my hands from the original receivers of them to those who exercised them in the purchase of land, I making a very moderate profit indeed out of them. I mention this, because there is an idea that I made enormous profits out of them. I might disabuse the minds of the Committee of that idea by saying that for the great bulk of these land-orders I paid 90 per cent. of their face-value; for some, 95 per cent. of their face-value, and in a small proportion of cases I got them cheaper; and when one considers that this occupied a great deal of my time spread over two years, and that I had to travel from one end of the colony to the other to conduct it, I think it will be generally admitted that the profit, after paying commissions, exchanges, and travelling-expenses was not very great. As regards the matters now before the Committee, there are only two points at issue. The first is the question of the £500 limit, and the second, the acceptance of scrip for Ellesmere lands. Now, upon the first question, I may say that Mr. G. F. Richardson, backed up by the Lands Department, had always fought this question tooth-and-nail. He objected to land-orders beyond £500 in amount being used in any part of the colony at all, and only gave in when the Court of Appeal gave the case against him. Then, afterwards, the question came up as to whether he would stand upon that part of the law which prevents the exercise of any land-order of a value exceeding £500 outside the provincial district in which it was issued, and on that point, too, he seemed reluctant to give way: but after consultation with some of his colleagues he did give way, as far as I know, for the reason that it could make no difference to the Land Fund whether they were exercised inside of the provincial district or outside of it, for the cause of this limitation had been done away with, the Land Fund having ceased to be provincial revenue.

Hon. Mr. Seddon: There were no provinces in 1888.

Hon. J. B. Whyte: I used the word "cause" advisedly, not reason, because this was not the reason of it, but only the outcome of mixed up legislation in 1871-72, 1885, and 1888. The next point at issue is the acceptance of land-orders in the purchase of the Ellesmere lands. That came about in this way: I was in Auckland, and I saw in the *Gazette* advertisements, inserted several times under the usual heading of "Crown Lands," saying that certain Crown lands at Ellesmere would be offered for

sale on a certain date, without any reference to any special Act. This is a point I wish you to note. There was no reference made to a special Act at all. There was simply an advertisement stating that Crown lands would be offered for sale at a certain date. Seeing this, I got all the land-orders I had, and all I could buy, and went down to Canterbury to see the land, with a view of buying some of it myself or finding someone who would use these land-orders. I saw the land, and met a gentleman named John Murray, who said he would exercise the land-orders I held. I then saw the Commissioner of Crown Lands, and told him what was intended. He then said that he could not accept land-orders for that land. I told him that he would have to accept them, because he had advertised this land as Crown land for sale for cash; that these land-orders on their face gave the bearer the right of remission of cash in the purchase of Crown lands, and that he had no option in the matter. He then said that, nevertheless, he would refuse to receive them at the sale, and there might be a disturbance. I then, on consideration, said that, rather than raise a disturbance, we would not use them on the day of the sale, but would pay the deposit then payable in cash, leaving the question of the acceptance of scrip for the balance to be settled in Wellington. I then came to Wellington and saw the Hon. Mr. Richardson, who still demurred to accept scrip, but said that he would see one or two of his colleagues about it. I may mention here that all through Mr. G. F. Richardson viewed all these land-orders with great disfavour, because they disarranged his finances and lessened his Land Fund. Before leaving Wellington I saw Sir Harry Atkinson, and told him the circumstances of the case. He then said: "Are there many more of these land-orders about?" I said I thought not—that there were only a few more to be issued. This turned out afterwards to be correct: there was only a few issued afterwards. He then said: "Oh, then, let us get rid of them"; and believe that his reasons for accepting them for the Ellesmere lands were as follows: First, that these lands having been advertised for sale as Crown lands of the colony, without any reference to a special Act, they could not be reasonably refused; secondly, that if they were refused, they would have to be accepted shortly in payment for other lands in some other part of the colony, and that the Land Fund of the colony would not therefore be affected at all. It was also held by some that there was nothing in the Ellesmere Lake Lands Act to bar the acceptance of scrip. I also heard at the time that the opinion of one of the law officers of the Crown coincided with my view, that scrip could not be refused, seeing that the land had been advertised as Crown land without any reference to any special Act. The only other point I wish to refer to at present is the irregularities or technical defects referred to yesterday in these various land-orders. It was said that the Receiver had been instructed to take Whyte's land-orders "anyhow," no matter what irregularities were connected with them; whereas the fact of the case is that they were instructed to accept these land-orders provided the irregularities were only technical, not affecting their validity, and such as could be put right within reasonable time. At that time I naturally got a little anxious lest these technical irregularities should suspend the exercising of these land-orders; because if there were any such irregularities they were the work of the Land Department itself. Neither the original owners of the land-orders nor myself, nor the person exercising them, were responsible for them. Therefore, what the Government did was this: They agreed to receive these land-orders because they could not reasonably refuse to receive them. They allowed these technical defects to be put right because, if there were any such, they were the fault of the officers of the Land Department, and did not in any way affect their validity. Therefore, to say that instructions were given to accept my land-orders "anyhow" is neither fair nor accurate. Referring specially to Mr. Rhodes's land-order, the history of that is simply this: Some time before that date I had bought land-orders of the value, in round figures, of £1,000, at 90 per cent. of their face-value, and I, seeing that the Rhodes family were purchasing land, wrote down to Mr. Rhodes telling him that if he chose to exercise that land-order I would allow him 2 per cent. for doing so off the face-value. He agreed to this. The land-orders were sent down through the bank, with a draft against them amounting to £20 less than their face value, on the understanding that he was to have time to take them to the Land Office to see that they were valid and good before paying the draft; if not, they were to be returned.

The Chairman: Did Mr. Rhodes lead you to suppose that it would be contrary to law?

Hon. J. B. Whyte: No. I may say this, in justice to the Receiver and Commissioner, in receiving these land-orders through Mr. Rhodes, I think that they had in their minds that the £500 provincial limit had been waived in the Ellesmere cases.

FRIDAY, 4TH AUGUST, 1893.

Mr. C. O'HARA SMITH, Auditor of Land Revenue, further examined.

Mr. Smith: In accordance with the wish of the Committee, I have prepared this statement showing the particulars of the scrip used by Mr. J. G. Murray in the purchase of the Ellesmere lands. [Analysis handed in as Exhibit "V."] If the interpretation of the Act is that the whole of the scrip is to be taken together, the amount used in excess of the legal limit would be £2,634 19s.—that is, £3,334 19s., less £500 limit and the £200 worth of scrip used, issued under the Naval and Military Settlers' and Volunteers' Land Act: making a total of £700. That £700, deducted from the £3,334 19s. would leave an excess of £2,634 19s. over the legal limit. If the interpretation of the Act is that each piece of scrip is to stand on its own merits, the total amount used in excess would be £541 9s. The interpretation of the Audit Office is that each piece of scrip has to stand on its own merits. Consequently, in accordance with the Auditor's interpretation, the total excess is £541 9s.

Hon. J. B. Whyte's statement continued.

Hon. J. B. Whyte: The return just handed in by Mr. Smith shows that the amount of scrip used in the purchase of Ellesmere land in excess of the £500 limit was only £541 9s. Referring to what I said yesterday, regarding what I understood to be Sir Harry Atkinson's reasons for accepting scrip in payment for Ellesmere land: I forgot to mention that, although he appeared to think that scrip could not reasonably be refused, he also thought that a transfer of the amount from the Land Fund to the Public Works Fund might be required. This transfer, it would appear, has never been made; and, therefore, the necessity for the Bill now before Parliament. In reference to the advertisement inserted in the *Gazette* by the Commissioner of Crown Lands in Christchurch, with regard to the sale of these Ellesmere lands, I stated that this advertisement made no reference to any special Act, but they were merely advertised as Crown lands. And that was so with respect to the first three or four advertisements; but I forgot to say that, when he had ascertained that there was a likelihood of scrip being tendered, he inserted an advertisement containing a reference to the Ellesmere Lake Lands Act.

81. *Sir John Hall.*] With regard to the last question, you say the last advertisement did contain a reference?—Yes.

