

Dated 26<sup>th</sup> November 1873

45/96 33/469  
P2/119  
H1-4-10

Will

of

James Robt Fairchild Esq



Vaughan Monte and Seddon

This is the last Will and Testament  
of me James Robert Fairchild of Melbourne in the Colony of Victoria  
Merchant I devise and bequeath all my real and personal estate  
whosoever and wheresoever to which I shall be entitled or over which  
I shall have any disposing power at my death (except estates vested in  
me as Trustee or Mortgagee) unto and to the use of Jesse Fairchild  
of Melbourne aforesaid Gentleman Stephen George Staughton of the  
Territories in the said Colony Settler and John Kane Smyth of  
Melbourne aforesaid Wool Warehouseman their heirs executors and administrators  
respectively Upon Trust that they the said Jesse Fairchild Stephen George  
Staughton and John Kane Smyth or the survivors or survivor of them or  
the heirs executors or administrators respectively of such survivor shall in  
such manner and under such stipulations and upon such terms and  
conditions in all respects as they or he shall think fit sell collect and convert  
into money so much of the same premises as shall not consist of ready  
money or of such investments in securities (whether of the description  
authorized by the trust for investment hereinafter contained or not) as the  
said Trustees or Trustee shall think it desirable to continue with power  
to buy in or rescind or vary any contract for sale and resell without  
liability for loss and shall stand possessed of the moneys to arise from  
such real and personal estate or which shall otherwise form part of  
my general personal estate and also of the securities to be continued as  
aforesaid upon the trusts hereinafter declared concerning the same But  
I give to the Trustees or Trustee for the time being of this my Will full  
power to postpone for such period or respective periods as they or he  
shall in their or his discretion judge expedient for the benefit of the  
persons beneficially interested the sale collection and conversion of the  
whole or any part or parts of my real and personal estate respectively  
I also give to the said Trustees or Trustee full discretionary power  
during the suspension of the sale collection and conversion of the said  
trust estate to manage and order all the affairs thereof respectively as  
regards letting occupation cultivation repairs receipt of rents and all other  
matters and in the execution of this power of management themselves or  
himself to occupy in any manner all or any part or parts of the said  
trust estates And also to let the said premises or any part or parts

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3

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This is the paper writing marked "A" referred to in the Affidavit of Jesse Fairchild  
Stephen George Staughton John Kane Smyth and Emma Fairchild's Petitions regarding same  
made at Melbourne 18th day of March 1857 before me  
Commissioner of the Supreme Court of the Colony  
of Victoria for the Territory of Victoria

Witnesses  
Indicible Name  
J. P. Derham

(1)

J. Fairchild



This clause is not X  
sufficiently explicit -  
My wish is, that whosoever  
has child's interests, the  
property (entailed) belonging  
to my wife, or to her  
by her father, shall be  
excluded from any share  
in my property, except  
it may be the only  
surviving child.

"younger children" and "younger child" and "younger son" in this my  
will it is my intention to exclude from any benefit under this my will  
my child who may become entitled to any benefit under the settlement made  
on my marriage with my wife Emma Australia Fairchild But if my  
child who may at my death be entitled under the settlement as aforesaid  
should be my only child living at the time of my death then I declare that the  
Trustees or Trustee for the time being of this my will shall stand possessed  
of all the trust moneys and securities aforesaid and the interest and  
income thereof in trust for such only child when he or she attain the age of  
twenty five years But in case any daughter of mine who shall be  
contingently entitled to any benefit under this my will shall marry under  
the age of twenty five years then I declare that if the Trustees or Trustee  
for the time being of this my will shall think proper but not otherwise  
such daughter shall upon such marriage acquire an absolutely vested  
interest in the share to which she shall be contingently entitled under  
this my will but nevertheless the said share shall be held by the Trustees  
or Trustee for the time being of this my will upon the trusts hereinafter  
declared concerning the same I direct my said Trustees or Trustee  
themselves or himself to pay or apply such sum as they or he shall in  
their or his discretion think expedient and proper in each year without being  
liable to see to the application thereof for or towards the maintenance  
and education of my children or child who shall be entitled to any benefit  
under this my will until as respects a son he shall attain the age of  
twenty one years or as respects a daughter she shall attain a vested interest  
in her share whether during minority or afterwards And I direct the  
said Trustees or Trustee if they or he shall think fit to pay to each  
younger son of mine who shall attain the age of twenty one years and  
until he shall attain the age of twenty five years such annual sum as  
they or he shall in their or his discretion think expedient and proper out of  
the interest and income of the share to which each such son shall for the  
time being be entitled in expectancy such annual sum to be paid by equal  
quarterly payments the first quarter to commence on the day on which each  
such son shall attain the age of twenty one years And I declare that all  
the surplus of the interest and income not applied or disposed of under the  
aforesaid provisions relating to the allowance to my younger sons or son  
during the suspension of the absolute vesting of their or his shares or share

