[HIGH COURT OF AUSTRALIA.]

HACK . . . . . APPELLANT;

AND

THE MINISTER FOR LANDS (NEW SOUTH WALES). . . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

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SYDNEY, *Sept.* 22, 23, 29.

Griffith C.J., Barton and O'Connor JJ.

Crown Lands Act (*N.S.W.*), (*No.* 15 *of* 1903), *sec.* 3, *sub-sec.* (*a*), *sec.* 4—*Lands exempt from conditional purchase under Crown Lands Act of* 1884—*Suburban and population area—Set apart for homestead selection under Act of* 1895—*Available for additional conditional purchase—Implied repeal.*

By the Crown Lands Acts of 1884 and 1889, Crown lands in suburban or population areas were exempt from conditional purchase except when set apart for that purpose by the Governor-in-Council.

The appellant became the holder of a residential conditional purchase in such an area whilst it was temporarily set apart for such selection. Subsequently, when the area had ceased to be so available, but had been made available for homestead selection under the *Crown Lands Act* of 1895, the appellant applied for an additional conditional purchase under sec. 3, sub-sec. (*a*), of the *Crown Lands Act* 1903, which provides that the holder of a homestead selection, settlement lease, or conditional purchase may apply for an additional holding of the same class of tenure as his original holding, and that, subject to sec. 4 of that Act, land shall be "available for the purpose of any such application which is available for homestead selection, or settlement lease, or conditional purchase or conditional lease, whether specifically set apart for that form of holding or not." Sec. 4 provides that the Minister may set apart areas for conditional holdings of any of these classes, or for original holdings of any particular class or classes "to the exclusion of any or all of the additional holdings" mentioned. No action had been taken by the Minister under this section with regard to the area in question, to interfere with the operation of sec. 3.

Held, that it was not necessary that the area in which an additional conditional purchase was applied for should have been set apart exclusively for that particular form of selection under sec. 4, as long as it was lawfully capable of being, and had in fact been, set apart for any of the forms of selection mentioned in sec. 3, sub-sec. (*a*), and therefore, that, as the area in question had in fact been lawfully set apart for homestead selection, it was also available for additional conditional purchase.

Per O'Connor J.: Sub-secs. iv. and vii. of sec. 21 of the *Crown Lands Act* 1884, which make suburban and population areas exempt from conditional purchase, cannot stand consistently with giving full meaning to sec. 3 of the *Crown Lands Act* 1903, and therefore must be taken to have been impliedly repealed.

Decision of the Supreme Court, *Minister for Lands* v. *Hack*, (1905) 5 S.R. (N.S.W.), 124, reversed, and that of the Land Appeal Court restored.

APPEAL from a decision of the Supreme Court.

The following statement of the facts, and of the sections of the various Statutes referred to, is taken from the judgment of *Griffith* C.J.

"This was an appeal from a decision of the Full Court allowing an appeal from the Land Appeal Court on a case stated under the *Crown Lands Act* 1889. The appellant was the holder of a residential conditional purchase within an area called the Suburban and Population Boundaries of the City of Armidale. Under the *Crown Lands Act* 1884, sec. 21, sub-secs. iv. and vii., such lands were declared to be exempt from, *i.e.*, not available for conditional purchase. By the *Crown Lands Act* 1889 (sec. 18), however, the Governor-in-Council was empowered by notification in the *Gazette* to set apart land within suburban or population boundaries as special areas, which should thereupon be available for conditional purchase on special conditions to be notified. Such a notification had been published with regard to the area in question, but had been withdrawn after the appellant had acquired his conditional purchase. By the *Crown Lands Act* 1895 two new forms of settlement were introduced, called homestead selection and settlement lease. Sec. 10 of that Act empowered the Governor by notification in the *Gazette* to "set apart" Crown lands for holdings of kinds to be specified in the notification, in which case the land was in general not to be available for applications for holdings of any other kind. Sec. 13 of the same Act provided for setting apart land for homestead selections alone, and sec. 24 for setting apart land for settlement leases alone. Under these Acts, therefore, land in order to be available for homestead selections or settlement leases, must have been set apart for those purposes. With regard to conditional purchases, the setting apart was not always necessary, but it was necessary in

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the case of conditional purchases within suburban or population boundaries. Then came the Act of 1903, on which the question for decision arises. Sec. 3 of that Act is as follows:—

'The holder of—

'any homestead selection; or

'any settlement lease; or

'any original conditional purchase, other than the holder of a non-residential conditional purchase;

'may make application as prescribed, and accompanied by such provisional deposit as may be prescribed, for additional land, to be held by him as an additional holding under the same class of tenure (except that the holder of an original or additional conditional purchase may apply for a conditional lease, subject to the limitation of section twenty-six of the *Crown Lands Act* of 1889), as that under which he holds the land by virtue of which he applies.

