

secondary evidence in instances where the living witness is not available, and when such evidence would be legally receivable in English Courts; but the profession must understand that when the primary evidence is fairly obtainable the Court will look upon its suppression, and the tendering of mere secondary evidence, as being in itself an indication that the transaction is unable to bear full light. Purchasers claiming the benefit of this Act must show the fairness of their transactions. If they fail to show that, they fail to comply with the condition on which Parliament allows breaches of former statutes to be ignored in their favour.

[By His Honour Judge Barton.—Reprinted from the *Poverty Bay Herald*, April 20th and 21st, 1893.]

On last Monday, April 17th, Mr. Day, counsel for the Natives, requested that Mr. W. L. Rees, M.H.R., might be allowed to address the Court at that stage on the question of jurisdiction. Mr. Day said that this question was of importance, in cases like Mr. Tiffen's, throughout the district; and as a decision if now given in this case would guide the profession and their clients as to the bringing of similar cases before the Court, he hoped Mr. Rees would be heard. If Mr. Rees's contention should be sustained, it would save much expense to have the question decided on an interlocutory judgment.

Mr. Lysnar, for Mr. Tiffen, said he had no objection to Mr. Rees addressing the Court at this stage, though he should under any circumstances insist on his client's right to have the certificate sent to Parliament.

Mr. Rees then commenced his argument, which lasted all day. At its conclusion Mr. Lysnar declined to reply, stating his willingness to leave it to the Court to adopt whatever course it deemed best suited to the public interest. The proposal of Mr. Rees to have a case stated for the Supreme Court he was not willing should be adopted, as it would be an acknowledgment of the right of the Supreme Court to interfere between this Court and the High Court of Parliament. Let this Court (said Mr. Lysnar) give its decision, and then each party will be at liberty to take such steps as he may think proper to test that decision.

As the judgment of the Court deals with all the arguments urged by Mr. Rees on the main questions he raised, it is unnecessary to recapitulate them; but Mr. Rees desired particularly to state that he did not seek a decision now on minor points affecting only Mr. Tiffen's particular facts, but a broader decision upon the applicability of this validation statute to any case of violation of the Act of 1873. He had no wish to say that Mr. Tiffen's case was not a proper one for relief under some future Validation Act. He only desired to raise the question whether he could have relief under the present validation statute. In Parliament he (Mr. Rees) had urged the insufficiency of this statute to meet the wants of the country, and now he desired to bring that matter to the test of judicial decision.

The answer made to him by the Government majority was that this Act should be passed for what it was worth, and afterwards Parliament could see by the action of the Courts whether it was workable or not. This Court (said Mr. Rees) is now starting into action, and he had come to argue before it because the presiding Judge combines practical experience as a Land Court Judge with ability to deal with technical legal questions quite equal to that of any Judge now on the Supreme Court bench.

The decision of this Court (said Mr. Rees) will carry weight with Parliament, and, also, it can be further tested before the Supreme Court and Court of Appeal. He would suggest that Mr. Lysnar should agree to step at once into the Appeal Court with the decision now to be given, and thus save delay in the settlement of a question so important to have decided before the meeting of Parliament. He urged that the President of this Court can state a case or give a special judgment like a special report to Parliament without waiting for conclusion of Mr. Lysnar's cases.

These courses could none of them injure Mr. Tiffen; whereas, if the Court carries on Tiffen's case and exceeds its jurisdiction, and does acts that cannot be recalled, Mr. Tiffen and others may find disastrous consequences resulting to them.

#### *Judgment of the Court.*

His Honor Judge Barton delivered judgment as follows: In accordance with the request made to me from the Bar, I now proceed to give judgment upon the question whether this Validation Court, sitting under the Act of 1892, has jurisdiction to entertain Mr. Tiffen's application for a certificate in respect of purchases in Puhatikotiko No. 1, that being the first of Mr. Tiffen's cases in the five divisions of this block.

I should have much preferred to wait until the close of Mr. Tiffen's case, because many points arise in the different purchases which have each some bearing upon this jurisdiction question, and would illustrate by the living example the proper construction to be put on the words of the statute, but I am unable to say when Mr. Tiffen's case will close. The Act directs that the land recommended to be given to the applicant should be described in the certificate, and that a partition shall take place "forthwith" to enable that to be done. But a partition takes time. It cannot be made behind the backs of the owners who have not sold, and "forthwith" must mean after reasonable notice to them to appear and defend their rights. The definition of the purchased land being made a necessary ingredient in the certificate causes much delay; the inquiry needed for the validation of the purchases can be held without defining the locality of the shares, and the purchaser after the validation of his title by Parliament could come for a partition to the ordinary Land Court as others do, and his certificate need not have been delayed by such requirement. Contests on partition frequently consume much time, and therefore the partition in Mr. Tiffen's case may happen to be a long one. The requirements of the statute, however, must be complied with, and the certificate must wait until after partition, although the actual work needed for validation is now almost completed.