

upon parties who seek to set up an informal will, signed by mark, instead of the usual subscription in full of the testator, obtained from him by one of their own number having a substantial interest in its provisions, and witnessed by two of her relatives; and, in the second place, they held that the evidence of the one witness upon whom he relied was not conclusive, or, at all events, was insufficient *per se* to satisfy the onus attaching to the appellants.

Their Lordships do not think it would serve any useful purpose to examine the evidence in detail. It is, however, necessary to refer to the surrounding circumstances, and to the relations in which the parties stood to each other and to the deceased at the time when the will is said to have been executed by him. As to these facts there is really no material variance in the accounts given by the witnesses on either side.

During the week commencing the 8th April, 1888, there was a large congress of Maori chiefs held at Omaha. Mrs. Donnelly, whose residence, "Crissoge," is a mile and a half distant from Omaha, was requested by Renata to direct, or to aid in directing, his preparations for their hospitable reception; and for ten days before Renata's death the lady seems to have spent a considerable part of each day at Omaha. On Friday, the 6th April, Mrs. Donnelly became seriously alarmed about the state of Renata's health, and sent for Dr. Spencer, who came the following day, and (with the exception of the Sunday) continued to see his patient daily until Friday, the 13th. On the Monday Dr. Spencer communicated to Mrs. Donnelly his apprehension that Renata would not recover, and recommended that, if he had any business affairs to settle, he should be advised to do so at once. On the Wednesday another medical man, Dr. Faulknor, was called in by the respondent, and the result of a consultation was that the doctors differed, Dr. Faulknor taking a favourable view of the patient's symptoms, which ultimately proved to be over-sanguine. After Dr. Faulknor left, Dr. Spencer had a conversation with Mrs. Donnelly and the respondent, when he repeated his opinion that if Renata had any business affairs to settle he ought to be informed that there was no time to lose. The respondent on that occasion made no objection to Renata's being told what Dr. Spencer advised. On the same day Dr. Spencer, who knew nothing about Renata's having previously executed a settlement, and who in the course of his professional avocation appears, naturally enough, to have been occasionally required to prepare a patient's will, had "offered Mrs. Donnelly to make the will if wanted."

The infirmity of Renata and the propriety of his making a testamentary settlement of his affairs became, after the opinion of Dr. Spencer was expressed to Mrs. Donnelly on Monday, the 9th April, a common theme of discussion and conversation not only in the household of the deceased, but among the Maori chiefs then assembled at Omaha. Mrs. Donnelly had evidently a conviction that Renata, if advised that his time for the final disposition of his affairs was short, would, at all events, make a substantial provision in her favour—a conviction probably induced by the fact of their recent reconciliation, and also by her having heard Renata express sentiments hostile to two of the beneficiaries who, with their children, took a share of the fund to be invested under the will of 1887. Accordingly, from Monday until the night of Wednesday Mrs. Donnelly was constant in her endeavours to persuade one or other of the chiefs in congress assembled to approach Renata, to inform him of his hopeless condition, and to advise him of the necessity of making any change in his settlements which he might contemplate, without delay. Whether from feelings of delicacy or other motives, none of the chiefs thus solicited appear to have been willing to undertake the ungracious task of assuring the sick man of the near approach of his dissolution. It is only natural to suppose that the respondent was not specially desirous that Renata should be stirred up to alter or modify the will already made in his favour; but beyond the suggestion that Dr. Faulknor was right, and that Renata's illness was not so deadly as Dr. Spencer supposed, he did nothing to dissuade or prevent any one who chose from acting on the advice given by Dr. Spencer.

Thus far the facts of the case are substantiated by the evidence given on both sides. It now becomes necessary to refer to the circumstances attendant upon the actual execution of the alleged new will, which, so far as direct evidence is concerned, rests upon the testimony of Mrs. Donnelly, and of Te Teira and Te Roera, the subscribing witnesses.

The account given by Mrs. Donnelly is that on Thursday morning, some time between 10 a.m. and 12 noon, she went into Renata's apartment, when she found him in bed, attended by his two wives, of whom one in a little while went to sleep, and the other shortly after followed her example. So early as Tuesday morning Mrs. Donnelly, in the expectation of Renata being informed of his condition, and thereupon resolving to make a new will, provided herself with paper, pen, and ink, which she carried in her pocket in readiness for the emergency. When both his wives had fallen asleep Renata asked her, "Have you made my will?" to which she answered, "No." He said, "Why not?" She said, "Because I was waiting for you to tell me to do it." He said, "Well, do it now." She then said, "What am I to say?" He said, "My will to you and your *teina* [i.e., younger brothers and sisters], and your children." She then wrote the body of the will to Renata's dictation upon one of the sheets of paper which she had in her pocket; and, having done so, proposed to wake up one of the wives to fan him whilst she went out in search of her uncle Te Teira. Renata said, "Never mind." So she went out and found Te Teira at the gate, and, having told him to bring Te Roera with him, returned to Renata's apartment. Te Teira and Te Roera soon arrived, whereupon Renata asked if they had been told why they were sent for, and received an answer in the affirmative. The will was read aloud by Mrs. Donnelly, and Renata asked for a pen but found that he was unable to sign his name owing to physical weakness and an injury to his right hand, which it is proved *aliunde* that he had actually suffered. He then, at her suggestion, made the mark with his own hand, and she afterwards wrote his name on either side of the mark. Renata, addressing Te Teira and Te Roera, said, "Friends, will you come and write your names to my will?" And they accordingly did so, and took their departure. The attesting witnesses gave substantially the same account with Mrs. Donnelly of their being called in, and of the reading and