

VALIDATION COURT, GISBORNE.  
TIFFEN'S CASE.—JUDGMENT NO.

[Before His Honour Judge Barton.—Reprinted from the *Poverty Bay Herald*, Tuesday, 28th March, 1893.]

On the opening of the Validation Court at Gisborne yesterday morning by His Honour Judge Barton, Mr. W. D. Lysnar, solicitor, asked the Judge whether, in cases that were coming before the Court, he would accept copies of the evidence already taken before Mr. Booth when acting as Frauds Commissioner as being evidence sufficient for the Validation Court, and whether he would accept the certificate of Mr. Commissioner Booth as proof that the transaction was fair and square.

Judge Barton: On Thursday I said something respecting the evidence which ought to be brought before this Validation Court. I have since gone over the Act, and can now say that it imposes upon me the necessity of taking down the evidence of the witnesses in writing. That written evidence has to be signed by each witness and countersigned by me as Validation Judge, and attached to my certificate for consideration by Parliament. Whatever doubts may be entertained as to the general construction of this Act, two things appear very plainly by it. The first is that the Court must satisfy itself by witnesses examined before itself that the transaction is fair and square, and that the consideration to the Native vendors has been fully given. The other is that the Court shall not refuse to validate any honest and straightforward transaction by reason of technical defects. The intention of the Legislature with respect to these two matters I think perfectly clear, and Parliament has retained the whip-hand by compelling the Judge not only to send in the certificate expressing his opinion, but the whole evidence on which that certificate is based, attested by the signatures of the witnesses themselves, so that the grounds on which the Judge gave the certificate can be tested.

I do not know whether the other Judges of the Native Land Court—all of whom without any exception have been appointed special validators under this Act—take the same view of the purpose of the Legislature as that which I have just expressed, but all parties coming before me must make up their minds to a full investigation, and giving in evidence such testimony of living witnesses as will justify the Court in brushing technicalities out of the way of a transaction shown to be honest and straightforward.

This showing of the *bona fides* of the transactions, being the substance lying at the root of the statute, it appears to me that the Court is not permitted to take the statement of any Frauds Commissioner as the foundation of its certificate, and it also appears to me that I and my Assessor are bound to fully investigate the *bona fides* of every transaction for ourselves, and satisfy ourselves that it is *bona fide*; and if Parliament gives effect to our certificate it must be on the faith that we have so satisfied ourselves. The impropriety of our acting on conclusions already arrived at by a Frauds Commissioner may be tested very easily by assuming for a moment that my certificate might run thus: "Mr. Commissioner Booth has already investigated the matter in question as Frauds Commissioner, and has certified to my Court that the transaction was not shown to him to be fraudulent, and therefore on the faith of his negative certificate I now certify positively to Parliament that no fraud exists." Any member of Parliament reading such a certificate as that would see, and would probably say in debate, that that certificate was a farce, and that we had turned the Validation Act into a sham. Yet this is what it is proposed we should do when I am asked to accept the certificate of a Frauds Commissioner's Court, and base my positive certificate on his merely negative finding; and this in the face of the Frauds Commission statutes themselves, which expressly provide that the Trust Commissioner's certificate is not to be treated as proof in other Courts that any transaction was therefore fair and straightforward because it had passed successfully though that inquiry.

The *Canterbury Times*, in a recent paragraph respecting the Native Land Court, used the following pungent expressions: "This is the first time the operations of the Native Land Court have been brought under the shadow of justice. That no doubt accounts for the enormous amount of injustice perpetrated by that Court beyond the conception of any observer of the doings of modern Courts of law. We may reasonably doubt whether the worst Courts of mediæval times have ever perpetrated a tithe of the injustice done in the Native Land Courts."

Now, it is clear that the determination of the Legislature is that the proceedings of the Validation Court shall not be subject to any such sweeping censure. It intends that parties coming before the Court for validation of their now invalid transactions must show, by the class of evidence usual in such cases in other Courts of Justice, that their transactions have been honest and straight, and that those who seek to avail themselves of the advantages of this Act shall not avoid compliance with the conditions under which the advantages are offered.

As to technicalities, those who are familiar with the proceedings of the Native Land Court in this district under my presidency are well aware that no man coming to this Validation Court with an honest straightforward case has any reason to fear that I will allow his rights to be sacrificed to technicalities. Indeed, it appears to me that the Legislature has embodied in this Act the same hatred of rotten technicalities that I myself have so frequently expressed.

With regard to the other branch of inquiry, *i.e.*, whether the transaction is free from fraud, my endeavour will be that if any certificate of mine should unfortunately become the subject of debate by Parliament, no member shall be able to say that this Validation Court had acted like one of the mediæval Courts to which the *Canterbury Times* has compared us, and that, at all events, if any swindling transaction should succeed in passing undiscovered through the Court, it will not be for want of endeavour on our parts to carry out the clearly-expressed intention of the Legislature, that we should satisfy ourselves of the *bona fides* of every transaction brought before us by evidence given before us, according to the recognised rules of evidence in English Courts of law. Therefore, we cannot accept as satisfactory evidence in this Court mere notes of the translation of unsigned evidence taken before a Frauds Commissioner. Every witness, if his evidence be obtainable, must come here and give his evidence and sign it. The Court will, of course, accept