'(*a*) Subject to the provisions of section four of this Act, land shall be available for the purpose of any such application which is available for homestead selection or settlement lease, or conditional purchase or conditional lease, whether specifically set apart for the class of holding applied for or not.'

"Section 4 is as follows:—

'Notwithstanding anything to the contrary in the Principal Acts, the Minister may, by notification in the *Gazette*, set apart areas (to become available on and after such dates as may be specified) for additional conditional purchases or conditional leases, or additional homestead selections or additional settlement leases (whether for one or more of such additional holdings), at such rents, capital values, or prices whether above, below, or at one pound per acre, as may be specified in the notification aforesaid, and may in a similar manner set apart areas for any original holdings to the exclusion of any or all of the additional holdings herein mentioned.'

"The term 'set apart' used in these sections must be read as bearing the same meaning as in the Acts of 1889 and 1895.

"Soon after the Act of 1903 came into operation, the appellant applied for an additional conditional purchase within the area in

question, which had been duly set apart for homestead selection. On the question being raised before the Local Land Board whether the land was available for additional conditional purchase, they referred it to the Land Appeal Court, who held that the land was so available. That Court thought that sec. 4 of the Act of 1903 had no bearing on the matter. On appeal, the Supreme Court reversed their decision, being of opinion that sec. 4 imposed a condition precedent which must be fulfilled before the right conferred by sec. 3 could be exercised: *The Minister for Lands* v. *Hack* (1)."

The present appellant was not represented on the argument before the Supreme Court.

It was from the above decision that the present appeal was brought.

Pike, for the appellant. Sub-sec (*a*) of sec 3 of the Act of 1903 is, in effect, a repeal of sec. 10 of the Act of 1895, making it no longer necessary that Crown lands, in order to be available for any one of the several forms of selection there mentioned, should have been previously set apart for that particular purpose. The result is that lands which have been made available for any of these purposes are available not only for that, but for any of the others. [He referred to sec 21, sub-secs. iv. and vii. of the *Crown Lands Act* 1884, and secs. 10 and 13 of that of 1895.] Sec. 4 of the Act of 1903 has no bearing on this point. It was relied upon by the Supreme Court in their judgment, but no argument was addressed to them upon it by either side. That section merely gives power to the Minister to set apart areas exclusively for certain purposes, either for original or for additional holdings, but it is quite consistent with the construction suggested for sec. 3, sub-sec. (*a*). Areas that have been made available for one form of selection will be available for all, under the latter sub-section, unless the Minister has exercised the power conferred upon him by sec. 4. [He referred also to *In re Rixon* (2); sec. 3, sub-secs. (*d*) (*e*) and (*i*) of the *Crown Lands Act* 1903, and sec. 20 of the Act of 1895.] Sub-sec. (*a*) cannot be read *reddendo singula singulis*, because it provides that the lands shall be available for the purpose of

(1) (1905) 5 S.R. (N.S.W.), 124. (2) 14 N.S.W. W.N., 37.

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"any" such application, that is, any of the several forms of tenure already mentioned. The section practically does away with the three cardinal principles of selection contained in the earlier Acts, viz. (1) limitation of area of selection, (2) necessity for additional holdings to adjoin the original, and (3) restrictions of certain areas to certain specific forms of selection. [He referred to *Minister for Lands* v. *Harrington* (1).]