J. Fairchild

8<sup>th</sup> Dec. 1881

Witnesses  
D. M. M. M.  
M. M. M. M. M. M. M. M.  
C. S. 1881

Witnesses  
J. P. Dehau

(3)

J. Fairchild

as the case may be shall be added to the capital of the shares or respective shares whences the same shall have arisen and be disposed of as part thereof I also empower the said Trustees or Trustee in their or his discretion to apply any part or parts not exceeding in the whole the amount or value of One half \_\_\_\_\_ of the capital of the shares to which each or any younger child of mine shall be entitled in expectancy in or towards the advancement in life or otherwise for the benefit of the same child whether such child shall be a son or daughter or whether under the age of twenty one years or not Provided always that if any of my younger children shall die before me or before he she or they shall have acquired an absolutely vested interest or absolutely vested interests in the said trust premises then and in such case I declare that such child or children of each younger child of mine so dying as shall survive me and attain the age of twenty one years or marry shall take and be entitled to the share in the said trust premises which his her or their parent or parents would have taken if he she or they being sons or a son had survived me and attained the age of twenty five years or being daughters or a daughter had survived me and attained that age or been married And I further declare that it shall be lawful for the Trustees or Trustee for the time being of this my Will at any time or times after my death with the consent in writing of all my children then living who being sons or a son shall have attained the age of twenty five years or being daughters or a daughter shall have attained that age or married instead of selling the same to appropriate and allot all or any part of my property in or towards satisfaction of the shares hereby given in favor of my children or any of such shares And every such appropriation shall take effect from such period and shall be in respect of such sum or upon such estimate of value and in such manner as the said Trustees or Trustee with such consent as aforesaid shall think proper And the property appropriated in or towards satisfaction of any share shall be held by the said Trustees or Trustee and the income thereof applied upon the like trusts and with and subject to the like powers as are hereinbefore declared with respect to the several securities in or upon which such share might have been invested under the trusts hereby declared And every such allotment shall in all respects be effectual and binding upon all persons entitled under this my Will I declare that the Trustees or Trustee for the time being shall hold the share in or to which each or any daughter

