treated in the same way as those who selected land after 1884. At all events, I see no sufficient ground for doing any violence to the plain language of the Act. I cannot find any instance in which the words "alienation in fee simple" have been used in the Acts in the intermediate sense which I suggested; and I find it has frequently been used in the simple sense adopted by the Lands Office in this case. For my part, I am strongly opposed to the practice of introducing refinements into Acts by conjecture however probable, or of qualifying plain words by inference, unless the inference be, in the strict sense, necessary, not merely reasonable.

I am of opinion that the appeal should be dismissed.

Appeal dismissed with costs.

Solicitor, for the appellant, *R. L. Cross* for *F. W. Edmondson*, Wodonga.

Solicitors, for the respondent, *Russell & Meares* for *C. W. C. Hodgson*, Chiltern.

B. L.

[HIGH COURT OF AUSTRALIA.]

LYONS . . . . . APPELLANT,
DEFENDANT,

AND

SMART . . . . . RESPONDENT,
INFORMANT.

Costs—Taxation—Appeal from Court of Petty Sessions of a State—Order to review—Limitation on amount of costs—Justices Act 1890 (*Vict.*) (*No.* 1105), *sec.* 148—*Rules of the High Court* 1903, *Part I., Order XLVI., r.* 14; *Part II., sec. IV., r.* 1; *Rules of the High Court of 12th October* 1903, *r.* 3.

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LYONS v. SMART.

Order XLVI., r. 14 of Part I. of the *Rules of the High Court* 1903 which prescribes the scale for taxation of costs does not refer to any maximum amount of costs to be allowed, and, therefore, the provision in sec. 148 of the *Justices Act* 1890 (Vict.), which limits the total amount of costs that can be allowed in the Supreme Court upon an order to review a decision of a Court of Petty Sessions to £20, does not apply to the costs of an appeal by way of order to review from a Court of Petty Sessions exercising federal jurisdiction to the High Court.

Costs of affidavits disallowed.

MOTION.

On an appeal to the High Court, by way of order to review, from a conviction by a Court of Petty Sessions of Victoria exercising federal jurisdiction, the appeal was allowed with costs, *Lyons* v. *Smart* (1), and judgment was entered accordingly.

The respondent now moved, (*a*) for an intimation from the Court as to whether the Court on delivering judgment on the appeal had made an order or declaration to the effect that sec. 148 of the *Justices Act* 1890 did not apply to the appeal, or had made an order that costs in the appeal should be allowed as costs of an appeal brought in the ordinary method; (*b*) if no such order or declaration was made, for an order that the amount of taxed costs properly allowable to the appellant under the order of the Court should be an amount not exceeding £20.

Macfarlan, for the respondent. The effect of Order XLVI., r. 1 of Part I., and Sec. IV. r. 1 of Part II. of the *Rules of the High Court* 1903, and r. 3 of the *Rules of the High Court* of 12th October 1903, is that the limitation imposed by sec. 148 of the *Justices Act* 1890 upon the amount of costs which may be recovered on an order to review in the Supreme Court applies to an appeal to the High Court brought by way of order to review. The effect of that section is the same as if the limitation were contained in the scale of costs, and if it were there, there can be no doubt it would apply to an appeal to the High Court by way of order to review.

Mitchell K.C. and *Bevan*, for the appellant, were not called upon.

(1) 6 C.L.R., 143.

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GRIFFITH C.J. delivered the judgment of the Court. Sec. 148 of the *Justices Act* 1890 does not govern Order XLVI. r. 14, which is a general rule prescribing a scale upon which the officer is to tax the costs, and has nothing to say as to the maximum amount that can be allowed. The only order on this motion will be that the appellant's costs of the motion be added to the costs of the appeal. I am of opinion, and my brothers agree with me, that this is a case in which no affidavits were needed, and therefore no costs of affidavits will be allowed on either side.

Order accordingly.

Solicitor, for the respondent, *Powers*, Commonwealth Crown Solicitor.

Solicitor, for the appellant, *A. E. Jones.*

B. L.

[PRIVY COUNCIL.]

INTERNATIONAL HARVESTER CO. OF AMERICA . . . . . } APPELLANTS;

AND

PEACOCK . . . . . RESPONDENT.

ON APPEAL FROM THE HIGH COURT OF AUSTRALIA.

PRIVY COUNCIL.* 1908.

June 25.

Patent—Infringement—Validity of patent—Combination—Specification—Prior publication—Patents Act 1890 (*Vict.*), (*No.* 1123), *sec.* 56.

Where a patent is sought for a combination of several parts, it is not necessary in the specification to distinguish between those parts which are old and those which are new.

*Present.—Lord Macnaghten, Lord Atkinson, Lord Collins, Sir J. H. de Villiers and Sir Arthur Wilson.