82. What were the terms used in the advertisement which appeared in the *Gazette*? Did it say that scrip would be accepted?—No, it did not make any reference to scrip.

83. *Mr. Guinness.*] It only made reference to the Act; that the transaction was taking place under a particular Act?—Yes, that is so.

84. Did you know of the case of Paterson and Fairlie in the Supreme Court?—Yes.

85. It was tried in Auckland?—No, it was tried at the Court of Appeal in Wellington.

86. It had been moved from Auckland?—It was brought before Judge Conolly, who asked both parties if they would have it tried at the Court of Appeal; this they agreed to, and the decision was given against the Government.

87. Were you aware of the case having been heard in the Court of Appeal?—Oh, yes, I was quite aware of it.

88. Did you buy all of the scrip produced after that?—Yes, with one exception.

89. Had you bought any land-orders before the case came before the Court? or did you buy it after the case was pending in the Court?—I think that I bought the whole of the land-orders after that, with the exception of one, so far as I can remember. [List "V" before referred to produced.] I do not know the date of the Court's decision.

Mr. Wright: The dates are 31st October and 15th November, 1889.

Mr. Guinness: That is, when the case came into the Court of Appeal. Judgment was given on the latter date.

Witness: Of course I am only speaking from memory. I think, with the exception of one scrip, I bought them all subsequent to that case. In the case of the one particular scrip, I had agreed to buy before the decision of the Court was given. That is as far as my memory guides me.

Mr. Smith: That was in the month of December. It is indorsed by the clerk. I am now referring to Paterson's case.

90. *Mr. Guinness* (to witness).] Who did you buy this scrip from?—From the people whose names are mentioned in the list, or from their representatives.

91. You know the man you dealt with?—The man who handed some of the scrip to me was a lawyer in Auckland named Oliphant.

92. Did Mr. Oliphant hand all the scrip to you?—No.

93. We will take the cases in the order in which they appear on the list. J. Paterson, £544 12s.?—As far as my memory serves me I got the scrip from a lawyer in Auckland named Peter Oliphant. He was the solicitor acting for owners.

94. R. M. Paterson, £923 6s.?—Ditto.

95. James Fairlie, £682 12s.?—Ditto.

96. J. Cowan, £663 6s.?—Ditto.

97. P. S. McLean?—I got the scrip direct from P. S. McLean.

98. A. J. McLean, £716 6s. 6d.?—From P. S. McLean, acting for him.

99. F. Hubbard, £1,008?—From himself.

100. M. Noake, £200?—I wrote to him at Wanganui, and offered to buy his scrip.

101. Have you any objection to state to the Committee the amount you paid for the scrip?—I have no objection at all. In the case of J. Patterson I paid 90 per cent. of the face-value; R. M. Paterson, 90 per cent.; James Fairlie, 90 per cent. I can say the same of the three next on the list. In the case of F. Hubbard 75 per cent. was paid; Major Noake, £95.

102. Prior to the trial of that action in the Court of Appeal, had you any conversation with the Hon. Mr. Richardson (Minister of Lands) as to the scrip being exercisable?—Oh, yes; several times.

103. With reference to the scrip?—I had several communications with him on the general question of whether the scrip was worth the face-value, because Mr. Richardson had always contended that no scrip was worth more than £500 in any part of the colony; and he never gave way on that point until the Court of Appeal compelled him to give way. I stated that in my evidence.

104. You always contended that there was no scrip worth more than £500?—No; I always contended that the scrip was worth what was stated on the face of them. The holders of these land-orders had the right conferred on them to purchase land to the value stated without limitation.

105. Do you know Mr. Murray, to whom you transferred some scrip?—Yes, I met him down in Canterbury.

106. He appears to have exercised the most of the scrip?—Yes.

107. He exercised the whole of it?—Yes.

108. Did you tell Mr. Murray that there was no limit of £500?—No, I did not. I wish the Committee to understand that it was quite understood that Mr. Murray was not to pay for these orders until he had satisfied himself that they were valid and good.

109. If the amount was over £500?—That was never mentioned. It was only reasonable that any man asked to pay such a large sum should first satisfy himself that the orders were good.

110. Did you have any conversation with Mr. Murray on this subject?—Did you point out or suggest that there was a doubt as to whether scrip could or could not be exercised if the amount was over £500?—I cannot say whether that point came up or not, probably it did not.

111. It was distinctly understood that he was not to complete the bargain unless the scrip had a State value put upon it?—Yes. I wish to explain that that understanding was not on account of any doubt we had as to its validity. You may be pretty sure I had no doubt of its validity or I would not have paid those prices for it; but it was only reasonable that any man buying to such an extent should have an opportunity of satisfying himself that he was getting value. If I had been afraid of its being refused I would not have paid such prices for the scrip.

112. When you sold the scrip to Mr. Murray, were you aware of the decision of the Appeal Court to the effect that it was limited to £500 in any other province than the Auckland Province?—Speaking from memory, I did not find that out until after I had seen Mr. Murray. I remember hearing of the decision of the Appeal Court when in Dunedin for the first time, and I think that was after I had seen Mr. Murray. According to the advertisement, the decision of the Court of Appeal was given before Mr. Murray bought these lands in.

113. *Mr. Smith.*] The decision of the Court was given before Mr. Murray paid the money?—I fancy when I was speaking to Mr. Murray the question was not decided by the Appeal Court.

114. *Mr. Guinness.*] You told us that you bought this scrip from the original holders after the Appeal Court decision. You could not agree to sell the scrip to Murray before you bought it? I agreed with him that he would exercise any scrip I sent within the limit of his purchase.

115. You made an arrangement with Murray to give him the scrip before concluding the bargain with the scrip owners?—Before I concluded the bargain for the whole of the scrip used by him.

116. You recollect saying, in answer to the first question put to you, that you bought no scrip until after the decision of the Court of Appeal?—If I said that, it was not the meaning I meant to convey.

117. *The Chairman.*] You said you agreed to buy from Mr. Hubbard.

118. *Mr. Guinness.*] Yes, and none of the others. Is that wrong?—It is possible I may have said so. I had always a quantity of these land-orders lying in Auckland. I also knew when I went down to Canterbury that I could get certain scrip at 10 per cent. discount. Possibly I did not complete the purchase of some of them until after I returned to Auckland.

119. I understand you now to say that you cannot be certain whether the arrangement with Mr. Murray was made before or after the decision of the Supreme Court?—I can be certain that I made the arrangement with him to use any scrip that I might send him.

120. You cannot say whether the arrangement was before or after the decision?—If you can give the date of the decision it will settle everything.

121. The date was the 15th of November, 1889?—I see now that it must have been before the decision. I saw him before the land-sale, and that was before the decision was given on the 15th of November, 1889.

122. Do you recollect whether or not you told Mr. Murray that the scrip could only be exercised on land to an extent not exceeding £500 in any land district other than Auckland?—No, I do not recollect it.

123. Did you mention to Mr. Baker, the Chief Commissioner of Crown Lands in Canterbury, anything about the limit?—I may have in conversation with him, but I do not think so. I saw a good deal of Mr. Baker in the South.

124. Did you ever have a conversation with him with regard to the £500 limit not being exercisable in Canterbury?—Not that I recollect. I met him often at the Club, and talked the matter over; but as far as I remember, the only point at issue between Mr. Baker and myself was whether he would accept the scrip at all.

125. From that statement, we must conclude that nothing was said about exercising scrip beyond the limit of £500?—I fancy not. We had so many conversations it is quite possible that it may have been mentioned. This subject was interesting a great many people at the time. It had been a great fight. The late Government had contested the point in every possible way. It is quite possible I mentioned it, but as far as I remember that point was not at issue between Mr. Baker and myself.

126. Can you say whether he told you of the Crown Law Officer's opinion with regard to the exercise of scrip in the purchase of the Ellesmere lands?—I am not quite sure.

127. We have had three opinions. I am asking you the question generally. Did you see any of these opinions?—No. I saw none of them.

128. Were any of these opinions communicated to you by any officials, or by the Minister of Lands?—There are two points concerned in that question.