Hanbury Davies (*Pilcher* K.C. with him), for the respondent. Up to the beginning of 1904 these lands were exempt from conditional purchase by virtue of sec. 21 sub-secs. iv. and vii. of the Act of 1884, and also as being set apart for homestead selection, under the Act of 1895. The appellant therefore has to show that the bar to selection has been removed. In order to do that he must show that sec. 21 of the Act of 1884 has been repealed, expressly or impliedly, because some of the exemptions prescribed in that section would clearly apply unless removed by subsequent legislation. There has admittedly been no express repeal, and there is no real inconsistency between sec. 3 of the Act of 1903, and the earlier Acts, which will necessitate that section being read as an implied repeal. The presumption is against any such repeal, because, in this Statute, whenever the legislature intended to repeal earlier enactments they did so expressly, and they are not likely to have overlooked earlier legislation on the same subject. All the Acts are, if possible, to be read together as one code, *Kutner* v. *Phillips* (2), and construed so as to avoid inconsistency. Sec. 21 of the Act of 1884 and sec. 3, sub-sec. (*a*) of the Act of 1903 may be read together, if the latter is construed in the way contended for by the respondent. When the land was set apart under secs. 10 and 13 for homestead selection, all prior reservations or dedications were preserved. They therefore still remained under sec. 21 of the Act of 1884. [He referred to *In re Rixon* (3).] That being so, they were not available for conditional purchase. Sec. 3, sub-sec. (*a*) must be read distributively, to avoid inconsistency; the application for an additional holding must be made in respect of land set apart for that form of

(1) (1899) A.C., 408.
(2) (1891) 2 Q.B., 267, at p. 271.
(3) 14 N.S.W. W.N., 37.

holding. The Court will not hold that such a radical change in the law, as the appellant suggests, has been made by implication, when another construction is possible which does away with the inconsistency. [He referred to *Broom's Legal Maxims*, *sub.* "Repeals."] Sec. 4 is not the basis of the respondent's contention, though it supplies an argument in that it is more easily understood when the respondent's construction is placed upon sec. 3, than when that section is read in the way contended for by the appellant. The appellant is not entitled to succeed simply because the Supreme Court has given a wrong or insufficient reason for its decision. The appeal is against the decision, not against the reasons.

[He proposed to argue that the appellant was disentitled from making an application for an additional conditional purchase, on other grounds, as to which no question had been submitted in the special case, but the Court refused to allow argument on any points other than that submitted, that is, whether the area in question was available for conditional purchase.]

Pike, in reply, referred to sec. 4 of the Act No. 51 of 1899, and *Hardcastle, Interpretation of Statutes*, 2nd ed., p. 376, *sub.* "Implied Repeal," and to the same volume, p. 76, on the question as to interpretation of words clear in themselves.

Cur. adv. vult.

The following judgments were read.

September 29.

GRIFFITH C.J. [His Honor, having stated the facts, and read the various sections as already set out, proceeded]:

With great respect for the opinion of the learned Judges, it appears to me that the words in sec. 3 of the Act of 1903 "subject to the provisions of sec. 4" are used to introduce a restriction upon the rights which would otherwise arise under sec. 3, and do not impose a condition precedent to their coming into existence. The exercise of the powers conferred on the Minister by sec. 4 might clearly operate as such a restriction. Before us it was contended that at the time of the passing of the Act of 1903 there were two bars to conditional purchase within such an area; (1) that imposed by the Act of 1884 sec. 21 (iv.) (vii.), and (2) the

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fact that the land was available exclusively for homestead selection, and that the first of these bars was still unrepealed.

But, although the provisions of sec. 21 (iv.) (vii.) have not been expressly repealed, the bar or prohibition which they imposed had been conditionally or potentially removed by the Act of 1889, so that the actual bar was only the absence of a subsisting notification under that Act.

I proceed to examine sub-sec. (*a*) of sec. 3 of the Act of 1903 from this point of view. It must be remembered that at the time of the passing of that Act "land available for homestead selection or settlement lease" meant land which had been exclusively dedicated for those purposes respectively, since it could not under the existing law have become available in any other manner. On the other hand, land available for conditional purchase or conditional lease included land set apart (whether exclusively or not) under the Act of 1889, and all other lands which were available for conditional purchase or conditional lease without such special dedication. Substituting these definitions and transposing, sub-sec. (*a*) will read: "Subject &c. land which has been dedicated exclusively for homestead selection or settlement lease, or which is available for conditional purchase or conditional lease, shall be available for the purpose of any such application (*i.e.* for an additional holding), whether it has been dedicated exclusively for the class of holding applied for or not." The general intention of the provision, so read, appears to be that land which has been made available for any one of these three classes of selection shall be available for the others. If the section is read distributively, the words "whether &c." would be nugatory as referring to homestead selections and settlement leases, since the land must necessarily have been dedicated for those purposes exclusively, and would be idle as referring to conditional purchases and conditional leases, since, if land is available for one purpose, it is immaterial whether it is also available for another. This distributive construction is, therefore, inadmissible.

