

*Cross-examined by Mr. Poananga.*] I am a married woman. One of my husbands named Apiata. We all lived same pa. Not in same house. Takimoana also married and lived with her husband. I know Paratene, the husband of Takimoana. He was a religious man—could read Bible. If he had instructed her I would have seen him. I saw her occasionally.

*Re-examined by Mr. Ford.*] I am prepared to swear that Takimoana could not read.

MIHI TARENA (called by Mr. Ford—sworn): Live Raukokore. Wife of D. Sterling. Have known Takimoana since I was a child—about thirty or forty years. Have lived with Takimoana in her house periodically. I have never seen her read or write. She could not read a book. Do not know how old she was. Do not know anything about this will. Remember the time Takimoana died.

*Cross-examined by Mr. Poananga.*] Do not know whether Takimoana has any children. She had no children of her own. She never boasted of her ability to read. She did not know how to read or write in matters affecting land. Tiweka used to do the writing. She was ignorant. Paratene knew how to read and write. I cannot say if Paratene taught her. At church service she never read the prayer-book.

TIWEKA ANARU (called by Mr. Ford—sworn): Live Rotorua. Civil servant. Used to live Orete and Raukokore. Takimoana reared me. I was born 1874. She took me from birth. Lived with her up to 1906. I never saw her read a book. She did not know how to read or write. In 1883 I went to college. I returned to her on my vacation. In 1893 I came back and lived with her to 1906, and lived as an adopted child. There were four of us adopted. I was the first. When I returned from school, Paretio was then adopted. When my son Karauri was born he was taken by Takimoana; she gave him that name after her brother. When Karauri grew old enough she sent him to Te Aute, and kept him there. During Karauri's absence at school Te Miro was adopted. Paretio and Te Miro continued to live with testatrix up to time of death. At Orete we all lived together in one house. She could not read the Bible or any other book. Paratene used to read the prayers. I have known Mr. Allison for about thirty years. He was a great friend of mine. I know that he did not know the Maori language. He did not know enough to explain Takimoana's will. He could not read Maori.

*Cross-examined by Mr. Poananga.*] My wife does not speak English, and I have not troubled to teach her. Paratene died two years before Takimoana. There was a possibility of Paratene teaching his wife.

MR. FORD addressed the Court.

MR. POANANGA addressed the Court.

Decision reserved.

#### TAKIMOANA (DECEASED)—RESERVED DECISION.

(Delivered Te Kaha, 7th July, 1922.)

The testatrix made her last will, probate of which is not applied for, on the 6th April, 1920. The testatrix died on the 15th April, 1920, suffering from heart trouble.

The will is in Maori, and is attested by competent witnesses under section 134 of the Native Land Act. The testatum clause of the will does not contain the certificate required by subsection (2) of that section—*i.e.* "that one of the competent witnesses satisfied himself that the testatrix understood the effect of the will." This omission does not, under the saving clause of the section, invalidate the will, but the witnesses to the will have to satisfy the Court that they satisfied themselves that the testatrix understood the will.

Mr. W. S. Saunders, one of the witnesses, says in evidence that he had no knowledge of the Maori language. It is admitted that the testatrix could not speak English, and Mr. Saunders could not therefore, and did not, satisfy himself that the testatrix understood the effect of her will. He does not even know whether Takimoana was aware that the document she was signing was her will.

Mr. W. Allison, senior (the other witness), unfortunately died early in the year. Mr. Weihana Delamere and Mr. W. Allison, junior, son of the deceased witness, both testify that the late Mr. W. Allison's knowledge of the Maori language was nil, or at the most a jargon, sufficient only for store purposes trading with Maoris who had some knowledge of English.

The Court is satisfied that Mr. Allison could not have explained the terms of the will to Takimoana, and there is Paretio's evidence to show that the will was not even read over to the testatrix. The propounders therefore do not show that she, Takimoana, knew of her own knowledge, apart from any explanation by the witnesses, what were the contents of the will.

The will is said to have been prepared by Messieurs Nolan and Skeet, solicitors, of Gisborne, admittedly on the instructions of Paretio, the sole beneficiary and executrix named in the will. The will was brought to Takimoana by Paretio, and was kept in a box belonging to deceased, until it was produced by Paretio, on the day of signature.

The Court is satisfied on the evidence that Takimoana could not read or write Maori, and could not therefore have read the will before execution. Paretio says deceased was aware of the contents of the will, and that the will prepared was in accordance with instructions given by deceased to Paretio. Deceased was over seventy-five years of age, and made her will nine days before her death.

The Court is satisfied that the present is a case where, the beneficiary having procured the will to be written, there are suspicious circumstances which make it incumbent on the propounder of the will to remove that suspicion and show there was no undue influence. The Court is of opinion that the propounder of the will has failed to remove that suspicion.