Witnesses

Richard M. M. M.  
J. P. Derham

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J. P. Derham

of mine shall acquire an absolutely vested interest under the trusts hereof upon trust to pay the interest and income thereof as and when the same shall become due and not by way of anticipation into the proper hands of my same daughter to be enjoyed by her as an inalienable personal provision free during any coverture and from the control and engagements of her husband and for which income her receipt alone shall be sufficient discharge. And immediately after the death of my same daughter as to as well the capital of her share as the interest and income thereof thenceforth to accrue due for the same in trust for all or any one or more exclusively of the children and issue of the same daughter in such proportions and for such interests and generally in such manner as she whether covert or sole shall by deed or will appoint but no child in whose favor an appointment shall be made shall participate under the trust next hereinafter contained in the unappropriated portion of the said share without bringing the benefit of such appointment into hotchpot. And in default of appointment and subject to any partial appointment in trust for all the children or any the child of my same daughter who either before or after her death being sons or a son attain the age of twenty one years or being daughters or a daughter attain that age or marry and if more than one equally. And in default of such issue then in trust for such persons or person and in such manner in all respects as my same daughter whether covert or sole shall by will appoint. And in default of appointment in trust for the person or persons who at the death of my same daughter shall be of her blood and of kin to her and who under the Statutes for the distribution of intestate estates would be entitled to her personal estate if she were dead a spinster and intestate such persons if more than one to take in the proportions prescribed by the said Statutes. But I empower my same daughter by deed executed either after or in contemplation of marriage or by will to appoint the interest and income to accrue after her death of her said share or any part of such income to and for the life of any husband of the same daughter who shall survive her. I also empower the said Trustee or Trustees to apply all or any part of the interest and income of the share or shares to which each or any infant child or issue of each or any daughter of mine shall be entitled or contingently entitled in possession by virtue of any appointment or appointments or otherwise under the trusts aforesaid in or towards the maintenance and education or otherwise for the benefit of such child or issue. And I direct the said Trustee or Trustees to accumulate

Witnesses,

William J. Mum  
J. P. Derham

(3)

W. J. Mum

by any such investments as are hereinbefore authorized the unapplied & surplus if any of such incomes and declare that the accumulations thereof shall be added as capital to the share or respective shares whence the same shall have arisen And I also empower the said Trustees or Trustee to apply any part or parts not exceeding one moiety of the capital of the share to which each or any child or issue whether under the age of twenty one years or not of each or any daughter of mine shall be entitled as aforesaid in or towards the advancement in life or otherwise for the benefit of such child or issue, but no such application as last aforesaid shall be made during the life of my said daughter without her previous consent in writing nor after her decease to the prejudice of the life interest of any husband in whose favor an appointment shall have been made by her as aforesaid without his like consent And I declare that the provisions for maintenance education and advancement last aforesaid shall equally apply and extend to the expectant or presumptive shares of the children of any son or daughter of mine who shall die in my lifetime or before he she or they shall have acquired an absolutely vested interest in the said trust premises leaving a child or children in manner hereinbefore mentioned until such children shall acquire vested interests or a vested interest in his her or their parents or respective parents shares I declare that it shall be lawful for the Trustees or Trustee for the time being to pay or remit any interest income yearly sum or capital belonging or payable under the trusts hereof to any object or objects being a married woman or married women to such Banker or Agent as she or they shall from time to time appoint or to authorize such Banker or Agent to receive the same for the purposes of remittance or payment as such married woman or married women shall direct and every payment or remittance which shall be made to or through the agency of a Banker or Agent appointed or approved of by such married woman or married women respectively shall be a good discharge to the Trustees or Trustee for the money so paid And I declare that it shall be lawful for the Trustees or Trustee for the time being at any time or times to invest all or any part of the trust monies for the time being subject to the trusts hereof (and for that purpose to convert into money or call in any securities for the time being subject to the same trusts) in the purchase of any freehold lands tenements or hereditaments in England or any of the Australian Colonies with the same powers as the money laid out in the purchase of such hereditaments would then have been subject to if the same had not been so laid out And shall until all such hereditaments

