It has been held by the Supreme Court that land under restriction and customary lands do not pass by will. At present it seems that there is no such thing as customary land. Mr. Lusk referred the Court to section 73 of the Act, but section 33 of the Act of 1896 would seem to be conclusive on the point. It has not been shown in this case that any portion of the estate of Arapeta Karaitiana is restricted; but if any of it should be, then that land by virtue of the decision of the Supreme Court will not pass by will.

The Court grants probate of the will of Arapeta Karaitiana to Angela Elizabeth Karaitiana as executrix and sole legatee.

The Court has satisfied itself not only as to who are the nearest-of-kin, but also that they are wealthy landholders, and do not require any portion of the estate for their support.

Mr. H. B. Lusk and Mr. A. L. D. Fraser for Mrs. Karaitiana.

Mr. D. Scannell for nearest-of-kin.

WILL OF PIRIHI TUTEKOHE, DECEASED.

THE following judgment was delivered by Judge Jones (Native Land Court), at Gisborne, on Monday, 28th March, 1904:—

Pirihi Tutekohi, an aboriginal Native, died on the 10th October, 1903. Three days previously he executed what is alleged to be his last will and testament. By this will he purports to revoke all previous wills; gives his wife his personal property; gives his shares in five Native blocks to his wife and her little grandchild (who lived with them) in equal shares; gives his interests in six other blocks to Henare Ruru; gives to his namesake Pirihi Tutekohi his share in Torehaua Block; gives the Ruangarehu D Block to his trustees to be dealt with as directed by William Douglas Lysnar as he in his sole discretion may direct (which it is claimed amounts to a gift to Mr. Lysnar); and the residue of his lands he gives to his wife. He appoints Mr. Lysnar and Charles Scudamore (son of wife) executors and trustees of the will.

The will was prepared by Mr. Lysnar, one of the beneficiaries under the will, who has acted as the deceased's solicitor for many years, as well as doing him many kindnesses outside his professional services.

The will is opposed on behalf of the successors according to Native custom on the grounds of fraud, duress, and undue influence coupled with the incapacity of the testator. It has, however, been expressly admitted that these successors are already provided for under the 46th section of "The Native Land Court Act, 1894."

When the Native Land Court was given exclusive jurisdiction over wills of deceased Natives, it could have scarcely been anticipated that the Judges of that Court, acting without juries, would be called upon to decide questions of this nature, involving as they do matters of fact and law which have vexed and puzzled our highest tribunals. However, we have been given the responsibility and must accept it, and our superior Courts have told us that in doing so the rules of the Courts of Probate should be by no means relaxed in the case of alleged testamentary papers executed by Maoris.

Viewing the matter in this light, we think that the will of the 7th October has been executed with all the formalities required by law. We further think that at the time of the execution of such will the testator was of sound mind, memory, and understanding. It is true that he was physically weak, so much so that he could not sign his name, but the evidence of the doctors and of the other independent witnesses who saw him on that day or about that time is conclusive that he was capable of making such a will. With regard to the legacies to the widow and child, it having been proved that the will was executed with due solemnity by a person of competent understanding and an apparently free agent in so far as that portion of his will is concerned, the onus of proof of undue influence and other allegations was on those who alleged it. Nothing has been proved that would lead the Court to infer that the widow, or any one on her behalf, forced the making of the will. It may have been contrary to Maori custom to leave the land from his blood relations, but it is quite natural that he should wish to provide for his wife and the child of their adoption, and all the witnesses agree that he did intend to provide at least something for her. We must therefore find that the testator knew and approved of this portion of his will.

When, however, we approach that portion of the will which gives a benefit to the solicitor who prepared it, we find the onus of proof is altogether shifted. The rules in this matter are two, and are succinctly laid down in Barry *v.* Butlin (2 Moore, P.C. 480): "The first, that the *onus probandi* lies in every case on the party propounding a will, and he must satisfy the conscience of the Court that the instrument so propounded is the last will of a free and capable testator. The second is that if a party writes or prepares a will under which he takes a benefit that is a circumstance that ought generally to excite the suspicion of the Court, and calls upon it to be vigilant and jealous in examining the evidence in support of the instrument, in favour of which it ought not to pronounce unless the suspicion is removed and it is judicially satisfied that the paper propounded does express the true will of the deceased." This rule has been acted on by all the Courts, and was referred to with approval by our own Court of Appeal in the Broughton *v.* Donnelly case. In the present case we have a solicitor dealing with an aboriginal Native unversed in pakeha methods, and one of a class who in all Native-land laws are jealously guarded and protected by the State. Had the benefit been small the rule above quoted would not have applied, but in this case the benefit must be held to be a substantial one, inasmuch as it is about the only land mentioned in the will which is not restricted by the Native-land laws. We have evidence that the testator financed upon this block, and, compared with his other lands loaded with their Native title, it forms a substantial portion of his assets. It appears from the evidence that the solicitor had the business with reference to such land in his hands. Money was raised by way of mortgage which the solicitor disbursed. The solicitor collected the rents and paid the interest, accounting