We have carefully compared the evidence adduced to remove such suspicion in the case quoted, with the evidence adduced in Wi Matua's case, to see if on the dicta laid down we could grant probate of Wi Matua's will. After very careful consideration we, with a great deal of hesitation, have decided that the evidence adduced before us is hardly sufficient to remove that suspicion, and that we ought not to grant probate.

JUDGMENT of the NATIVE APPELLATE COURT, delivered at New Plymouth on the 29th day of October, 1906, by H. G. SETH-SMITH, Esq. (President), and C. E. MACCORMICK, Esq. (Judge), in the Matter of the Application of C. N. Rowe for Probate of the Will of Eraia Ngamuka, *alias* Pakirihiri; C. N. ROWE, Appellant.

THIS is an appeal from the decision of the Native Land Court, sitting at New Plymouth on the 29th day of May, 1905, refusing to grant probate of the will of Ngamuka, deceased.

The will in question was executed on the 10th October, 1903, in due form in accordance with the provisions of the Wills Act. The testator died on the 22nd October of the same year. By the terms of the will Rowe is made the executor and sole beneficiary.

The grant of probate is opposed on the following grounds:—

(1.) That the testator was induced to make the will by undue influence.

(2.) That the testator had not a disposing mind.

(3.) That the testator did not know the contents of the will.

(4.) That the witnesses to the testator's signature were the paid agents of the beneficiary.

(5.) That one of the witnesses did not understand the Maori language.

There was another ground brought forward which was very properly abandoned by Mr. Damon on the hearing of the appeal—viz., that the date of execution was erroneously described in the Maori translation as the 10th November instead of the 10th October.

There is no conflict of evidence as to the circumstances under which the will was executed. It is admitted that the solicitor, Mr. Wilson, who prepared the will, received his instructions from Mr. Rowe, and that a Maori translation of the contents was indorsed by Mr. Adams. Messrs. Wilson, Adams, and Rowe then proceeded to the testator's house at Wimi and the will was signed by the testator there, no one else besides these four persons being present. We will consider the evidence as to what took place at that time when dealing in detail with the objections to the will. Taking these objections in order.

(1.) Undue influence: In Wingrove *v.* Wingrove (55 L.J. Prob. 7) Sir James (afterwards Lord) Hannan pointed out the common misconception with regard to the meaning of these words, and told the special jury that influence to be undue must amount to coercion, that it must be shown positively or by reasonable inference that the testator did not exercise his own volition, that he made his will at the dictation of some one else and in contravention of his own wishes. There is, in our opinion, nothing in the present case to suggest that coercion was employed, nor any circumstances from which coercion might reasonably be inferred.

(2.) That the testator had not a disposing mind: On this point the evidence is that testator appeared to be in full possession of his mental faculties at the time when he signed the will. We find nothing to suggest that he was insane or imbecile, and, although there is some evidence that he was addicted to the excessive use of intoxicating liquor, it had not been proved that he had thereby permanently injured his mental faculties to such an extent as to make him incompetent to understand what he was doing, nor that he was drunk at the time he signed the will. We must therefore deal with this case as that of a testator in possession of his mental faculties and acting under no compulsion.

(3.) The testator did not know the contents of the will: On this point we have only the evidence of Mr. Adams, the only person present who had a competent knowledge of the Maori language to enable him to depose to the state of the testator's knowledge. Mr. Adams has sworn that he explained the contents of the will to the testator, who assented to them. If, therefore, we are to reject his testimony we must assume that, although he held an interpreter's license, he was in fact incompetent, or that being competent he fraudulently misrepresented the contents of the will. We should not be justified in either assumption.

(4.) The other points of objection do not call for special comment. Where the general circumstances attending the execution of a will are such as justify a suspicion of *mala fides*, the fact that the witnesses to the execution are paid by the beneficiary would be entitled to considerable weight. In this case the agency of the witnesses seems to be the only suspicious circumstance apart from the general suspicion which of necessity attaches to all wills made by Maoris in favour of Europeans.

We may add that, although we dissent from the final conclusion, we agree with that part of the judgment of the Native Land Court which refers to the suspicions which attach to all wills made by Maoris in favour of Europeans. It would, in our opinion, be advisable for the Legislature to impose restrictions on alienations by wills similar to those which are in force with regard to alienations *inter vivos*, but in the absence of such restrictions we can only apply to Maori wills the same principles which in other Courts are applied to wills of Europeans.

There remains the question whether any successor is entitled to relief under section 46 of "The Native Land Court Act, 1894." The Native Land Court has found that some successors have not sufficient land, but has not determined who they are nor made succession orders in their favour.

The case will therefore be referred back to the Native Land Court with a direction to grant probate of the will to Charles Nicholas Rowe, with such limitation, if any, as may be found necessary in exercise of the power conferred by section 46 of "The Native Land Court Act, 1894."

Order accordingly.

Deposit to be refunded.