In the Supreme Court
of the Colony of Victoria

In the Probate Jurisdiction

17/285

In the Will of John Curwen Walker late of the Priory Brighton in the Colony of Victoria Esquire deceased

Affidavit of Executor

VICTORIA ONE SHILLING

MASTER IN EQUITY'S OFFICE.
FILED
26 FEB
1878
MELBOURNE.

Randall Mitchell & Nevett
Ballarat

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

In the Will of John Curwen Walker
late of the Priory Brighton near
Melbourne in the Colony of Victoria
Esquire deceased

I Henry Curwen Walker of Burrumbeet in the Colony of Victoria Farmer make oath and say-

1 That John Curwen Walker late of the Priory - Brighton near Melbourne in the Colony of Victoria Esquire departed this life on the twentieth day of January one thousand eight hundred and seventy eight

2 That I believe the annexed paper writing to be the true last Will and Testament of the said John Curwen Walker deceased

3 That by the said Will the said John Curwen Walker devised and bequeathed all his real and personal estate whatsoever or wheresoever of or to which he should at his death be seised possessed or entitled or over which he should at his death have any disposing power unto and to the use of his Wife Anne Louisa Walker her heirs executors administrators and assigns respectively absolutely And after appointing certain Trust funds over which he had a power of appointment as in the said Will is mentioned the said Testator thereby appointed his brother Christian Henry James Walker of Ballarat in the said Colony Accountant and me this deponent Executors of his said Will

4 That the said John Curwen Walker died possessed of property in the said Colony not —

exceeding in value Four thousand pounds which said property consisted of real Estate within the said Colony of the value of Three thousand five hundred pounds and personal estate within the said Colony of the value of Five hundred pounds

Sworn at Ballarat in the Colony of Victoria this twentieth day of February One thousand eight hundred and seventy eight
Before me

Henry W. Watkins

A. W. Mitchell
A Commissioner of the Supreme Court of the Colony of Victoria for taking Affidavits

Dated 285 1870

Will

of

John. C. Walker Esq

Randall Mitchell & Howard
Ballarat

This is the last Will and Testament

of me **John Curwen Walker** formerly of Derwent Park near Hobart Town in the Colony of Tasmania but now of Brighton near Melbourne in the Colony of Victoria Esquire **I devise and bequeath** all my real and personal estate whatsoever or wheresoever of or to which I shall at my death be seised possessed or entitled or over which I shall at my death have any disposing power (except what I otherwise dispose of by this my Will or any Codicil hereto) unto and to the use of my dear Wife Anne Louisa Walker her heirs executors administrators and assigns respectively absolutely **And whereas** by virtue of a certain Indenture or Deed of Settlement bearing date the fifth day of March One thousand eight hundred and sixty six and expressed to be made between me the said John Curwen Walker and Henry Curwen Walker (therein described) of the one part and Thomas Randall (therein described) — Harrie Wood (therein described) and the said Henry Curwen Walker of the other part **After reciting** that under and by virtue of an Indenture dated the twenty fifth day of May One thousand eight hundred and thirty three and expressed to be made between Charles Walker Esquire of the first part me the said John Curwen Walker of the second part and Thomas Le Blanc Esquire and Henry Curwen Esquire of the third part and an Indenture dated the first day of March One thousand eight hundred and sixty six and expressed to be made between the said Henry Curwen Walker of the first part me the said John Curwen Walker of the second part Anne Louisa Walker the wife of me the said John Curwen Walker of the third part Charles Frederick Walker of the fourth part and Richard Nicholson of the fifth part and duly enrolled in the High Court of Chancery and acknowledged by the said Anne Louisa Walker certain messuages farms lands tenements and hereditaments situate in the Townships of Guiseley Yeadon Baildon Esholt or elsewhere in the County of York in England with the appurtenances were limited To such uses upon and for such trusts intents and purposes and with under and subject to such powers provisoes agreements and declarations as I the said John Curwen Walker and Henry Curwen Walker should by any deed or deeds with or without power of revocation and new appointment to be by them legally executed jointly appoint **And reciting** that I the said John Curwen Walker and Henry Curwen Walker intended to reside in Australia and were desirous that the same messuages farms lands tenements and hereditaments should be sold and that the net monies to arise by such sale and the rents and profits thereof until sale and a sum of One hundred and twenty one pounds thirteen shillings and fourpence three per cent consolidated Bank annuities after payment of certain costs and expenses should be settled upon the trusts and with and subject to the powers provisoes agreements and declarations thereinafter expressed declared and contained of and concerning the same respectively **And reciting** that towards effectuating the said desire and by an Indenture bearing even date with but executed before the reciting presents and expressed to be made between me the said John Curwen Walker and Henry Curwen Walker of the one part and William Wells of Bradford in the said County of York Gentleman and Thomas Holmes of Baildon in the Parish of Otley in the said County of York Worsted Spinner and Worsted Manufacturer of the other part the said messuages farms lands tenements and hereditaments with the appurtenances had been appointed and conveyed by me the said John Curwen Walker and Henry Curwen Walker unto and to the use of the said William Wells and Thomas Holmes and their heirs upon trust to sell the same as therein mentioned **And** that it was by the Indenture now in recital declared that the said William Wells and Thomas Holmes and the survivor of them and the executors or administrators of such survivor should with the money to arise from the sale of the said hereditaments and premises pay the costs and expenses therein mentioned and the two several sums of Eight hundred pounds and Six thousand pounds to me the said John

