

[*Extract from Te Kaha Minute-book 5, Folio 265.*]

6th July, 1922.—H. CARR, Commissioner.

(On adjournment from Opotiki.)

WILL OF TAKIMOANA.

Paretio Wi Tupaea, applicant. *H. Poananga* for applicant. *Mr. Ford* opposing on behalf of next-of-kin.

WILLIAM SYMOND SAUNDERS (sworn): School-teacher, Raukokore, sixteen years. Know Europeans and Maoris well. Remember witnessing will of Takimoana. Mr. Allison was the other witness. He was a much older identity than I; lived near me. That is my signature on will produced. Wrote date "6/4/20" after my signature. Mr. Allison, a J.P. and Postmaster, told me that day that he had been sent for in connection with Takimoana's will. He also said that Takimoana had said that she wished me to accompany him to the house. It was the first I knew of the old lady's illness. But I first learned that Mr. Rutledge had been attending her for some time. About two hours later Mr. Allison called at my house, and we went together to Takimoana's house. The old lady was lying on a bed near the fire, and Paretio was doing the housework. Mr. Allison spoke to Takimoana in Maori. I do not understand Maori, and thought that he was passing a joke with her. She replied. Mr. Allison said in English, "She will soon be all right." Paretio then presented will. Mr. Allison looked at it, then passed it to me. I could not read it, as it was typed in Maori. Will produced appears to be the document. The old lady was again spoken to; she got up on her elbow, reached out her right hand, touched the pen while some one wrote her name. I think, but not certain, that it was Mr. Allison. Then Mr. Allison made a cross, wrote above it "her mark" and his own initials. As far as I can remember that was all. When we left the house Mr. Allison remarked that he thought the old lady would soon be well again. I saw her touch the pen. I signed my name in her presence. Mr. Allison signed his name in her presence also. I also signed in Mr. Allison's presence and he in mine. Should say Takimoana's mind was normal; would not have signed if her mind was otherwise. Never heard that the state of her mind was questioned until much later, from Natives. I had no reason to think otherwise than that she was sane and knew what she was doing. Prior to signing of will there was a conversation between Mr. Allison and testator.

*Cross-examined by Mr. Ford.*] I do not know what the conversation was. Formed my opinion as to testator's mind from her actions. The only other person in room was a child of eight years, also Paretio and the three of us. Do not know who sent for Mr. Allison; I thought it was to make out a will. Do not know who prepared will. Do not know whether it was explained to Takimoana. As far as I can remember it was Mr. Allison who signed Takimoana's will. Cannot swear to it. Cannot swear that Takimoana understood contents of will before she signed.

JOHN H. D. RUTLEDGE (sworn): Sheep-farmer, Orete, for thirteen years. Knew Takimoana; also European and Maori neighbours. I had been to see her during her illness. I remember giving Takimoana a will; saw her once or twice afterwards. Saw her mind was perfectly normal. I asked her where her pain was and she pointed to her side. I felt pulse. Said nothing further, as I did not wish to disturb her. Gave instructions to Paretio. She understood my question. Her reply was rational.

*Cross-examined by Mr. Ford.*] Taki appeared to be over seventy-five years. Hers was a bodily sickness. Tendered her about three weeks. Consider she died of heart trouble. Appeared perfectly normal up to last. Do not understand Maori well. Do not think she contracted influenza before she died.

*Re-examined by Mr. Poananga.*] My knowledge of Maori is sufficient to make myself understood in Maori.

PARETIO WI TUPAEA (sworn): I am a foster-child of Takimoana. Adopted since a child. Takimoana made the will in my favour because I was the only one who looked after her. I used to plough and cultivate for her because no one else would do it. Even when Tiweka's son returned from school he would do nothing even when Takimoana asked him to do it. He said he wouldn't stop. He went back to school. Takimoana said if he wouldn't stop she would not recognize him. Takimoana gave instructions to have will prepared. Takimoana told me to find a good person to draw up the will. I said I knew of no other persons besides lawyers who were capable of making wills. After that I took ill and went to Gisborne to attend Dr. Scott. Takimoana told her to go to Dr. Scott. Mr. Rutledge also advised me to go to Dr. Scott. While in Gisborne I went to Nolan and Skeet; they received instructions from me to prepare the will. When I got the will Nolan and Skeet gave me instructions as to signing will, and the necessary witnesses—J.P., schoolmaster, licensed interpreter, and minister. On my return I gave the will to Takimoana and told her that it was prepared in accordance with her instructions; that all her belongings and lands were left to me. The will produced is the will I refer to. Takimoana said that was what she desired. Takimoana kept the will. She can read a book. She read the will and said that it was what she wished. I was present when the will was signed. I understood what conversation took place between Allison and Takimoana. Mr. Allison asked Takimoana whether the will was hers, and if she understood the will. She told Mr. Allison that it was in consideration of what I had done in looking after her. Prior to that I got the will out of Takimoana's box. She told me to get the will. The box was alongside of her. Mrs. Brown was not in the room. No relative of Takimoana's was present for a month prior to the death. She died 15th April, 1920. I never at any time asked her to make a will. It was of her own volition.

*Cross-examined by Mr. Ford.*] I am a *tamaiti whangai*—not registered. Perhaps I would not be entitled to succeed except for the will. Deceased was a distant aunt of mine. Do not know deceased's