The words "whether &c." suggest that the legislature had in contemplation land which could by law be dedicated, but might not have been in fact dedicated, exclusively or otherwise, for the class of holding applied for. In my opinion they import a

distinct reference to the Acts of 1889 and 1895, which made specific provision for setting apart areas, including areas such as that now in question, for the various forms of selection. In the present case the power to set the land apart still remained in existence, though its exercise was in abeyance.

I think that the true construction of sub-sec. (*a*) is that it dispenses with the necessity of prior notification in all the cases mentioned, and consequently that, in every case in which land could have been lawfully set apart for a particular form of selection, although under the existing law it must, if so set apart, have been set apart for that form exclusively, it was to be available for that form of selection, provided that it was in fact and law available for one of the other specified forms. It follows that, as the land in question might, under the Act of 1889, have been made available for conditional purchase, and it was in fact and law available for homestead selection, it became available for additional conditional purchase. The decision of the Supreme Court must therefore be reversed, and the decision of the Land Appeal Court restored.

BARTON J. Under the *Crown Lands Act* 1884, sec. 4, the term "Population Boundaries" includes lands within areas bounded by lines bearing north, east, south and west as defined by proclamation in the *Gazette*, and distant not more than ten miles from the nearest boundary of any city, town, or village. The same Act exempts from conditional purchase under Part III. thereof (*inter alia*) lands reserved or set apart for town or suburban lands or for village sites, and lands within population areas as above defined. [Sec. 21, sub-secs. (iv.) and (vii.)]. Sec. 18 of the Act of 1889 gives power to the Governor in Council to proclaim and set apart by notification in the *Gazette*, any lands within the suburban or population boundaries or population areas of any cities, towns, or villages. Such lands (without cancellation or revocation of such boundaries or areas) are, notwithstanding anything to the contrary in the principal Act, to be open to conditional purchase. Under this section certain lands within the suburban and population boundaries of the City of Armidale were, on the 10th of March, 1900, set apart by *Gazette* notification as a "special area"

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for conditional purchase, and under the terms of the notification the appellant, on the 30th of May, 1901, took up within the special area an original conditional purchase of 20 acres 2 roods 1 perch, and on the 25th of June, 1903, he took up an additional conditional purchase of 32 acres. The Act of 1895 provided for the classification of Crown lands; and that this might be properly done, the Governor in Council was by sec. 10 empowered to notify in the *Gazette* that the Crown lands in any tract or area described in the notification should be set apart for holdings of the kinds specified whether by way of purchase, lease, or otherwise. No lands within any such tract or area were, after the notification, to be available to satisfy applications for holdings of any kind other than the kind specified. The same Act made provisions for new kinds of holdings, among them homestead selections and settlement leases, and secs. 13 and 24 provided for the setting apart of tracts of Crown lands for the purposes of these holdings respectively, subject to the provisions of and under the powers conferred by sec. 10; that is, within the areas classified under the last-mentioned section. Under the two sections mentioned, certain lands were, by *Gazette* notifications of the 8th December, 1897, and the 5th July, 1899, set apart for homestead selections. Some of these lands had been included in special areas, since revoked; and they were also within the suburban and population areas of the City of Armidale. In December, 1903, the land laws were further amended by an Act which took effect on the 1st of January, 1904. Its third section provided [His Honor read subsec. (*a*) of that section.] Endeavouring to share in the advantages offered by this enactment, the appellant, as the holder of an original conditional purchase, applied on the 7th of January, 1904, for an additional conditional purchase of 64½ acres and a conditional lease of 160 acres, both within the limits of the lands which had been set apart for homestead selection by the two *Gazettes* of December, 1897, and July, 1899.

These applications came before the Local Land Board at Armidale, and being in doubt whether they could lawfully confirm to the appellant the lands he had applied for as last mentioned, they duly referred to the Land Appeal Court the question whether the land applied for by way of additional conditional purchase and

conditional lease was available for the applications. The Land Appeal Court decided that the lands were so available. A special case on appeal was stated to the Supreme Court, to whom the following question was submitted for decision :—

"Are lands which have been notified as available for homestead selection thereby available also for additional conditional purchase and conditional lease under the provisions of the Crown Lands Acts, notwithstanding that such lands are situate within the suburban or population boundaries or population area of a city, town or village ?"

The matter was argued before the Full Court, who returned the following answer :—

"No, unless and until the notification referred to in sec. 4 has been issued."