This is the paper writing referred to in the annexed affidavit of Henry Curwen Walker sworn before me this twentieth day of February 1875
J. Mitchell
A Commissioner of the Supreme Court of the Colony of Victoria for taking Affidavits

Curwen Walker and Henry Curwen Walker respectively as therein also mentioned and should pay or transmit the residue of the said monies to the said Thomas Randall Harrie Wood and Henry Curwen Walker or other the Trustee or Trustees for the time being of a certain Indenture therein mentioned to be then already prepared and engrossed and made or expressed to be made between the same persons as are parties hereto and in the same order meaning thereby the reciting presents upon the trusts and with and subject to the powers provisoes agreements and declarations therein expressed and declared of and concerning the same And that in the Indenture then in recital was contained a power enabling the said William Wells and Thomas Holmes and the survivor of them and the executors or administrators of such survivor until sale of the said hereditaments and premises to manage or superintend the management of the same as therein mentioned and by and out of the rents and profits of the said hereditaments and premises including the produce of the sale of timber and underwood to pay and discharge the expenses incurred in or about such management or otherwise in respect of the premises and all outgoings not payable by any tenant or other person with full power if they or he should think fit so to do with and out of such rents and profits to pay or retain the costs and expenses thereinbefore directed to be paid or retained out of the moneys to arise from the sale of said hereditaments and interest on the said sums of eight hundred pounds and six thousand pounds as therein mentioned and to pay or transmit the residue of the said rents and profits unto the said Thomas Randall Harrie Wood and Henry Curwen Walker or other the Trustees or Trustee for the time being of the Indenture of even date therewith thereinbefore mentioned or referred to meaning thereby the reciting presents upon the trusts and with and subject to the powers provisoes agreements and declarations therein expressed and declared of and concerning the same And that by the Indenture then in recital I the said John Curwen Walker and Henry Curwen Walker had assigned All that the said sum of One hundred and twenty one pounds thirteen shillings and four pence three per cent consolidated Bank annuities and the dividends and annual produce thereof unto the said William Wells and Thomas Holmes their executors administrators and assigns Upon trust to sell or cause to be sold the said Bank annuities and to stand possessed of the moneys to arise from such sale and the dividends and annual produce of the said annuities in the meantime and until sold upon the trusts thereinbefore expressed and declared of and concerning the moneys to arise from the sale of the said hereditaments and premises thereby assured or intended so to be It is by the reciting Indenture Witnessed that for further effectuating the said desire and in consideration of the premises it was thereby agreed and declared between and by the parties to these presents that they the said Thomas Randall Harrie Wood and Henry Curwen Walker their executors administrators and assigns did and should stand possessed of and interested in the principal moneys which should be paid or transmitted to them by the said William Wells and Thomas Holmes or the survivor of them or the executors or administrators of such survivor or other the Trustees or Trustee for the time being of the hereinbefore recited Indenture of even date therewith Upon the trusts and with and subject to the powers provisoes agreements and declarations thereinafter expressed declared and contained of and concerning the same (that was to say) Upon trust that they the said Thomas Randall Harrie Wood and Henry Curwen Walker and the survivors and survivor of them and the executors or administrators of such survivor or other the said Trustees or Trustee for the time being of the reciting presents did and should by and out of the same moneys invest the sum of Four thousand pounds sterling in their or his names or name or under their or his legal control in any of the Government securities of the Colony of Victoria or upon the stocks funds shares debentures mortgages or securities of any Corporation Company or Public body Municipal Commercial or otherwise in the Colony of Victoria or on security of freehold and leasehold estates in the said Colony and did and should from time to time with the consent in writing of the said John Curwen Walker Anne Louisa Walker and Henry Curwen Walker or the survivors or survivor of them vary the said investments for other stocks funds and securities of a like nature And upon further trust that they the said Trustees or Trustee for the time being of the reciting presents did and should pay the annual income of the said sum of Four thousand pounds and the stocks funds and securities for the time being representing the same unto the said John Curwen Walker until he should die or should become a Bankrupt or Insolvent or should assign charge or incumber or attempt to assign charge or incumber the annual income of the said sum of Four thousand pounds stocks funds and securities or some part thereof or should do or suffer something whereby the same or some part thereof would through his act or default or by operation or process of law or otherwise if belonging absolutely to him become vested in or payable to some other person or persons And after the failure or determination of the trust thereinbefore declared in his favor did and should if the said Anne Louisa Walker should be then living pay the annual income of the said last mentioned sum of Four thousand pounds or of the stocks funds and securities for the time being representing the same