*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of George Meredith Bell* v. *The Receiver of Land Revenue of the District of Southland, from the Court of Appeal of New Zealand; delivered* 11*th March* 1876.

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Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

IN this case George Meredith Bell obtained a rule nisi, calling upon the receiver of land revenue of Southland, who is the Respondent in this case, to show cause why a mandamus should not issue commanding him to receive from the Appellant payment at the rate of 20*s.* per acre for certain Crown lands which the Appellant had applied for, or elected to purchase under the Southland Waste Lands Act of 1865, 29th Victoria, No. 59. The Supreme Court after hearing the case made that rule absolute, upon which the Respondent appealed to the Court of Appeal for New Zealand, and that order making the rule absolute was reversed. Mr. Bell now appeals to Her Majesty in Council against the decision of the Court of Appeal.

The question depends upon the true construction of the Act 29 Victoria, c. 59, the Waste Lands Act of 1835. Section 6. is as follows: "There shall be established a board, called the "Waste Lands Board, to consist of one chief "commissioner, and of not less than three nor "more than five other commissioners, all of "whom shall be appointed and be removable by

" warrant under the hand of the superinten-
" dent." By section 7 it was enacted, that the Waste Lands Board should sit at the principal land office of the province at certain stated times, to be determined by the superintendent; and it appears by the second paragraph of the affidavit of the Appellant, that the days fixed were Tuesday and Friday in every week. Section 10. enacted that "all applications for land and " for pasturage and for timber licences shall, " after hearing evidence when necessary, be " determined by the Board at some sitting " thereof." Section 12, which is one of the important sections of the Act, enacted, that " a book, to be called the 'application book,' shall " be kept open during office hours at the land " office, in which the name of every person " desiring to make any application to the Board " shall be written in order by himself or any " person duly authorised on his behalf." According to this section, all that the applicant is to do is to write his name in the application book as a person desirous to make an application; and in this particular case the entry, which was made in the book on the 7th July by Mr. Macpherson as the agent for Mr. Bell, was in the following terms:—" G. M. Bell per Wm. Mac-
" pherson, 7th July 1873." He merely wrote the name and the date of writing it. The section goes on: " And the Commissioners shall, during " the sittings of the Board, consider and deter-
" mine all applications in the order in which " they shall appear in the application book. " Provided that if any person shall not appear " himself or by some person duly authorised " on his behalf before the Board when called in " his turn, his application shall be dismissed " until his name shall appear again in the book " in order." A little confusion arises from the use of the word "application" in this sec-

tion. The word "application" is referred to in the first portion of the section in this way, "every person desiring to make any application." Then, in the second part, it is said that all applications shall be considered and determined in the order in which they shall appear in the application book. But the Act does not require the terms of the application itself to appear in the book; it merely requires the name of the person desirous of making an application, and the true construction of the word "applications" in the second portion of this section is, applications of the intention to make which to the Board applicants have given notice. Then the third portion of the section says, "Provided that if "any person shall not appear himself or by "some person duly authorised on his behalf "before the Board when called in his turn,"— that is according to the order in which his name appears in the application book,—"his application shall be dismissed;" that is to say, unless he appears he shall not be at liberty to make an application. Nothing is said in the Act of delivering or lodging a written application, specifying the particular land for which it is the intention of the applicant to make application. It had been the practice of the Board (probably they had made some rule on the subject), as appears by the 4th paragraph of the Appellant's affidavit, to hear and determine only such applications for land as had been lodged with the proper officer of the Board at least the day previous to the day on which the Board met for the transaction of business. Now, the lodging of the application was not the presenting of an application to the Board; applications to the Board were not presented until the day of their sitting. In paragraph 5 of the affidavit it is said, "That at such sittings as aforesaid of the "said board, the applications for land were

" opened and considered in the order in which " the applicants names appeared in the said " application book." It appears, therefore, to their Lordships that the 12th section of the Act merely required an entry in the book of the name of any person intending to make an application, and that it did not give him a right to have an application which he should afterwards present to the Board determined in any particular manner. He was to make his application to the Board, and bring his case within the law as it stood at the time when he came before the Board. Section 26 enacts that " All lands not included in any of the " foregoing regulations shall be open for sale " as rural land at the fixed price of 20*s*. per " acre; provided always, that if at any time " the superintendent and provincial council of " the said province shall recommend the Go- " vernor to raise such price, then it shall be " lawful for the Governor in Council, if he " shall see fit, to raise such price in accord- " ance with such recommendation." Now, by virtue of the 12th and the 26th sections put together, it is contended that when the applicant entered his name in the book as a person desiring to make an application, he obtained a vested right to have his case heard and determined, and to have the land at the price fixed by the Government at the time when he entered his name in the book as an intending applicant, and not at the price fixed by Government at the time when the application was made at the sitting of the Board. It appears then that on the 7th July 1873 Mr. Macpherson entered Mr. Bell's name in the book of applications. He says that on the same day he lodged applications. On Tuesday the 8th, the Land Board sat. They did not arrive at his turn to make the applications.

That meeting was adjourned, and at the time of that adjournment the application of Mr. Bell had not been reached. The Board sat again on the 9th, and on that day they again adjourned before the application of Mr. Bell had been reached. In the meantime, viz., on the 9th July 1873, an order had been made by the Governor in Council, according to the provisions of the Act, that the price of land should be raised from 1*l.* an acre to 3*l.* an acre; and on that same 9th July on which the Board sat it was publicly announced by Mr. Baker, the inspector of surveys, and the chief commissioner of the Board, that the Government had made that order, and that the price of lands had been raised from 1*l.* to 3*l.* an acre. Mr. Baker says, "that previous to the granting "of any of the said applications, to wit, on the "9th day of July 1873, I, this deponent, pro- "duced and read publicly, in the hearing of all "persons present at the meeting of the Waste "Lands Board, and, I verily believe, in the "hearing of the said William McPherson, a "telegram from his Honour the Superintendent "of the province of Otago, to the Receiver of "the Land Revenue, announcing that by an "order in Council the price of land had been "raised to the sum of 3*l.* per acre." Mr. Bell did not present his application on that day, because, according to the order in which his name appeared in the application book, his turn had not arrived. He received notice on the 9th that the price of lands had been raised from 1*l.* per acre to 3*l.* per acre. Having had that notice on the 9th, he at the sitting of the Board on the 10th, when they reached his turn, presented his application to the Board for the first time, and they then determined that he was entitled to purchase the land. No price was fixed in his written application; no price appears to have been specified by the Board. They

granted his application, and in effect said, You are entitled to have these lands at the price which has been fixed by Government. Notwithstanding the price was 1*l.* an acre when he entered his name in the book as intending to make an application, he had been informed on the 9th that the price had been altered, and he presented his application to the Board after that notice. It appears to their Lordships that the grant of the application was merely the grant of an application at the price which had then been fixed by Government, namely, at 3*l.* per acre; and that the Appellant, Mr. Bell, had no right to have his rule nisi for a mandamus made absolute to command the Receiver of Land Revenue of the district of Southland to receive payment at the rate of 1*l.* per acre.

Under these circumstances, their Lordships are of opinion that the decision of the Court of Appeal was correct, and they will humbly recommend Her Majesty to affirm their judgment, and to dismiss this Appeal with costs.