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(10)

In the Supreme Court  
of the Colony of Victoria.  
Chancery Jurisdiction

In the Will

of  
Frederick Nestle

formerly of No. 191 Colman's  
Street Sydney City State of New South  
Wales in the Colony of  
Victoria deceased

Affidavit of Executors



Gilbert Heales  
Proctor  
117 Elizabeth St  
Melb

In the Supreme Court  
of the Colony of Victoria } In its Probate Jurisdiction

In the Will of Thoebe Nisbet  
formerly of Number 191 Johnston Street  
Fitzroy but late of Number 45 Auburn  
Parade Upper Hawthorn in the Colony of  
Victoria Widow deceased

We Charles Frederic Heales of Number 117 Elizabeth Street Melbourne in the Colony of Victoria Solicitor and Charles M Landlish in the said Will called Charles M Landlish of Bruce Street Kensington in the said Colony <sup>do hereby</sup> make oath and say:

1. - That we are seeking to obtain Probate of the Will of the abovenamed Thoebe Nisbet deceased.
2. - That the said deceased died on the thirteenth day of April One thousand eight hundred and ninety eight at Number 45 Auburn Parade Upper Hawthorn aforesaid.
3. - That the said deceased left a Will bearing date the sixteenth day of January One thousand eight hundred and ninety four which is as we verily believe the Last Will and Testament of the said deceased and which is unrevoked as we verily believe.
4. - That by her said Will the said Testatrix appointed us these Deponents Executors thereof.
5. - That the paper writing hereunto annexed marked "A" is the said Last Will of the said deceased as we verily believe.
6. - The said Will was executed in the presence of Edward Maddox Gibbs of Number 117 Elizabeth Street Melbourne aforesaid Solicitor and Bertha Burns of Number 69 Landell Street Fitzroy Widow.
7. - That the said deceased left real estate in the Colony

of Victoria not exceeding in value the sum of  
One thousand one hundred and fifteen pounds and  
personal estate in the said Colony not exceeding in  
value the sum of four thousand two hundred and  
six pounds <sup>three hundred and twenty one pounds</sup> making together the sum of five thousand <sup>and</sup>

8. - That one A Cartledge claims a Deposit  
Receipt Numbered 67759 for One thousand pounds  
in the Union Bank of Australia Limited which he  
states was given to him by the said deceased on the  
Eighth day of April One thousand eight hundred and  
ninety eight at her residence as a present which claim  
we these deponents do not admit

9. - That to the best of our knowledge information  
and belief the said deceased did not within the  
space of two years preceding the date of her death  
convey or otherwise dispose of for other than adequate  
valuable consideration any real or personal property  
of which she was seized or possessed other than the  
above mentioned Deposit Receipt as alleged.

10. - That the said deceased was not at the time  
of her death possessed of or entitled to any real or  
personal property outside the Colony of Victoria.

Sworn at Melbourne in the Colony of Victoria this 38<sup>th</sup> day  
of April One thousand eight  
hundred and ninety eight by  
both of the above named Deponents

R. J. Heals.  
B. M. Chandler.

Commissioner of the Supreme Court of the  
Colony of Victoria for taking Affidavits.

*[Faint, mostly illegible handwriting at the top of the page]*

*Sibbs & Heales  
Solicitors  
117 Elizabeth St*



*Will  
of  
Mrs. Nisbet*

*[Faint handwriting in the middle section of the page]*

*B.  
Coakledge & Heales  
solicitors  
11/11/98  
R*

*[Faint handwriting in the lower middle section of the page]*

*[Faint handwriting at the bottom of the page]*

This is the paper writing marked A referred to in the annexed Affidavit of Charles Frederic Heales and Charles McLandrick sworn to this twenty eighth day of April one thousand eight hundred and ninety eight Before me

*[Signature]*  
A Commissioner of the Supreme Court of the Colony of Victoria for taking affidavits

This is the Last Will and Testament of me Phoebe Nisbet of No. 191 Johnston Street Fitzroy in the Colony of Victoria widow. I hereby nominate constitute and appoint Charles Frederic Heales of the firm of Messrs Gibbs and Heales of No. 117 Elizabeth Street in the city of Melbourne in the said Colony Solicitor and Charles McKaulish of Bruce Street Kensington in the said Colony Carrier the executors and trustees of this my will and who are hereinafter designated my said trustees Whereas by a Settlement bearing date the 5<sup>th</sup> day of May 1865 made between David Nisbet therein described of the first part myself of the second part and William Oliver and Thomas Woods both therein described of the third part and registered Book 149 No. 978 the land and premises therein described were inter alia held in trust for such person or persons as I should by my last will and testament in writing duly executed direct limit and appoint And in exercise of such powers contained in the now reciting indenture I now do hereby direct limit and appoint and do also give devise and bequeath all the lands hereditaments and premises described in the said indenture And also all other my said real and personal estate whatsoever and wheresoever unto my said trustees upon trust as soon as conveniently may be after my decease to make sale dispose of and convert into money in such manner as they or he may deem most eligible the whole of my real estate including that mentioned in the hereinbefore and part recited settlement and such parts of my personal estate as shall not consist of money or securities for money and to receive recover and get in the remainders thereof and shall stand possessed of the whole of the proceeds arising from such sale or sales calling in and conversion Upon Trust to divide the same equally between the persons hereinafter mentioned in the colonies of Victoria and New Zealand and the survivor and survivors of them and should there be but one surviving

then the whole shall go to such survivor namely my sister  
Mary Ann Robertson wife of John Robertson of Malvern  
Road Toorak Contractor, my niece Eliza Hume of  
Brunswick widow, Mrs Hambleton wife of John Hambleton  
of Kyneton shoemaker Phoebe Mc Kaulish daughter of  
the said Charles Mc Kaulish of Kensington Carrier all  
the aforegoing are resident in the Colony of Victoria and  
Alexander Mc Kenzie of Dowling Street Dunedin in the  
Colony of New Zealand Presser who is employed at Messrs  
Morris and Seelye, Archie Moorhead Edwin Street  
Darley Caversham Dunedin aforesaid cab proprietor  
And I hereby declare that the said Charles Frederic  
Hales shall be entitled to charge his costs and expenses  
in proving this my will and in winding up my estate in  
the same manner as he might have done had he not been  
a trustee or executor and that the said trustees of this  
my will shall be entitled to receive a commission of  
Four per cent out of the estate for their time and trouble  
in carrying out my last wishes as contained in this my will  
And hereby revoking all former and other wills I declare  
this to be my last will and testament In Witness  
whereof the said Phoebe Nisbet hath hereunto set her  
hand this Sixteenth day of January in the year of our  
Lord One thousand eight hundred and ninety four —

Signed by the said Testator in the  
presence of us both present at the  
same time who at her request in her  
presence and in the presence of each  
other have hereunto subscribed our  
names as attesting witnesses

Phoebe Nisbet

Wm Mc Gibbs Solo. Melbourne.

Betha Bury 69 Condeall Street  
Fitzroy Widow