The appeal was therefore allowed with costs. It may be mentioned that the then respondent, now appellant, did not appear on the hearing of the special case, while the case has been argued exhaustively on both sides before us.

Sec. 4 of the Act of 1903 empowers the Minister, "notwithstanding anything to the contrary in the Principal Acts," to set apart, by *Gazette* notification, "areas (to become available on and after such dates as may be specified) for additional conditional purchases or conditional leases, or additional homestead selections or additional settlement leases (whether for one or more of such additional holdings), at such rents, capital values, or prices whether above, below, or at one pound per acre, as may be specified in the notification," and it further empowers the Minister to set apart in a similar manner "areas for any original holdings to the exclusion of all or any of the additional holdings therein mentioned."

I am of opinion that the question to be answered under this special case is not affected by anything in sec. 4. Any land which on the 1st of January, 1904, was available for homestead selection, settlement lease, or conditional purchase or conditional lease, and any land which might afterwards become so available, was open to application for the purpose of any of the additional holdings made procurable by sec. 3. Under that section, therefore, an applicant might not only obtain an additional holding, out of

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lands which the Minister might under sec. 4 set apart for such holdings, but he had within his range of choice lands which were already available for the purposes of sec. 3, or which might become so available, irrespective of any action of the Minister under sec. 4. Such action might and, if taken under the first branch of sec. 4, would add to the lands available for the purposes of sec. 3. But the mere existence of the power in the Minister to add to the lands available could not operate to prevent applicants from having the advantage of the special statutory permission given them by sec. 3. The second branch of sec. 4, however, gives the Minister power "to set apart areas for any original holdings to the exclusion of any or all of the additional holdings" in that section mentioned, and the additional holdings there mentioned are of the same classes as those mentioned in sec. 3. I think it is to this power of the Minister to provide for original holdings, to the exclusion of additional holdings, that the words "subject to the provisions of sec. 4 of this Act," which we find at the head of sub-sec. (*a*) of sec. 3, naturally and properly refer. The Minister has not taken any action under sec. 4 which would interfere with the operation of sec. 3.

Were then the lands, notified as set apart for homestead selection by the *Gazettes* of December, 1897, and July, 1899, made available by the Act of 1903, sec. 3, for the purpose of such additional holdings as the additional conditional purchase and conditional lease for which the appellant applied on the 7th of January, 1904?

Following the terms of the section, the appellant urged that, at the time of his application, he was the holder of an original conditional purchase, a residential one; the applications for additional holdings, save that the conditional lease was within the prescribed exception, were "under the same class of tenure as that under which he held the land by virtue of which he applied"; the land was "available for homestead selection." What was there against the application?

Confining the objections within the limits of the special case, they resolved themselves into two.

The first was upon these words: "Land shall be available for the purpose of any such application which is available for home-

stead selection or settlement lease, or conditional purchase or conditional lease." [Sec. 3 (*a*).] It is said that these words should be construed *reddendo singula singulis*, so that lands available for homestead selection should be open by way of additional holding to homestead selectors only, and so on. Under this construction the appellant's application would be defeated, for as an original conditional purchaser he could not take up any lands except such as were available for conditional purchase. But this construction would go far to defeat the plain object of the Act, the terms of which throughout show that it was intended as a genuinely ameliorative measure, planned to extend largely the opportunities and privileges of settlers to make easier terms for the acquisition and holding of land; and to increase, subject to due inquiry and regulation, the areas which might be purchased or leased. The word "any," used in connection with "such application," appears to be in entire consonance with these objects, and apart from that consideration, to say that land available for homestead selection, settlement lease, or condititional purchase or conditional lease, shall not be available to satisfy any applications except for the same class of holdings singly and respectively, is to my mind to do violence to the terms used and to destroy the real value of the words "any such application," than which it is hard to imagine any stronger to accomplish the purpose for which I take them to have been used.

The second objection is as to the words "whether specifically set apart for the class of holding applied for or not," which are supposed to restrict in some way the meaning of the sub-section. I have already expressed my opinion as to the width and force of the preceding words, which if they stood by themselves, would amply support the appellant's contention in this regard. It appears to me that the words which conclude the sub-section were introduced to clinch the meaning of the antecedent declaration, and to make it more emphatic. Land is to be available for the purposes stated, not only when it has been specifically set apart for the class of holding applied for, but even if it has not been so set apart, and even if it has been set apart for some other class of holding than that applied for. If, for instance, it has been set apart as a special area for conditional purchase under sec. 18 of

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the Act of 1889, it is to be available for additional homestead selection or additional settlement lease as well; if it has been set apart for settlement lease under sec. 24 of the Act of 1895, it is to be open to additional homestead selection or additional conditional purchase or conditional lease. Then, if set apart for homestead selection under sec. 13 of the last-mentioned Act, is it not to be open to additional settlement lease or additional conditional purchase, subject of course to the safeguards provided in the other parts of the section? I am unable to see any good reason to the contrary.