129. What I want to know is this: Were the opinions communicated to you?—I always understood that, according to the ruling of the Court of Appeal, no particular scrip was exercisable for more than £500 outside of the provincial district in which it was issued. As regards the acceptance of any scrip at all for the Ellesmere lands, I heard in some indefinite way that one Law Officer of the Crown agreed with my contention that the Ellesmere lands, having been offered and advertised as Crown lands, and being in fact Crown lands, scrip could not be refused, which, on its face, enabled the owner to tender it in payment for any Crown lands in the colony.

130. You say you heard that in an indefinite way. From whom did you hear it?—I cannot say now.

131. From some official of the Government?—It may have been Mr. Richardson.

132. You spoke of departmental errors in the scrip being corrected, in your evidence yesterday?—Yes.

133. What were those departmental errors?—Oh, I cannot now tell you.

134. How did you come to speak of them then?—Because the land-orders were stuck up for a time in the office at Christchurch, and owing to these errors, or omissions.

135. Had you any knowledge or information as to what those errors were?—No doubt they would send me some account of them at the time, but I have no record of what they were. You may depend upon it, if I had thought there was anything wrong, I would not have paid such a price for the scrip.

136. You do not mean to suggest that you got the whole of the scrip before buying them? Did you ascertain at the Land Office whether or not the errors were corrected, before you received the absolute transfer?—I bought them, relying on their validity. I sent them down to Canterbury to Mr. Murray, on the understanding that he had full opportunity of taking them to the Land Office, and finding out whether they were good or not, and whether they would be accepted or not. This he did. I then heard that technical objections were made by the Receiver and Commissioner in Christchurch, and I got very anxious, thinking that it would be very awkward if all that scrip were hung up through no fault of the receiver of them, or of mine, or of Mr. Murray. I therefore telegraphed to Wellington and Canterbury on the subject. I gathered that from Mr. Smith's evidence, but I had forgotten all about it. It appears that I telegraphed to the Commissioner of Crown Lands, and to the Land Department here, pointing out that it was very unfair to suspend the exercise of land-orders owing to these departmental errors, with the result that a limited time was given to put these errors right. The Land Office meanwhile held a marked cheque of Mr. John Murray's for the amount.

137. After the ruling of the Supreme Court, did you have any communication with the Hon. Mr. Richardson or with Mr. Elliott, the Under-Secretary for Lands?—Probably I had a conversation with the latter. I had a conversation with the Hon. Mr. Richardson.

138. Was that conversation in reference to the amount of scrip that could be exercised in the purchase of the Ellesmere lands?—Yes.

139. Was the opinion then expressed, probably by Mr. Richardson, that the Land Office had advertised the lands as Crown lands, and not under the Ellesmere Land Act—and that scrip could be taken for them?—I stated in my evidence, from memory, the reason given for accepting scrip.

140. You have nothing further to add?—No.

141. *Sir Robert Stout.*] Was that Ellesmere land bought at auction?—It was bought at auction.

142. When was the auction sale?—12th November, 1889.

Mr. Smith: 15th January, 1890, is the date brought to charge in the cash-book of the Receiver, but he had it in hand some time previously before he could decide whether the scrip were valid or not.

Witness: The sale was on the 12th of November. The payment of the balance was due within thirty days from that date. No doubt the tender of the scrip would be made in time, and Mr. John Murray's cheque paid in time.

143. *Sir Robert Stout.*] The point I wish explained is this: Was this scrip presented to the Commissioner before the 30th June, 1889? Is there any indorsement on the order, as required by the Act?

Mr. Smith: No, because no land scrip was issued until October.

144. *Sir Robert Stout.*] That is not correct; one was issued in July—Fairlie's scrip. Is there no indorsement in terms of the Act of 1888 on any of the scrip?

Mr. Smith: Yes.

145. *Sir Robert Stout.*] What scrip has that indorsement on it?

Mr. Smith: The indorsement is on the whole of them.

146. *Sir Robert Stout.*] The indorsement is not signed by the Commissioner, but by the Chief Clerk. Was any of this scrip issued before the 30th June?

Mr. Smith: I do not know when the original orders were issued.

147. *Sir John Hall* (to witness).] Did Mr. Baker make any demur to the acceptance of any scrip beyond £500 out of the Auckland Provincial District?—So far as I had any direct communication with Mr. Baker, and so far as my memory guides me, the only question that arose between him and me was the acceptance of scrip at all. That other point may have arisen afterwards when the scrip was tendered by Mr. Murray, and the amounts paid.

148. But, so far as you are aware, did Mr. Baker demur on the ground that the scrip could not be accepted, if beyond £500, outside the district?—He did not, so far as I remember.

149. *Mr. Wright.*] What consideration did you agree to allow Mr. Murray for exercising that scrip?—I did not agree to allow him any. Afterwards it turned out that he was willing to exercise it without any consideration, but I did allow him £50.

150. What percentage would that be on the amount?—About one and a-half per cent.

151. *Mr. Tanner.*] Did the *Gazette* notice advertising Crown land for sale invariably speak of it as offered under some special Act?—I cannot say; but, as far as my experience and memory guide me, it is not advertised under the provisions of any special Act.

152. Does the *Gazette* notice make no reference to a special Act? Would that invalidate a distinct enactment which limits the exercise of scrip to £500? (I am asking you this as a matter of opinion).—I should think not.

153. The question I ask you is: Whether, in your opinion, the *Gazette* notice, which makes reference to no special Act, invalidates a distinct legal enactment which restricts the exercise of scrip to £500?

The Chairman : That is a matter for the opinion of the law officers of the Crown, and not a question for the witness to answer.

154. *Mr. Wright*.] Can you tell me how it happens that Hubbard's scrip was obtained at the low price of 75 per cent. ?—Because I had agreed to buy it some time before.

155. Before the decision of the Court of Appeal ?—Yes. A better reason might be given—namely : that was all he asked for it.

TUESDAY, 8TH AUGUST, 1893.

Mr. Wright : I wish to read to the Committee the following memorandum by Mr. Rhodes, which he wishes accepted as supplementary to his evidence : “ I wish to say, in addition to my previous evidence, that I have had my office diary searched to ascertain the date of my receiving the scrip, and find that the scrip was in the possession of the Bank of New Zealand and I borrowed it from them on the 9th February to take up to Mr. Baker for him to satisfy himself. I had never seen scrip until this date, and never had until the 12th February, except for this purpose.”

Hon. G. F. RICHARDSON examined.

1. *The Chairman* : In the departmental documents having reference to the subject of this inquiry, there appears the following memorandum, written by you when you held the portfolio of Minister of Lands :—

“ Having regard to all the circumstances, and to the desirability of ending the matter of the Forest Tree Planting scrip, I think no objection should be made to its being received as payment for Ellesmere lands, the amount being debited to the Public Works Fund.—G. F. R. 2/12/89.”

Do you remember the transaction in connection with which you issued this minute ?—Generally I remember the circumstances.

2. The Under-Secretary, Mr. Elliott, I believe, sent a memorandum to the officials at Christchurch, instructing them to take scrip in payment for the land. Will you look at this memorandum, it may refresh your memory ?—I have looked at it.

3. This memorandum was sent subsequent to the decision of the Court of Appeal ?—I believe the memorandum you have just read is the one which really governs the whole case—the memorandum of the Under-Secretary. This one requires to be read with the other. [Witness read the document.]

4. *The Chairman*.] This is a memorandum from Mr. Elliott to the Commissioner of Crown Lands in Christchurch, and is dated 2nd December, 1889 :—

“ Adverting to previous correspondence relative to accepting scrip in payment for Lake Ellesmere lands, I am instructed by the Hon. Minister of Lands to state that, having regard to all the circumstances, and to the desirability of ending the matter of the Forest Trees Planting scrip, no objection will be made to its being taken in payment for Ellesmere lands, and debited to the Public Works Fund.”

The word “ debited ” is here used. Should it not be credited ?—It is debited at the time and credited afterwards. The intention of the memorandum is quite clear.

Mr. O'Hara Smith : “ Debited ” is the word used in the original.

5. *The Chairman* (to witness).] Would you wish to say anything in explanation of this memorandum ?—I want to know what the Committee want to know from me.