unto the said Anne Louisa Walker during her life for her sole and separate use independently and exclusively of the said John Curwen Walker if living and every future husband and without being subject to his debts control interference or engagements but so nevertheless that she should not have power while under coverture to deprive herself of the benefit thereof by way of anticipation and after the failure or determination of the trust thereinbefore declared in favor of the said John Curwen Walker and the death of the said Anne Louisa Walker did and should stand possessed of and interested in the said last mentioned sum of Four thousand pounds and the stocks funds and securities for the time being representing the same and the annual income thereof Upon trust for the said Henry Curwen Walker his executors administrators and assigns absolutely And upon further trust that they the said Trustees or Trustee for the time being of the reciting presents did and should invest the residue of the said principal moneys which should remain after answering the said principal sum of Four thousand pounds in their or his names or name or under their or his legal control in any of the stocks funds or securities in or upon which the said sum of Four thousand pounds was thereinbefore directed to be invested and did and should from time to time with the consent of the said John Curwen Walker during his life and after his decease at their or his discretion vary the said investments for other stocks funds or securities of a like nature And upon further trust that they the said Trustees or Trustee for the time being of the reciting presents did and should pay the annual income of the said residuary trust moneys stocks funds and securities unto me the said John Curwen Walker until I should die or become Bankrupt or Insolvent or should assign charge or incumber or attempt to assign charge or incumber the annual income of the said residuary trust moneys stocks funds and securities or some part thereof or should do or suffer something whereby the same or some part thereof would through my act or default or by operation or process of law or otherwise if belonging absolutely to me become vested in or payable to some other person or persons and after the failure or determination of the trusts lastly thereinbefore declared in favor of me the said John Curwen Walker did and should stand possessed of the said residuary trust moneys stocks funds and securities and the annual income thereof Upon trust for all and every or such one or more exclusively of the other or others of the children (including the said Henry Curwen Walker) and remoter issue of me the said John Curwen Walker by the said Anne Louisa Walker my Wife and in such manner and form in every respect as I the said John Curwen Walker should by Will or Codicil appoint and for want of such appointment and so far as any such appointment (if incomplete) should not extend In trust as therein mentioned **And** it was thereby (inter alia) agreed and declared that until all the said hereditaments and premises made saleable by the hereinbefore recited Indenture of even date with the reciting presents should be sold the rents and profits which should be paid or transmitted to the Trustees or Trustee for the time being of the reciting presents by the said William Wells and Thomas Holmes or the survivor of them or the executors or administrators of such survivor or other the Trustees or Trustee for the time being of the said Indenture of even date with the reciting presents should be paid and applied by the said Trustees or Trustee for the time being of the reciting presents In the first place in payment of interest on the said sum of Four thousand pounds hereinbefore directed to be invested after the rate of Five pounds for every One hundred pounds by the year or on so much thereof as for the time being should not have been so invested in the same manner as the interest of the said last mentioned sum would for the time being be payable or applicable under the trust hereinbefore declared in case the same were then invested such interest on the said sum of Four thousand pounds to be computed from the day of the date of the reciting presents and pay and apply the residue of the said rents and profits in the same manner as the annual income of the said residuary trust moneys would for the time being be payable or applicable under the trusts hereinbefore declared in case the same had been received by the Trustees or Trustee for the time being of the reciting presents and had been invested in the manner hereinbefore directed **And whereas** there are issue of me the said John Curwen Walker and the said Anne Louisa Walker as follows (namely) the said Henry Curwen Walker William Oliver Walker John Christian Walker Caroline Louisa Curwen Walker Isabella Harriette Walker Charles Claude Walker Alfred Curwen Walker and James Frederick Walker **And whereas** portions of the said lands and hereditaments referred to in the said recited Indenture of Settlement have been sold and the proceeds thereof have been invested by the said Thomas Randall Harrie Wood and Henry Curwen Walker in pursuance of the trusts in that behalf contained in the same Indenture **Now I hereby declare** and in exercise of the power in this behalf given to me by the hereinbefore recited settlement and of every or any other power in anywise enabling me in this behalf appoint that the trust moneys stocks funds and securities which shall from time to time be comprised in and subject to the trusts of the hereinbefore recited settlement and over which I have any disposing power shall from and after my death be held upon and for the trusts and purposes hereinafter expressed (that is to say) As to the sum of Two thousand five hundred pounds part thereof **Upon trust** for my said son William Oliver Walker absolutely **And** as to the further sum of One thousand five hundred