Witnesses

Indira M. M. M.  
J. P. Verhau

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J. P. Verhau

shall be sold pay or apply the rents and profits thereof in the manner in which the interest and income of the trust premises applied in the purchase thereof as aforesaid would have been payable or applicable in case such purchase had not been made And I declare that the powers of management and leasing hereinbefore contained shall extend and be applicable to the purchased hereditaments or the unsold part or parts thereof I declare that it shall be lawful for the Trustees or Trustee for the time being notwithstanding any of the trusts hereinbefore contained to raise any money which shall be requisite to satisfy my debts and funeral and testamentary expenses or necessary for answering or performing all or any of the trusts and powers herein declared or the expenses losses or outlay incurred in or incidental to the execution of the same trusts or any of them by mortgaging (with or without power of sale) or charging my real and personal estate or any part or parts thereof but no mortgagee shall be obliged to ascertain the occurrence or existence of any purpose for which a mortgage or charge is hereinbefore authorised to be made nor to enquire into or take notice of any matter connected with the propriety or regularity of any mortgage or charge I declare that the receipt of the Trustees or Trustee for the time being of this my will for the purchase money of any property hereby directed or authorised to be sold and for any other moneys paid and for any securities transferred to them or him by virtue hereof or in the execution of any of the trusts or powers hereof shall effectually discharge the person or persons paying or transferring the same therefrom and from being bound to see to the application or being answerable for the loss or misapplication thereof Provided always and I hereby declare that if the Trustees hereby constituted or either of them shall die in my lifetime or if they or either of them or any Trustee or Trustees appointed as hereinafter mentioned shall after my death die or desire to be discharged or refuse or become incapable to act then and in every such case it shall be lawful for the surviving or continuing Trustee or Trustee for the time being (and for this purpose every refusing or retiring Trustee shall if willing to act in the execution of this power be considered a continuing Trustee) with the consent of my wife if then living or for the acting executors or executor administrators or administrator of the last surviving or continuing Trustee with the like consent to appoint a new Trustee or new Trustees in the place of the Trustee or Trustees so dying or being absent from the Colony or desiring to be discharged or refusing or becoming incapable to act as aforesaid and upon every or any such appointment as aforesaid the

Witnesses

Richard M. M. M.  
J. D. Dehan.

(4)

J. D. Dehan

number of Trustees may be augmented or reduced and upon every such appointment the trust property shall if and so far as the nature of the property and other circumstances shall require or admit be transferred so that the same may be vested in the Trustees or Trustee for the time being and every Trustee so appointed as aforesaid may as well before as after such transfer of the trust property act or assist in the execution of the trusts and powers of this my will as fully and effectually as if I had hereby constituted him a Trustee. Provided also and I declare that the Trustees for the time being of this my will shall be respectively chargeable only for such monies and securities as they shall respectively actually receive and shall be answerable and accountable only for their own acts receipts neglects and defaults respectively and not for those of each other nor for any loss unless the same shall happen through their own wilful default respectively. And I empower the said Trustees or Trustee for the time being of this my will to reimburse themselves or himself or pay and discharge out of the trust premises all expenses including usual charges and commission incurred in or about the execution of the trusts or powers of this my will. I devise all estates vested in me as Trustee or Mortgagee unto and to the use of the said Jesse Tavichild Stephen George Staughton and John Kane Smyth their heirs and assigns upon the trusts and subject to the equities affecting the same respectively. I appoint the said Jesse Tavichild Stephen George Staughton and John Kane Smyth and my said wife Executors and Executrix of this my will and I authorize the acting Executors or Executor or Executrix for the time being to pay any debts owing by me or claimed as due from me upon any evidence they or he or she shall think sufficient and to accept any security real or personal for any debt or debts owing to me and to allow such time for the payment thereof as to them or him or her shall appear reasonable. I also empower the Trustees or Trustee for the time being in the sale and conversion of the said trust estates to give such credit as they or he shall think expedient. And I hereby appoint my said wife during her life and after her death the said Jesse Tavichild Stephen George Staughton and John Kane Smyth guardians and co-guardians of my infant children during their respective minorities. In witness whereof I have to this my last will and Testament contained in this and the seven preceding pages set my hand this twenty sixth day of November in the year of our Lord one thousand eight hundred and seventy three.

Signed by the Testator James Robert Tavichild as and for his last will and Testament in the presence of us present at the same time who at his request in his presence and in the presence of each other have hereunto subscribed our names as witnesses attesting the same

Witnesses  
Frederick George Moule  
Thomas Plimley Derham

J. D. Derham  
His clerk

J. Tavichild

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In the Supreme Court  
OF THE COLONY OF VICTORIA.