6. The Committee will ask you various questions on the subject-matter of this inquiry. These transactions took place during the period you held the office of Minister of Lands ?—Clearly so.

7. As the report of the Committee may possibly refer to your administration, I thought it would be but fair that you should appear before the Committee to make any explanation of the transaction which you thought right ?—I am very much obliged to you, but I see nothing in the transaction that requires explanation. The matter is perfectly simple. The whole trouble arose from an advertisement being inserted in the newspapers by the late Mr. Ballance. If you want the whole history of the matter I can give it to you.

Mr. Wright : It would be well, perhaps, that you should do so.

Witness : This advertisement called upon anybody in the colony who thought they had claims under the Forest Trees Planting Act to make those claims forthwith ; and that advertisement cost the colony thousands of pounds.

8. *The Chairman*.] When was that advertisement inserted ?—The officers of the department can easily find that out for you. In consequence of that advertisement everybody who had more than “ three gooseberry trees ” planted, put in a claim to the Government under the Forest Trees Planting Act. The department was deluged with applications for payment under that Act. The Commissioners had to deal with these cases. There is no doubt that in many of these cases, those who made claims, and whose claims were proved, had not planted with any intention of taking advantage of the Act ; but the Government was in the position that when these claims were proved, there was no evading the liability. A large number, of course, were rejected ; but as to those claims which were accepted by the Commissioners the scrip had to issue. Many of these applications were no doubt *bona fide*, and some of them were not ; but it was impossible in cases where certificates had been granted to prevent the issue of scrip. I forget the amount, but think there was over £14,000 worth of this scrip afloat. I was endeavouring to make the Land and Survey Department pay its way by cash sales, and was met, instead of cash, with this scrip coming in. It was ascertained that the Government could not refuse land scrip for any land which was offered for sale for cash. They were liabilities on the part of the colony which the colony had to meet ; and the colony has now met its liabilities in this respect and ended the trouble.

9. By some legal opinion?—I decline to give any particulars on this point. It is not justifiable for any Minister or ex-Minister to give or allude to opinions of Law Officers. I say the Government was aware of this fact. With regard to the Ellesmere lands, the advertisement having been put in without any special allusion to the Trust, the scrip had to be accepted in that case also. Really, it made no difference in this respect. Any money accruing from the Ellesmere lands would not have gone to the Trust, for this reason: That there was a very heavy charge against the Trust—amounting, I am speaking from memory, to, I think, forty odd thousand pounds. This was an advance from the Public Works Fund to the Trust, and this advance had to be recouped before any funds would properly accrue to the Trust itself. In other words, the Trust had to get out of debt before it could get into credit. As the total value of the land for sale was not likely to realise enough money to get the Trust out of debt, there was no hope of the Trust getting into credit through the transaction. It was, therefore, only a matter of account, and of no value to the Trust one way or the other, whether the money for the Ellesmere lands went to the ordinary land revenue or went into the Public Works Fund on account of the Ellesmere Trust. The ultimate result would have been the same. It was intended by the Government—whether it was carried out or not I do not recollect now; I think it was not—to transfer from the Consolidated Fund to the Public Works Fund the amount of scrip received in lieu of cash for the Lake Ellesmere lands. I do not know that there is anything else for me to say. The scrip was scrip issued under the Act of 1872. It was scrip issued in connection with claims which had arisen under the Act of 1872; and the result of the decision of the Appeal Court made this scrip exercisable to their full value. The only reason that the land-scrip was, at the date of 1871–72, limited to the land district, was because the scrip at that date was issued by the Superintendents of Provinces, whose powers did not extend beyond the bounds of their own provinces; but in 1876 the land ceased to be provincial revenue, and became general. The Superintendents no longer had any existence, and it was the General Government that issued the scrip. Therefore, what was before Provincial became Colonial. I think that is about the whole case, as far as I know.

10. *Hon. Mr. Seddon.*] I suppose you had an idea at the time that it was against the law? You say it made no difference to the Trust?—No, it was in keeping with the law, or it would not have been done; or, rather, I should not say, perhaps, the law, but with the honour and credit of the colony. The scrip had to be accepted in payment as cash for any lands offered for sale for cash.

11. The question that arises is this: With regard to the Ellesmere lands, they could only be sold for cash; it was contrary to the law to sell those lands except for cash?—Just so; but the land scrip was cash in the eyes of the law. The land scrip was simply a bank-note instead of gold.

Hon. Mr. Seddon: Except that the Ellesmere Land Act says they shall only take the gold for that land.

12. *Mr. Saunders.*] It seems to me that the question we have to decide is not touched by Mr. Richardson's evidence. A difficulty seems to have arisen in connection with the limit of £500, up to which it was supposed to exercise scrip in no other district but the one in which the scrip had been issued?—No; that is misreading the law. There is no such limit; it does not apply to rights acquired. Under the Act of 1872 that limit could have applied, but not in the present case, for the holders of this scrip had not asked the Commissioners of Crown Lands to indorse them under section 3 of the Act of 1888. It was out of their power to do so, because the scrip was issued after the time limited by that Act had lapsed. The 1888 Act limited the amount of scrip that could be exercised in any part of the colony outside the province in which it was issued.

13. *The Chairman.*] Do I understand you to say that the rights accrued under the Act of 1872 and not under the Act of 1888?—The 1888 Act only applied to those who came under it by applying to the Commissioners for indorsement under it. Here are the words of the "New Zealand State Forests Act Amendment Act, 1888," subsections (1) and (2) of section 3:—

"(1.) Any unexercised land-order issued under 'The Forest Trees Planting Encouragement Act Amendment Act, 1872,' which shall be presented on or before the thirtieth day of June, one thousand eight hundred and eighty-nine, to the Commissioner of the land district wherein such order was originally applicable, may, with the sanction of the Minister, be indorsed by such Commissioner with a certificate declaring such order to be exercisable in the purchase of Crown lands, whether town, suburban, or rural land, in any part of the colony, at any time on or before the thirty-first day of December, in the year one thousand eight hundred and ninety, and the last day whereon such order shall be exercisable shall be stated in such certificate; and any land-order so indorsed shall be exercisable accordingly, anything in the last above-mentioned Act to the contrary notwithstanding.

"(2.) No land-order, whatever the amount stated therein, and no number of land-orders in favour of the same person, shall entitle such person, or any other person with him, or for or on his behalf, or any other person or persons whatever their number, by virtue thereof or under any transfer thereof in trust or otherwise to acquire Crown lands as aforesaid in any part of the colony to any value exceeding five hundred pounds in the whole."

14. Are you aware that the Solicitor-General has given a different opinion?—Perhaps he has not had the full case put before him. He may have given an opinion on some point of the case. If the Solicitor-General has given an opinion different to my reading of the Act, I should imagine my reading of the Act was wrong; but I should like to see whether the Solicitor-General has given an opinion contrary to the plain terms of the statute. The decision of the Court of Appeal is thus stated by the Crown Solicitor: "1. That there is no limit of area under a land-order. 2. That there is no limit of value to a land-order unless it be exercised beyond the province in which the plantation is made. 3. That this applies to land-orders remaining to be issued under section 4 of the Act of 1888, as much as to land-orders already issued."

15. The Solicitor-General says: "The case in the Court of Appeal above (Wason's case) alluded to has practically decided that there is no limit of area or value under a land-order issued under the Forest Trees Planting Encouragement Act of 1872, except as to value when exercised beyond the provincial district in which plantation was made, under the amending Act of 1888." Does that agree with your opinion?—The Solicitor-General and I agree on that point.

16. *Hon. Mr. Seddon.*] Was not the witness aware that the scrip was indorsed?—It was not indorsed. The ones shown me are not indorsed.

Mr. Wright: We are now considering Rhodes's scrip, and not Paterson's case.

The Chairman: We are considering the whole of the Canterbury scrip.

[*Hon. Mr. Seddon* here produced Rhodes's scrip.]

Witness: If it is indorsed it is limited. I asked to see the Canterbury scrip, and what I saw was not indorsed. It was exercised to the full value.

17. *Hon. Mr. Seddon.*] You say an order indorsed is not legal if exercised beyond the limit?—What was indorsed was limited to the £500 outside the land district in which it was issued. What was not indorsed was exercisable to its full value in any other district.

