

NATIVE APPELLATE COURT.—JULY, 1907.

(Before Judge SETH-SMITH and Judge MACCORMICK.)

Judgment.

THIS is an appeal from the decision of the Native Land Court dated the 24th day of August, 1906, refusing probate of the will of Wi Matua, deceased.

The will bears date of the 28th day of February, 1903. It is written in English, with no Maori translation indorsed or annexed, and purports to have been signed by the deceased in the presence of A. R. Holdship, solicitor, and T. C. Jones, licensed Native interpreter. The attestation clause, in addition to the usual statement as to compliance with the formalities prescribed by the Wills Act, &c., further states that the will was explained in Maori to the testator before he signed it, and that he appeared to understand it. The will contains bequests and devises to the testator's wife, Erina Heremia, *alias* Kino, followed by devises of certain specific lands to other persons, and finally a devise of the testator's interest in Whawhakanga Block to Charles William Reardon, a European, who is also appointed one of the executors. The devise to Reardon is subject to a condition that he shall, within twelve months from granting of probate of the will, pay all the testator's debts. There is no residuary devise, but it does not appear that the testator left any property not dealt with under the will.

The case was twice before the Native Land Court. Motion for probate in solemn form was heard in 1903 by Butler, J., and Te Aohau Nikitini, Assessor. Evidence was taken and decision reserved, but the Judge died before the decision was given. The case was reheard by Palmer, J. (subsequently C.J.), and the same Assessor, and on the date already mentioned judgment was given, refusing probate. The Court held that the circumstances attendant upon the execution of the will were such as to cast upon it the suspicion that it was not the last will of a free and capable testator, the onus of removing which suspicion lay upon the propounders of the will; and, further, "with a great deal of hesitation," that the evidence adduced was hardly sufficient to remove that suspicion.

The following facts seem to be established by the evidence: Wi Matua was a very old man, probably not less than eighty years of age, whose permanent residence was at Porangahau, Hawke's Bay District. He had been a leading man among his people, taking a prominent part in any dealings with their lands. In his later years he had become a heavy drinker, and suffered so much from rheumatism as to be practically a cripple. Some two or three years before the execution of the alleged will he, being then a childless widower, married the woman Erina Heremia, or Kino, who belonged to Wanganui. This woman, on her own showing, was an absolute slave to drink. Reardon, who is a surveyor, became acquainted with Wi Matua while engaged in his professional duties at or near Porangahau, and formed a great friendship with him. Wi Matua employed Reardon professionally, and consulted him at times on business matters generally. Reardon at various times paid small attentions to Wi Matua, and supplied him with food, cigarettes, and beer. It is deposed by two witnesses that beer was supplied, and Reardon does not expressly deny it. But it is not shown that any inordinate quantity was supplied.

About the beginning of January, 1903, some one proposed to Wi Matua that he should go to Waitotara. Reardon says Kino first suggested this; Kino says it was Reardon. At any rate, Reardon supported the idea by suggesting that Wi should undergo treatment by a Maori herbalist at Waitotara, with a view to obtaining relief from his rheumatism. Wi decided to go. Some of his relatives and others of his people endeavoured to persuade him not to go, but without success. Then some attempt was made to get him to make a will before going. He was spoken to directly on the subject, and Reardon was also asked to use his influence in the matter. Wi did not comply with the request, but promised to think over the matter at Waitotara. According to Reardon's own evidence, when he mentioned the matter to Wi, the latter said, "There would be too much trouble. Wait until you and I get to Waitotara." It is a fair inference to draw from this remark that Wi intended, at any rate, to consult Reardon with regard to his will. The Natives manifestly regarded Reardon as having then great influence over Wi Matua, or they would not have approached the former in regard to the will. There does not seem to have been any idea among them that Wi was in any way mentally deficient. In fact, one witness in opposition to the will, Rupuha te Hianga, expressly says, "Wi Matua was clear in his mind when he went to Waitotara." The objections to the departure seem to have been on account of his physical condition.

Wi departed for Waitotara on the 20th January, 1903, accompanied by his wife and a native, Kawhena, as his body-servant. Reardon arranged for the journey, and accompanied the party as far as Palmerston. He also arranged for their reception on arrival at Waitotara. The woman Kino had lived at Waitotara with her first husband, and had an adopted daughter, Turua, still living there. Reardon telegraphed to Turua to meet the party and arrange for their accommodation. Wi and party reached Waitotara about the 22nd or 23rd January, 1903, Reardon arriving there next day. Wi, with his wife and servant, stayed first in a settlement a short distance from Waitotara Township, in a house belonging to Kahukaka, a friend of Kino.

After staying there some weeks the party removed to a house in Waitotara Township. Reardon arranged this removal, and also arranged with a storekeeper and a hotelkeeper to supply the household with stores and liquor on Wi Matua's behalf. It is said that the instructions as to liquor were that beer and lemonade only were to be supplied for Wi Matua, and whisky for Kino. This may have been so, but all the liquor went to the one house, and no one could possibly say that any discrimination was observed in the consumption of it. There can be no doubt that on one occasion, at any rate, prior to the execution of the will, Wi Matua was, to use Reardon's own expression, "very much on the wine"—that is, had been drinking to excess. The native Kahu-