kaka was of intemperate habits, on his own showing, and one cannot but conclude that Wi Matua, admittedly given to drink, and with persons like Kino and Kahukaka for his constant companions, would frequently be the worse for liquor.

A very few days after the arrival at Waitotara the question of Wi Matua's will became the discussion between himself and Reardon. The latter says that he then first became aware that Wi intended to make him a beneficiary. Reardon consulted his solicitor as to preparation of the will, and was properly told that Wi Matua ought to have a solicitor of his own. The date of this interview we are able, from the evidence of Reardon and Holdship, to fix as not later than the first week in February. Reardon subsequently met Holdship at Aramoho, and asked him to prepare Wi Matua's will. It is evident he did not explain the circumstances fully to Mr. Holdship, or make it clear to the latter that he was to act as Wi Matua's legal adviser. Holdship could not attend to the matter then, but subsequently, on receipt of a telegram from Reardon, he went to Waitotara on the 27th February, 1903, accompanied by Mr. Jones as interpreter. That evening, Jones and Reardon, without Holdship, went to Wi Matua's house, and the former subsequently brought to Mr. Holdship certain memoranda, partly in Maori and partly in English, as being the instructions of Wi Matua for his will. Reardon admits that he was present when these instructions were taken down by Jones. From these memoranda Holdship prepared a will, Jones assisting him, and Reardon also taking some part in discussion of the exact terms. It is not known what became of the memoranda of instructions subsequently. Next morning, the 28th February, 1903, Holdship, Jones, and Reardon went to Wi Matua's house, where the will was translated to the deceased by Jones. Wi Matua then signed the will, Holdship and Jones attesting it. Reardon was present throughout the proceedings, as also were Kino and Kahukaka. Holdship knew nothing of Maori. He asked Jones to formally put the question in Maori to Wi Matua whether he understood what he was doing. Jones spoke to Wi Matua in Maori, and the latter nodded his head affirmatively in reply. Holdship and Jones then left, the former taking the will with him, as his costs were not paid. It does not appear whether Jones was paid, or, if so, by whom. Jones, unfortunately, died before the application for probate first came before the Court, which was thus deprived of the evidence of a most material witness. He, however, was a man well known and of good repute, and we take it for granted that he would not have signed the attestation clause to the will unless he had read over the will to Wi Matua, and felt satisfied that the latter understood it. Further than that, of course, his duty did not go. It is clear from the subordinate and perfunctory part taken by Mr. Holdship in the proceedings attendant upon the obtaining instructions for and the execution of the will that he did not in any way regard himself as an independent adviser of Wi Matua.

Wi lived between six and seven months after the execution of the will, remaining at Waitotara, or in its neighbourhood, during the whole period. He eventually died there on the 17th September, 1903. During his residence there he appears to have leant greatly on Reardon. He continually sent for the latter, referred to him in all matters of importance, and many others that were not important. Reardon himself testifies to this. Wi permitted Reardon to receive and open the former's letters, and to receive and expend on Wi's account, but largely at Reardon's discretion, considerable sums of money. At one period Wi desired to return to Porangahau, and went as far as to telegraph to one of his relatives to come for him. No response was made to the telegram, and Wi was persuaded by Reardon not to go, the explanation given by the latter being that he advised Wi to wait for warmer weather.

The above facts are clearly proved in evidence, and are, indeed, practically undisputed. Indubitably they bring this case within the rules laid down in the leading case of Barry *v.* Butlin (2 Moore, P.C. 480), which rules have been approved and followed in all subsequent cases of the kind. Those rules are,—

(1.) The *onus probandi* lies in every case upon 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.

(2.) 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 produced does express the true will of the deceased. In Tyrrell *v.* Painton (1894, Prob. Division, 157) Lindley, L.J., said, with regard to the second rule above quoted, that it "extends to all cases in which circumstances exist which excite the suspicion of the Court, and wherever such circumstances exist, and whatever their nature, it is for those who propound the will to remove such suspicion, and to prove affirmatively that the testator knew and approved of the contents of the document, and it is only where this is done that the onus is thrown on those who oppose the will of proving fraud or undue influence, or whatever else they rely on to displace the case made for proving the will." Many other authorities have been cited to us, but the principles to be deduced from them are the same as those we have referred to. Several of them, however, show that, where there are other circumstances exciting suspicion, the fact of a beneficiary under a will being present at the execution greatly strengthens such suspicion.

In the present case, the prominent part taken by Reardon in procuring the preparation and execution of the instrument, his failure to insure independent legal advice for Wi Matua, and his presence when the instructions were taken and when the instrument was executed, are grounds for grave suspicion, especially when regard is had to the age, physical condition, habits, and general surroundings of Wi Matua at the time, and the burden of removing such suspicion clearly lies upon the propounders of the will. It is, therefore, necessary to carefully consider whether the evidence is in fact sufficient to discharge that burden. The witnesses called in support of the will were Holdship, Reardon, Manson, and Curry, Europeans; and Kino, Kahukaka, Turua, Wi Ngapaki, and Te Waka Taparuru, Maoris. The position of Mr. Holdship has already been