18. *Mr. Tanner.*] Is it the practice, in advertising land for sale in the *Gazette*, to specify the Act under which it is proposed to part with the land?—No.

19. Is it occasionally done?—It may be, but I could not say. But, speaking generally, if done in any case it would certainly be an exception.

20. If the Land Office advertised in the *Gazette* a sale of land without specifying the Act under which it was proposed to part with the land, would that lead to the conclusion that no restriction or stipulation applied to the sale of that particular land?—Yes, it is a reasonable conclusion. The rule is this: If there is any particular restriction, the regulation under which the land is to be dealt with is generally published, setting forth that the land is to be sold "subject to the following conditions," setting out the restriction, so that the public can be under no misapprehension concerning it. That is the rule always followed, but I have never seen the Act quoted.

21. Would land scrip under these circumstances be a legal tender, subject of course to the £500 limit?—The land scrip, of course, is a legal tender for land sold by auction. It is a tender which the colony cannot with honour refuse.

22. Of course you are aware that the Ellesmere lands were sold by auction?—Yes.

23. What is your meaning of the term "cash"?—The ordinary acceptance of the term.

24. What is the ordinary acceptance?—Well, coin or bank notes, some legal tender that represents coin.

25. Is there not a distinction generally in mercantile or financial transactions between cash and paper?—No. I would as soon take bank-notes as gold at any time; in fact sooner. I do not see that that bears on the matter so long as there is value given for the land sold.

26. Paper is paper, and metal is metal?—Well, generally speaking, if you put it in that way, generally speaking, in sales for cash, the payments are not made in metal; they are generally made in bank-notes or crossed cheques.

27. You think "cash" would include metal, bank-notes, or crossed cheques?—It would include anything that represented the full value for the money.

28. *Hon. Mr. Seddon.*] Would not a person purchasing scrip, knowing that that would be taken as cash for the Ellesmere lands, have an advantage over any intending purchaser who had to pay cash?—I do not see that he would; it depends upon the price he bought the scrip for.

29. If he obtained the scrip at a less value than that at which it was issued by the Land Department he would have an advantage over the rest of the intending purchasers to the extent of the difference in price—the price at which he would buy the scrip below par and the price which those who bought for cash would have to pay him for it, this difference would pay him to go to the trouble of working off the scrip and leave a margin?—It would be a matter of ordinary business.

30. Any person told beforehand that scrip would be taken would be in a better position than outside purchasers from that fact? You do not notify the world that you would take Ellesmere land scrip so as to give everybody an equal chance of purchase?—No one was notified that scrip would be taken.

31. If Mr. Whyte has said this, would it be true: "Saw advertisement *re* Ellesmere lands, and thought they were Crown lands. Bought up a lot of scrip in anticipation of sale. Saw Baker, Commissioner, in Christchurch, who said scrip could not be used in buying Ellesmere lands. Told him he must do so; he had no power to object." Did you tell Mr. Whyte that scrip could be exercised in the purchase of the Ellesmere land?—I cannot recollect now. I know this, that I opposed the exercise of scrip for the Ellesmere land until I found that the Government could not refuse to take it. There was no notification to Mr. Whyte or anybody else that scrip would be taken for the sold Ellesmere lands to the best of my belief.

32. But a person having that scrip, and having got your consent to exercise it, would have an advantage over any other person to the extent of the difference between the scrip and the cash value?—No person had my consent. It was only when I found that I was taking up an untenable position, in refusing scrip for the sold land, that the scrip was accepted.

33. *Mr. Wright.*] After the sale?—It was not before the sale. I am speaking from memory, but I think I am right.

34. *Hon. Mr. Seddon.*] You sold for cash, and afterwards agreed to take this scrip?—We found we had to take it; and to rectify the position the Government proposed to transfer the amount represented by the scrip to proper account.

35. How do you reconcile that with the opinion of the Law Officer and the Audit Department that it was not receivable for Ellesmere lands?—I think I have seen opinions that do not coincide with these you mention.

36. If the scrip were exercisable, there would be no necessity for legislation. You have seen Bills introduced to legalise the exercise of this scrip?—I think not.

37. Have you not seen a Bill brought into the House legalising the exercise of this scrip, and the transfer of the cash for the land which the scrip represented?—What Bill?

38. The Lake Ellesmere Land Bill?—Oh, yes; but it was quite unnecessary to bring in a Bill to legalise the matter, because it was legal before.

39. That is your opinion?—The Bill is simply to give effect to the intention of the Government to put the matter right by transfer.

40. *Hon. Mr. Seddon.*] It is to remedy a breach of the law as regards making the sale of the lands for cash. The land ought to be sold for cash under the original Act. It was not sold for cash; it was sold for credit?—It was sold for cash, and scrip was taken in part payment.

41. You do not call scrip cash, do you?—It was cash for the purpose of the land sales.

42. And it was only taken for the sale?—I think so.

43. Are you aware that the Commissioner of Lands, Mr. Baker, had refused to take this scrip?—I cannot recollect now. I know that I objected to its being taken at first, and I am pretty well sure that nobody had the slightest intimation, or had reason to believe, that scrip would be taken at the time the sale took place, as far as I can recollect.

44. You are satisfied upon that point? You are clearly of the opinion that no one who was allowed subsequently to use the scrip had an undue advantage?—No: he only had his right, no advantage. I was endeavouring to prevent this right being exercised in this case, but I found I could not prevent it.

45. I wish you to be clear on this point. After the scrip was indorsed it could only be used to the extent of £500, and would be a legal tender for the Ellesmere lands or any other lands?—I do not think that I ever gave any authority for the exercise of scrip indorsed under section 3 of the Act of 1888 to any extent beyond that limit. I do not think there was anything specific on that point. I do not know that indorsed scrip had been used beyond the £500 limit.

46. It could only be used to the extent of £500?—It could only be so exercised if indorsed. I did not know then of any of the scrip being indorsed. It appears to me that the indorsement limits the scrip.

47. Then, if indorsed, and exercised above the limit of £500, would you not consider that a cash transaction?—I do not think it should be exercised over £500. These are matters upon which a lawyer would be qualified to give an opinion.

48. You only gave scrip subject to the limit, and that scrip was indorsed?—I do not think the point was ever brought under notice; I do not recollect.

49. *Mr. Saunders.*] An important point seems to be whether or not Mr. Whyte was told that he could exercise scrip at this sale?—I distinctly told Mr. Whyte that scrip would not be taken, when he was going down south—that if I could prevent its being taken I would.

50. *Mr. Tanner.*] You gave permission for scrip to be exercised for the sale?—I think it was after the sale that scrip was allowed to be exercised. It was not until after the sale that the position was fully ascertained.

Mr. Saunders: That is a very important point.

51. *Hon. Mr. Seddon.*] Mr. Whyte, in his evidence, says that he bought the scrip in anticipation of the sale? I do not know what he was doing. I had simply to deal with the question whether scrip would be taken, and I said, “No.” Afterwards I found I had made a mistake in saying so—that we could not refuse scrip; but that was only after the sale.

52. You think that Mr. Whyte saw you before he went down South, and told you he was going to exercise scrip?—Whether it was direct to Mr. Whyte or not I am not sure. I know that application was made to me as to whether or not scrip would be taken at the Ellesmere sale, and I certainly said “No.” I remember being very strong on the point.

53. You said you told Mr. Whyte before going down?—I am not positive on that point. It is a long time ago, but I think it was so.

54. According to Mr. Whyte's evidence, he says, “Agreed to pay deposit in cash, and balance by and by, and in meantime would go to Wellington and get permission to use scrip?”

Hon. Mr. Whyte: That is not right.

Hon. Mr. Seddon: It is what I have taken down as your evidence.

Mr. Wright: That statement would be after the sale.

Witness: Nobody knew before the sale that scrip would be taken. That is the important point in the case. I am now speaking of the Ellesmere sale.

55. *Sir R. Stout.*] There is one point which I wish cleared up. After the decision of the Court of Appeal in the matter, the department seems to have been set aside. After the decision, telegrams and letters were sent by the Under-Secretaries to Christchurch. Were you aware of that, Mr. Richardson?—No, I did not know of it.