Then was this land validly set apart for homestead selection? If so it is open to the appellant's applications. I do not think the validity of the setting apart is seriously contested by the Crown, which performed that act. The 21st section of the Act of 1884 exempts lands within suburban limits or population areas from conditional sale under Part III. of that Act. The Act of 1889 in effect removes the prohibition. Land, therefore, validly set apart for homestead selection has been thrown open to additional conditional purchase or conditional lease within the meaning of sec. 3 of the Act of 1903, and I fail to see how the applicant's right is barred by the fact that the area set apart is situate within the suburban or population boundaries of a city, village or town. I concur in the allowance of the appeal.

O'CONNOR J. As the case is presented to us, the validity of the appellant's additional conditional purchases and conditional lease is assailable on two grounds:—First, on that decided by the Supreme Court, that lands cannot be taken up as an additional conditional purchase or conditional lease under sec. 3 of the *Crown Lands Act* 1903 until after a notification has been issued under sec. 4 setting apart the lands for additional conditional purchase or conditional lease, homestead selection or settlement lease: Secondly, on the ground submitted by the Land Appeal Court for decision in their special case, namely, that land notified as available for homestead selection cannot, if it is within suburban or population boundaries, be available for additional conditional purchase or conditional lease under sec. 3 of the *Crown Lands Act* 1903. As to the first ground I cannot agree with the interpreta-

tion their Honors of the Supreme Court have placed upon sec. 3. That section authorizes an original conditional purchaser to make application for an additional conditional purchase, and declares by sub-sec. (*a*) that, subject to the provisions of sec. 4, any land which is available for a homestead selection, is available for his application. Sec. 4 empowers the Minister to set apart areas for additional conditional purchase, conditional lease, homestead selection, or settlement lease at the prices and values specified in the notification, or to set apart any such areas for original holdings only, to the exclusion of additional holdings. If such a notification is issued the applicant can apply only subject to the terms of the notification, but the right to apply does not depend upon the issue of the notification. In other words, the right of the holder of the original conditional purchase to apply under sec. 3 is complete in itself without any notification under sec. 4, but the Minister has power under the latter section, if he so choses, to subject the applicant in regard to any particular area to the conditions and restrictions notified. I am of opinion, therefore, that the absence of a notification under sec. 4 did not in any way invalidate the appellant's application under sec. 3. The other objection is one of greater difficulty.

The 21st section of the *Crown Lands Act* 1884 expressly declares that Crown lands set apart for suburban lands (sub-sec. 4) or within population areas (sub-sec. 7) shall be exempt from conditional sale under that part of the Act, that is Part III., dealing with alienation. If that provision stands unrepealed it is a bar to the application. It was admitted that the provision is not expressly repealed, but Mr. Pike for the appellant contended that, by necessary implication, sec. 3 of the Act of 1903 must be taken to have repealed it. We have to determine whether that is a good contention. The test to be applied in considering whether there has been a repeal by implication is very clearly stated by Mr. Justice *A. L. Smith* in *Kutner* v. *Phillips* (1) as follows:—"Now a repeal by implication is only effected when the provisions of a later enactment are so inconsistent with or repugnant to the provisions of an earlier one, that the two cannot stand together, in which case the maxim, '*Leges posteriores contrarias abrogant*'

(1) (1891) 2 Q.B., 267, at pp. 271-2.

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applies. Unless two Acts are so plainly repugnant to each other, that effect cannot be given to both at the same time, a repeal will not be implied, and special Acts are not repealed by general Acts unless there is some express reference to the previous legislation, or unless there is a necessary inconsistency in the two Acts standing together."