PROBATE JURISDICTION.

IN THE WILL OF *James Robert  
Fairchild* late  
of *Melbourne* in the Colony  
of *Victoria* *Merchant* deceased  
x<sup>o</sup>

*Affidavit of Executors and*



*Duffell Brown  
19 Chancery Lane*

H. Thomas, Law Stationer, 80 Chancery Lane, Melbourne.

In the Supreme Court  
OF THE COLONY OF VICTORIA.

IN ITS PROBATE JURISDICTION.

IN THE WILL OF James Robert Fairchild  
late of Melbourne  
in the Colony of Victoria Merchant  
deceased

We Jesse Fairchild of Melbourne in the Colony of Victoria  
Gentleman Stephen George Staughton of the Werribee in the said Colony Settler  
John Kane Smyth of Melbourne aforesaid Wool Warehouseman and Emma Australia Fairchild  
of Melbourne aforesaid Widow of the above named ~~in the Colony of~~  
Victoria deceased make oath and say—

1. That We are seeking to obtain Probate of the Will of the above named  
James Robert Fairchild deceased.

2. That the said deceased died on the Twenty fifth day of January  
One thousand eight hundred and eighty seven leaving his last Will and Testament bearing  
date the Twenty sixth day of November One thousand eight hundred  
and eighty <sup>seventy three</sup> which is as we believe unrevoked and thereby appointed us the said  
Jesse Fairchild Stephen George Staughton John Kane Smyth  
and Emma Australia Fairchild executors and  
executrix thereof

3. That the paper writing hereunto annexed marked A is the true last Will and Testament  
of the said deceased as we verily believe.

4. That the said Will was executed in the presence of Frederick George Moule  
of Market Street Melbourne Solicitor and Thomas Stanley Derham  
of the same Place clerk to the said Frederick George Moule

5. That the said deceased left property in the Colony of Victoria not exceeding the value  
of Twenty thousand <sup>two</sup> hundred and ~~eighty~~ pounds ~~and no~~ <sup>and no</sup> consisting of personal property of the  
value of and no and real property of the value of

6. That if we obtain Probate we will well and truly collect and administer according  
to law, to the best of our knowledge and ability, the property, lands, and hereditaments, goods,  
chattels, and credits of the said deceased at the time of his death, which at any time after  
shall come to the power or control, hands, or possession of us as his executor or of any  
other person or persons for us that we will make or cause to be made a true and perfect  
inventory of all and singular the property, lands, and hereditaments, goods, chattels and credits  
of the said deceased which shall have come to the hands, possession, or knowledge of us  
or to the hands or possession of any other person or persons for us and the same so  
made will sign with our proper handwriting, and will exhibit and deposit, or cause to be exhibited  
and deposited, the same inventory in the office of the Master-in-Equity within three calendar  
months next ensuing the order granting probate and, further, that we will make or cause  
to be made a true and just account of the administration of the estate which we have undertaken

as to *CU* receipts and disbursements, and as to what portion is retained by *US* and what portion remains uncollected, and the same so made will sign with *CU* proper handwriting, and will exhibit and deposit, or cause to be exhibited and deposited, the same account in the said office of the Master-in-Equity within fifteen calendar months next ensuing the order granting Probate.

Sworn by the said deponents *Jesse Fairchild Stephen George Staughton John Home Smyth and Emma Aethalia Child* at Melbourne in the Colony of Victoria this second day of March. A. D. 1887

SWORN at \_\_\_\_\_ in the Colony  
of Victoria this \_\_\_\_\_ day  
of \_\_\_\_\_ One thousand  
eight hundred and eighty

Before me  
Before me

*J. Fairchild*  
*Stephen G. Staughton*  
*John H. Smyth*  
*J. Fairchild*  
A Commissioner of the Supreme Court of the Colony of Victoria for taking Affidavits