56. You said a little while ago that you understood that scrip was exercised under the Act of 1872?—No, that the right to the scrip accrued under the Act of 1872.

57. Were you aware that under the Act no order from the Auckland Province could have been exercised in Canterbury?—I explained that.

Hon. Mr. Seddon: Your explanation was that you could have exercised up to the full value if the scrip was indorsed.

Witness: If you will excuse me, I do not think you quote the decision of the Court of Appeal correctly.

58. *Sir R. Stout.*] I have read it correctly. There is no doubt about it?—In 1872 the matter was provincial, in 1890 it was General Government.

59. Before that you would have to get the indorsement of the Minister before the 30th of June, and you had to exercise the scrip before the 31st December. Were you aware of the £500 limit after you got the indorsement?—Yes.

60. If you did not get the indorsement you could only exercise the scrip in the province where the land was situate; there is not the slightest doubt about that?—I say there is great doubt about

it. The Court of Appeal, to my mind, gives a very different decision. If not indorsed the scrip was exercisable to its full value.

61. I do not want your law; what I want to know is this: Did you instruct your officer to act on the decision as if they could exercise the scrip, if not indorsed, where they pleased?—Yes, I think so. I do not say that I gave definite instructions to that effect. The conclusion we came to was that the Forest Tree scrip must be put an end to.

62. *Mr. Wright.*] The conclusion the Ministry came to?—We wanted to bring the whole thing to an end. There were three provinces alluded to in the Acts, and this decision deals with them all. Now that the Land Fund was General Government fund, and that the provinces were at an end, the scrip was allowed to be exercised to the face-value.

63. *Sir R. Stout.*] Then, what you agreed to was this: After the decision of the Court of Appeal in the case of Paterson and Fairlie, the Ministry came to the conclusion to allow the scrip to be exercised for its face-value all over the colony, though it had not been indorsed?—It could not be exercised if it was issued under the Act of 1888. It could only be exercised to the extent of £500; or, if indorsed, it could only be so exercised.

64. Do I understand you to say that scrip was issued without saying on the face of it under what Act it was issued?—Yes; that is, the scrip never bears less than two Acts, sometimes three Acts.

65. Allow me to say that I think that very curious. The conclusion you came to was that scrip could be exercised anywhere in the colony, and that it was not limited to any provincial district?—I think that was the conclusion.

66. Are you aware that all the scrip bears on the face of it the Act of 1888?—I am aware that some of the scrip bears the Act of 1888. I am also aware that they bear the Acts of 1871, 1872, and 1888.

67. And, therefore, the scrip was issued under the Act of 1888?—No.

68. How do you interpret the scrip to have been issued?—It had been issued, no doubt, at the date thereon; but the right accrued over a series of years.

69. What do you mean by that?—I do not want to talk law in the presence of lawyers. We have no power in equity or in fair dealing to refuse to honour land scrip issued by the colony.

70. I only want to know under what Act the Government came to their resolution regarding the exercise of the scrip—whether what they resolved upon was right or wrong?—In fair dealing the Government had no right to limit the rights of any one properly acquired under the law of the land.

71. That is quite true?—We acted on that.

72. Do you mean to say that, if a man acquired scrip in Auckland, he was right to exercise it out of Auckland, though he had not come under the Act of 1888?—I am not quite sure whether that was done or not.

73. You have said that the Ministry came to the conclusion that a land-order might be exercised outside the provincial district in which it was issued, though the holder had not come under the Act of 1888?—If he came under the Act of 1888 he could exercise it anywhere over the colony.

74. And if he did not come under the Act of 1888, what then?—I think we agreed to accept scrip wherever it was offered, so long as it was proper scrip.

75. That means that you deliberately set aside the decision of the Court of Appeal. Did you take the opinion of the Law Officers of the Crown before you came to that conclusion?—That is a question I decline to answer, simply because it is not a proper question.

76. I will put it in another way. Were you advised that the course you were taking was legal?—I could not answer that definitely. We were certainly not advised that there was anything wrong in it. We were advised on certain matters which led to the action which was taken.

77. *Mr. Tanner.*] May I ask was it a collective decision?—That is also a question which I will not answer.

78. What I want to know is: Was it your own decision, or who finally decided the question?—I finally decided it, because I was Minister of State Forests.

79. You took the responsibility?—I took the responsibility in the matter also.

APPENDICES.

"A."

(Memorandum No. 874/2.)

Crown Lands Office, Wellington, 2nd December, 1889.

ADVERTING to previous correspondence relative to accepting scrip in payment for Lake Ellesmere lands, I am instructed by the Hon. the Minister of Lands to state that, having regard to all the circumstances, and the desirability of ending the matter of the Forest Trees Planting scrip, no objection will be made to its being received as payment for Ellesmere lands, the amount being debited (? credited, *sic*) to the Public Works Fund.

H. J. H. ELIOTT, Under-Secretary.

The Receiver of Land Revenue, Christchurch.

"B."

(Memorandum No. 878/2.)

General Crown Lands Office, Wellington, 2nd December, 1889.

I OMITTED to mention in my memorandum this morning, as to exercise of Forest Trees Planting scrip in acquiring Ellesmere lands, that, by the recent decision of the Court of Appeal, the scrip is exercisable for the full amount stated therein. Further . . . (omitted).

H. J. H. ELIOTT, Under-Secretary.

The Receiver of Land Revenue, Christchurch.

"C."

MY DEAR SIR,—

Wellington Club, Wellington, N.Z., 3rd December, 1889.

You were, I believe, informed by yesterday's mail that the Government had consented to accept land-orders in payment of the Ellesmere lands. Now, payment should be made not later than the 12th, and I have to return to Auckland and arrange to send these orders on (to a value of over £3,200), and it may be impossible to have them sent by Friday's mail. I therefore write to ask you if it matters if payment be delayed two or three days. I imagine payments are often delayed more than that. Please wire me at Wyndham Street, Auckland, whether you permit the delay, and, if not, I must make a desperate effort to send them away on Friday. I am anxious, and the Minister is also anxious, that I should send in all I can this time, and to make an end of this business. If you can grant this delay, please tell the Receiver so, and very much oblige.

Yours sincerely,

J. B. WHYTE.

Mr. Baker.

"D."

Christchurch, 6th December, 1889.

REFERRING to your memorandum of December 2nd, on the subject of using Forest Trees Planting scrip in acquiring Ellesmere lands, I should be glad if you would send me down a copy of the recent decision in the Court of Appeal to which you refer. I presume it is the case of Paterson and Fairlie v. Humphries, which, as it also bears on Job Wason's case, I should be glad to see, and without it I cannot understand your remark that the scrip is exercisable to the full amount stated therein. As to stamp-duty.

J. WILLIAMS,

The Under-Secretary for Crown Lands.

For Commissioner of Crown Lands.

"E."

Auckland, 7th December, 1889.

(Telegram.)

PLEASE reply about few days' delay. Presume all right.

J. B. WHYTE.

Mr. Baker, Commissioner Crown Lands, Christchurch.

"F."

(Telegram.)

WILL hold over Murray's matter for one week. Meantime he deposits his cheque with the Receiver. Absent till this morning, so could not reply to your telegram.

JOHN H. BAKER, Commissioner of Crown Lands.

J. B. Whyte, Auckland.

"G."

General Crown Lands Office, Wellington, 13th December, 1889.

IN reply . . . I enclose copy of the judgment in the Court of Appeal case, Paterson and Fairlie v. Humphries, as requested.

H. J. H. ELIOTT, Under-Secretary.

Commissioner of Crown Lands, Christchurch.

"H."

(Telegram.)

Wellington, 18th December, 1889.

WHAT is irregularity in indorsement of Mr. Whyte's scrip, which he states you have refused. If not serious you can accept scrip, and have any technical error corrected afterwards.

Receiver, Land Revenue, Christchurch.

H. J. H. ELIOTT.

"I."

(Telegram.)

18th December, 1889.

REFERRING to your telegram 15th April last. Can Chief Clerk, Lands Office, Auckland, certify to transfer of Forest scrip?