In applying this test it becomes necessary to ascertain the meaning of sec. 3. Taking the words in their ordinary signification, the meaning is very plain. The main section enables the holder of any homestead selection, settlement lease or original conditional purchase (not being a non-residential conditional purchase) to make application for additional land to be held by him as an additional holding under the same class of tenure as that under which he holds the land by virtue of which he applies. Then follows sub-sec. (*a*) which, leaving out immaterial words, describes the land which may be applied for in the following terms, "land shall be available for the purpose of any such application which is available for homestead selection or settlement lease, or conditional purchase or conditional lease, whether specifically set apart for the class of holding applied for or not." The *Crown Lands Act* 1895, which created for the first time the tenures of homestead selection and settlement lease, empowered the Government to set apart, by notification, areas for these classes of holdings, and, when so set apart, they were available only for the class of holding notified.

Before that the *Crown Lands Act* 1889, by sec. 18, had empowered the Government by notification to set apart as special areas for conditional purchases lands within suburban and population boundaries or population areas without cancellation or revocation of such boundaries, and the section declared that, notwithstanding anything to the contrary in the previous Acts, the lands were to be open to conditional purchase in the areas, at the prices, and subject to the conditions specified in the notification. Such areas were therefore available exclusively for conditional purchase. This was the state of the law when the Act of 1903 was passed. In cases where the application under sec. 3 is for additional land in an area of the same class of holding as that held by the applicant, there can be no difficulty of inter-

pretation, but where the application is for land in an area set apart for a class of holding other than that held by the applicant, it is possible that a doubt might arise. To set any such doubt at rest the legislature has used the words at the end of the sub-section "whether specifically set apart for the class of holding applied for or not," which makes it plain that it shall be no bar to the application, that the area in which land is applied for has been set apart for a class of holding other than that of the applicant's original holding. The intention plainly expressed by the section is to enable a holder of any of the three classes of holding mentioned to add to his holding from any area adjoining, whether set apart or not, which is available for any of the three classes, and in the case of a notified area without regard to the restrictions as to the class of applicant which originally attached to the area—in other words, to give equality of opportunity of enlarging their holdings to each of the three classes of holders intended to be benefited. The question at once arises is it possible to give full effect to the intention of the legislature so clearly expressed if the restrictions on conditional purchasers, imposed by sub-secs. iv. and vii. of sec. 21 of the Act of 1884 are to remain in force. If those sub-sections are to be taken as still in force the unequal operation of the restriction on the three classes of holders intended to be benefited is at once apparent. The homestead selector or settlement lessee, whose holding is within or adjoining suburban lands or a population area, could apply to increase his holding from these lands, but the conditional purchaser could not—unless, indeed, the suburban lands and population area had been proclaimed, and remained, a special area. Such inequality in operation, founded on no reason in the nature of the holdings themselves, could never have been intended. But unless the sub-sections of sec. 21 under consideration have been impliedly repealed, that inequality must obtain. Again, test the question by a consideration of the previous law and the scope and purpose of the Act of 1903 passed to remedy its defects. The policy of exempting suburban lands and population areas from conditional purchase had been broken down long before by sec. 18 of the *Crown Lands Act* 1889. Whenever the Government chose to proclaim under that section a special area for conditional purchase within the boundaries of suburban or

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population areas the restriction on conditional purchase in that area disappeared. Instead of being an absolute exemption it had then become an exemption which the Government could remove in respect to any special area by notification. The object of the Act of 1903 was, as stated in the title, "to provide for granting increased areas to present holders." That object could only be attained effectively by making adjoining lands as far as possible available for additional application. To effect this purpose the Act of 1903 sweeps away for the purpose of its provisions the maximum and minimum limits of area of conditional purchase and additional conditional purchase and the necessity for the land applied for adjoining the original holding, and practically leaves the Land Board a free hand in allowing or disallowing applications under sec. 3. These provisions by implication repeal many important restrictions on the making of additional conditional purchases under the previous law. It surely never could have been intended that the restriction in question, which could be removed by Government proclamation in regard to any particular area at any time, should remain law, while so many vital restrictions must be taken to have been by implication repealed. For these reasons I have come to the conclusion that the sub-sections of sec. 21 of the Act of 1884 preventing conditional purchases in suburban and population areas cannot stand consistently with giving full meaning to sec. 3 of the Act of 1903, and therefore must be taken to have been impliedly repealed. It follows that the land applied for was open to the appellant's application, and that the question of the Land Appeal Court should be answered in the affirmative, and that the appeal should be upheld.

Appeal allowed.

Solicitor, for the appellant: *H. A. Langley.*

Solicitor, for the respondent: *The Crown Solicitor of New South Wales.*

C. A. W.