Does decision Court Appeal, referred to in your memo. 2nd instant, render inoperative subsection (2) of section 3 "New Zealand State Forests Act Amendment Act, 1888"? Land-orders value upward three thousand pounds tendered me to-day on behalf of one person.

J. WILLIAMS,

The Under-Secretary, Crown Lands, Wellington.

Receiver of Land Revenue.

"K."

(Telegram.)

Wellington, 19th December, 1889.

WE must accept certificates of transfer scrip signed by Chief Clerk, who acted for Commissioner of Crown Lands, having in view decision of Court of Appeal. Government agreed not to offer any obstacle to exercise of scrip to full value in acquiring Ellesmere lands, as Commissioner was informed by my memo. of 2nd December instant, No. 873.

Receiver, Land Revenue, Christchurch.

H. J. H. ELIOTT.

"L."

(Telegram.)

19th December, 1889.

IRREGULARITIES Whyte's scrip. Some transferred in blank, and such transfers certified to by Chief Clerk, Land Office, Auckland. Others not transferred; two not dated; one exercisable only in Auckland District. See subsection (1), section 3, "State Forests Act, 1888." One which is transferred in blank is not assented to by Commissioner of Crown Lands. Am I to receive them as they are? The bank will insert transferees' names.

J. WILLIAMS,

Under-Secretary for Crown Lands.

Receiver of Land Revenue.

"M."

(Telegram.)

Auckland, 21st December, 1889.

TRUST land-order matter settled Monday, Minister consented to exercising them outside Auckland, because general land revenue not affected; indorsements, if necessary, can be improved afterwards. Original owners here. Peruse telegram to Receiver. Please reply.

Mr. Baker, Commissioner of Crown Lands, Christchurch.

J. B. WHYTE.

"N."

Re Whyte's land-orders and balance of Murray's purchase-money on Lake Ellesmere lands, due 13th inst. He deposited Bank Manager's cheque £4,502 3s. 10d. for balance with Receiver, and I allowed one week from that date to permit of Whyte's land-orders being received from Auckland.

You have been advised that they are incomplete. Shall I give further time to allow land-orders to be returned to Auckland for correction, or shall I instruct Receiver to pass cheque to revenue?

JOHN H. BAKER,

The Under-Secretary, Crown Lands, Wellington.

Commissioner of Crown Lands.

"NA."

23rd December, 1889.

HAVE asked Under-Secretary Lands if I can give further time to allow land-orders to be returned to Auckland for correction. Will wire you result.

JOHN H. BAKER,

J. B. Whyte, Esq., Wyndham Street, Auckland.

Commissioner of Crown Lands.

"O."

(Telegram.)

Auckland, 24th December, 1889.

WILL suffer serious loss and great embarrassment if orders not accept(ed) now. Irregularities not mine, and can be easily remedied afterwards. Validity of orders can be ascertained by wire.

Mr. Baker, Commissioner of Crown Lands, Christchurch.

J. B. WHYTE.

"P."

(Telegram.)

Auckland, 24th December, 1889.

PLEASE read Elliott's former telegram authorising receiver to accept if irregularities can be remedied afterwards, as they easily can. Their validity is undoubted, and I am responsible.

Mr. Baker, Commissioner of Crown Lands, Christchurch.

J. B. WHYTE.

"Q."

Wellington, 24th December, 1889.

THE Government has undertaken, after decision of Court of Appeal, to allow Mr. Whyte's scrip to be taken in payment for Ellesmere lands, and we cannot now go back from that. If there are technical irregularities in transfer, give Mr. Whyte reasonable time to get them corrected, day before 14th January at latest. The tendering of the scrip must be regarded as payment of balance of purchase-money.

Commissioner of Crown Lands, Christchurch.

H. J. H. ELLIOTT.

"R."

24th December, 1889.

HAVE accepted orders which came through Bank of New South Wales; those through Bank of New Zealand will have to be returned to Auckland for proper endorsements. I have received authority to extend time to the 14th January at latest. Orders returned to bank to send up at once.

JOHN H. BAKER,

J. B. Whyte, Esq., Wyndham Street, Auckland.

Commissioner of Crown Lands.

"S."

Christchurch, 24th December, 1889.

HEREWITH I beg to return the following land-orders: P. S. McLean, £226 6s.; J. A. McLean, £248 6s.; Frank Hubbard, £529 11s., which should be sent back to Mr. Whyte, in order that the transfers written in red may be duly signed by the person whose name is indicated in pencil.

Please return my receipt which I gave you for these orders.

JOHN H. BAKER,

The Manager, Bank of New Zealand, Christchurch.

Commissioner of Crown Lands.

"T."

Auckland, 27th December, 1889.

TRUST you will inform me precisely what land-orders require.

Commissioner of Crown Lands, Christchurch.

J. B. WHYTE.

"TA."

28th December, 1889.

HAVE put proper declaration on back of orders, and returned them to the bank to be returned to Auckland. When signed they will be in order.

J. H. BAKER,

J. B. Whyte, Wyndham Street, Auckland.

Commissioner of Crown Lands.

“U.”

General Crown Lands Office, Wellington, 17th June, 1890.

In reply to your memorandum of the 10th May last, I am directed to inform you that the Government is advised that the decision of the Court of Appeal, in the case *Patterson and Fairlie v. Humphries*, does not affect the claim of Mr. Wason to a further grant of land, under the Forest Trees Planting Acts and Regulations. The case in question has practically decided that there is no limit of area or value under a land-order issued under “The Forest Trees Planting and Encouragement Act, 1872,” except as to value when received beyond the provincial district in which the plantation was made, under the Amending Act of 1888. After the decision of the Court of Appeal, it is not proposed to raise any further technical objections to the settlement of Mr. Wason’s claims.

Will you accordingly have the plantation inspected again, and forward a recommendation for a land-order to issue for whatever area Mr. Wason may be found to be equitably entitled to.

H. J. H. ELLIOTT,
Under-Secretary.

The Commissioner of Crown Lands, Christchurch.

“ V ”

PARTICULARS of SCRIP, used in Payment of Ellesmere Lands, District of Canterbury, by
Mr. J. G. MURRAY.

| Office of Issue, and to whom Scrip originally Issued. | Total Amount. | Amount Issued. | Where and by Whom exercised. | † When Lodged. | Total used by Mr. Murray. | Excess of Legal Limit. | Date Exercised on |
|---|---------------------|--------------------------------|--|---------------------------|------------------------------|------------------------------|----------------------|
| Auckland— J. Paterson .. | £ s. d. 544 12 0 | £ s. d. 99 0 0 445 12 0 | Auckland— J. Smith Canterbury— J. G. Murray | About 1st December, 1889. | £ s. d. 445 12 0 | £ s. d. .. | 15 Jan., 1890. |
| | 544 12 0 | 544 12 0 | | | | | |
| R. M. Paterson .. | 923 6 0 | 923 6 0 | Ditto | | 923 6 0 | 423 6 0 | " |
| James Fairlie .. | 682 12 0 | 94 0 0 588 12 0 | " | | 588 12 0 | 88 12 0 | " |
| | 682 12 0 | 682 12 0 | | | | | |
| J. Cowan .. | 663 6 0 | 490 0 0 173 6 0 | " | | 173 6 0 | .. | " |
| | 663 6 0 | 663 6 0 | | | | | |
| P. S. McLean .. | 716 6 6 | 490 0 0 226 6 6 | " | | 226 6 6 | .. | " |
| | 716 6 6 | 716 6 6 | | | | | |
| A. J. McLean .. | 604 6 0 | 356 0 0 248 6 0 | " | | 248 6 0 | .. | |
| | 604 6 0 | 604 6 0 | | | | | |
| F. Hubbard .. | 1,008 0 0 | 291 0 0 187 9 0 529 11 0 | " | | 529 11 0 | 29 11 0 | " |
| | 1,008 0 0 | 1,008 0 0 | | | | | |
| M. Noake .. | 200 0 0 | 200 0 0 | " | | 200 0 0 | .. | " |
| Legal limit | | | £500 0 0 | | 3,334 19 0 | 541 9 0 | |
| Noake's scrip, Naval and Military Settlers' and Volunteers' Land Act | | | 200 0 0 | | 700 0 0 | | |
| | | | | | * 2,634 19 0 | 541 9 0 | |

† NOTE.—The sale was held on the 15th November, 1889, and on the same day 25 per cent. of the purchase-money was paid in cash. About the 1st December, 1889, the scrip was tendered as part-payment of the balance of the purchase-money. The officers of the department for some time refused to accept it, but, after some controversy, the scrip was finally accepted by the department on the 15th January, 1890.

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

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.

the rural land of the waste lands of the Crown open for sale or selection in the province in which the trees are planted. The form of land-order in the schedule simply authorises the person named in it to purchase to the amount of so many pounds in value any waste lands of the Crown in the province open for sale without payment in cash. The order, in short, is, for land-purchasing purposes, equivalent to cash, and no limit is specified of the quantity of land that may be purchased with it.

The 4th section goes on to enact that, wherever in the Act of 1871 reference is made to a free grant of land, the Act is to be read as if such land-order had been referred to. The section further enacts that the certificate of the Superintendent shall not certify the quantity of land for which a free grant is to be made, but shall certify the sum of money for which the land-order is to be given, and that the Commissioner of Crown Lands, upon production of the certificate, is to give the land-order to the person entitled. The 8th section of the Act of 1872 enacts that the provisions of the Act of 1871, so far as inconsistent with or repugnant to the Act of 1872, are repealed. We are of opinion that the provisions of the Act of 1872 are clearly inconsistent with the limitation of the area to be granted contained in the 5th section of the Act of 1871. The whole scope of the Act of 1872 is to substitute an order representing money for a grant of land. Grants are no longer to be issued under the Act within the meaning of section 5 of the Act of 1871, and, that being so, the limitation of the area included in the grant becomes inoperative. There is nothing in the Act of 1872 to indicate the slightest intention on the part of the Legislature to limit the amount for which a land-order may be given. It is out of the question to suggest that an order may issue for any amount, but that its purchasing power is nevertheless limited by the 5th section of the earlier Act, which has nothing to do with land purchased with an order. The intention of the Legislature to get rid of the limitation is, in our opinion, plain.

The provisions of section 7 of the Act of 1872 give additional strength to this construction. If there had been any desire to limit the amount of money for which an order could be issued, nothing could have been easier than to have expressed it. This, in our opinion, is the only possible construction to place on these two Acts, and any person who planted trees after the Act of 1872 came into operation was justly entitled to rely on the promise of the Legislature that for every acre planted, whatever the number of acres, he was to receive an order representing a fixed amount of money not exceeding £4, which he could make use of to purchase land.

This gives the key to the interpretation of the later Acts, as the Legislature must not be supposed to have passed any enactment which would constitute a breach of faith unless the terms are beyond all question clear enough to show that no other possible construction can be placed upon it. The present plaintiffs had planted their lands before "The State Forests Act, 1885," came into operation.

The 29th section of that Act repeals the earlier Acts, but provides that, notwithstanding, they shall remain in full force so far as relates to anything done or commenced, right or privilege accrued or accruing, &c., under their authority before the passing of the Act of 1885. It was not, and could not be, questioned that the rights of the parties in the present case were thus efficiently preserved. Section 30 of the Act of 1885 in no way affected the rights of the parties. It was evidently framed to meet the case of there being no land in the province available for selection, and to give the person who had planted, if he could not get land, money in lieu of it.

From any point of view, the section was not intended to limit, but to add to, the rights of persons who had planted.

The section is carelessly drafted, but of course it must be construed with reference to the previous legislation. Section 3 of the Act of 1871 is alone mentioned in section 30, but section 3 had been amended by section 4 of the Act of 1872, and the reference to section 3 in the Act of 1885 must be to section 3 as it stood when that Act was passed, viz., as so amended. On this construction, if there was no rural land in the province available to satisfy a land-order, the Commissioner might have paid the holder in cash a sum not exceeding £2 for every acre which could have been bought with such land-order if there had been any land to buy. This seems the only possible construction, as, owing to the passing of the Act of 1872 in the year following, no right to a grant as distinguished from an order under the 3rd section of the Act of 1871, apart from the Act of 1872, could have ever accrued.

Whatever may be the construction of section 30, it is, however, clear that it was not intended to restrict existing rights, but to enlarge them, and it is clear also that the intention of section 29 was to preserve all existing rights. When, therefore, by the 3rd section of "The State Forests Amendment Act, 1888," section 30 is repealed, and other provisions are expressly stated to be in lieu of it, the presumption is that these provisions will not affect rights existing apart altogether from section 30, but will substitute other rights for the additional rights which section 30 certainly gave.

There can be no doubt that all the subsections of section 3 must be read together.

The first subsection gives the holders of land-orders an option before the 30th of June, 1889, with the sanction of the Minister, to have the orders indorsed so as to purchase Crown lands, whether town or rural, in any part of the colony, at any time on or before the 31st of December, 1890.

This is, of course, framed to meet the difficulty suggested by section 30 of the Act of 1885, of there been no rural land in the province available, the right being by the earlier Acts confined to rural lands in the province in which the trees were planted. Subsection (1), however, having given this privilege, subsection (2) proceeds to limit its extent to land of the value of £500. What is limited is the privilege of acquiring "Crown lands as aforesaid in any part of the colony," which clearly refers to the preceding subsection, and not to the right to purchase land in the province, which exists altogether apart from subsection (1) and from section 30 of the Act of 1885, for which the various subsections of section 3 are substituted. The words "as aforesaid" and "in any part of the colony" refer as clearly as language can make them to the right to acquire Crown lands in

any part of the colony given immediately before by subsection (1). Subsection (3) is evidently a provision with reference to a land-order indorsed under subsection (1). If the right of purchase can be exercised from time to time in the different land districts of the colony, some further provision for the case of a partly exercised land-order than that contained in section 7 of the Act of 1872 is manifestly desirable, and that provision is contained in subsection (3). Subsection (4) expressly refers to land-orders indorsed under subsection (1). Nor do we think that the construction of section 4 of the Act of 1888 is open to any real doubt. By that section every land-order yet to be issued under the provisions of the Act of 1872 is to be issued subject to the conditions mentioned in section 3. The meaning is plain that land-orders issued after the Act of 1888 are to be in the same position as those issued before it—that is to say, that if the holder chooses to present his order to the Commissioner on or before the 30th of June, 1889, he can have the benefit of the provisions of section 3. The Act of 1888 became law on the 28th of August of that year. All rights to land-orders must have become vested long before that time, as no planting begun after the 14th of September, 1885, the date of the repeal of the Acts of 1871 and 1872, would confer any right at all. It might, therefore, be presumed that nearly all the land-orders which could be issued had issued before the passing of the Act of 1888, and that those which had not then issued would issue very shortly after, in time, at any rate, to enable the holders to take advantage of section 3, by presenting them to the Commissioner before the 30th of June, 1889. Mr. Fairlie's land-order was not issued till the 30th of July, 1889. This fact prevents him from taking advantage of section 3, but it does not debar him from the exercise of rights existing outside that section. We think, therefore, that a careful analysis of the Acts show conclusively that both the plaintiffs are entitled to have the questions submitted to the Court answered in their favour. To decide in any other way would have led to the result that the plaintiffs had done work on the faith of a promise of the Legislature, and that the Legislature had gone back from its promise. In our opinion it is clear not only that no intention to evade any promise is shown, but that the various Acts when critically scanned indicate no suspicion of any such intention. The answer of the Court to the questions therefore will be—

1. No.

2. Yes.

3. The plaintiff, Robert Morton Paterson, is entitled to exercise his land-order in the purchase of rural land of the waste lands of the Crown in the Provincial District of Auckland to the full amount thereof, in accordance with the laws and regulations in force relating to the sale and disposal of rural land in the said district. He is not entitled to exercise his land-order under any of the provisions of "The New Zealand State Forests Act Amendment Act, 1888," as he has not presented it to the Commissioner before the 30th of June, 1889.

4. The plaintiff, James Fairlie, is entitled to a land-order enabling him to purchase rural lands waste lands of the Crown 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.

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