pounds **Upon trust** for my said son John Christian Walker absolutely **And** as to the further sum of Two thousand pounds **Upon trust** for my said daughter Caroline Louisa Curwen Walker absolutely **And** as to the further sum of Two thousand pounds **Upon trust** for my said daughter Isabella Harriette Walker absolutely **And** as to the further sum of Two thousand five hundred pounds **Upon trust** for my said son Charles Claude Walker absolutely **And** as to the further sum of Two thousand five hundred pounds **Upon trust** for my said son Alfred Curwen Walker absolutely **And** as to the further sum of Two thousand five hundred pounds **Upon trust** for my said son James Frederick Walker absolutely **And** as to the remainder or surplus of the said trust moneys stocks funds and securities **Upon trust** for my said son Henry Curwen Walker absolutely **And I declare and appoint** that the shares or portions of my said Children whether original or accruing under this my Will shall be payable to them respectively being sons on their respectively attaining the age of Twenty one years and being daughters on their respectively attaining that age or marrying under that age and that the shares of daughters shall be paid into their own hands for their sole and separate use free from the debts control or engagements of any husband and the receipt of such daughters respectively alone to be a sufficient discharge for their respective shares or portions **Provided always and I declare and appoint** that in case any of my said Children shall die in my life time leaving a Child or Children who shall be living at my death the share or portion to which under the appointment or trust in that behalf hereinbefore contained such deceased Child would have been entitled if he or she had survived me shall from and after my death remain and be held in trust for all and every the Children and child living at my death of such deceased Child of mine who being a son or sons shall attain or have attained the age of Twenty one years or being a daughter or daughters shall attain or have attained that age or shall marry or have married under that age and if more than one in equal shares But if no such grand child being a son shall attain the age of Twenty one years or being a daughter shall attain that age or marry under that age then from and after such failure of grand children such share or portion shall remain and devolve as it would have devolved under this my will had such Child of mine died under the age of twenty one years without leaving issue **Provided also and I declare and appoint** that in case any of my said Children shall die before obtaining an absolutely vested interest in the aforesaid trust moneys stocks funds or securities under this my will the share or portion of him or her so dying of and in the same trust moneys stocks funds or securities shall from and immediately after his or her death be held by the Trustees or Trustee for the time being of this my will **In trust** for the survivors of them my said Children or their issue in the like proportions in which the same trust moneys stocks funds or securities are hereinbefore divided or made payable to my said Children save and except that my said son Henry Curwen Walker or his issue shall not participate in or be entitled to any part of the share or portion of any other Child of mine dying as last aforesaid **Provided always and I hereby declare** that the Trustees or Trustee for the time being of this my will shall during the suspense of absolute vesting of the share or portion of any child or children of mine under the trusts aforesaid invest the same share or portion in the names or name of the said Trustees or Trustee in any of the public Stocks or funds or Government securities of the said Colony or of the United Kingdom or upon Real securities in the said Colony or in England and may vary and transpose the investment of the same trust premises at their or his discretion **Provided always and I hereby declare** that the Trustees or Trustee for the time being of this my will shall pay and apply the whole or such part as they or he shall think fit of the interest dividends and income of the share or portion to which any child or Grandchild of mine shall for the time being be entitled presumptively or in expectancy under the appointment or trust in that behalf hereinbefore contained for or towards his or her education or for or towards his or her maintenance until such his or her expectant share or portion shall become vested **And** that the said Trustees or Trustee for the time being may either themselves or himself so pay or apply the same or (so far as I can lawfully give such power) may pay the same to the guardian or guardians of such child or grandchild of mine respectively for the purpose aforesaid without seeing to the application thereof **And** shall during such suspense of vesting as aforesaid accumulate all the residue (if any) of the same interest dividends and income in the way of compound interest by investing the same and the resulting income thereof in or upon any such stocks funds or securities as are hereinbefore mentioned and such respective accumulations shall be added and form accretions to and eventually devolve together with the respective principal funds from which the same respectively shall have proceeded but with power for the said Trustees or Trustee for the time being to resort to the accumulations of any preceding year or years and to apply the same for or towards the education or maintenance of the child or Grandchild of mine for the time being presumptively entitled to the respective principal fund from which the same respectively shall have proceeded in the same manner as such accumulations might have been applied in case they had been interest dividends or income arising from the original trust fund in the year in which the same shall be so applied **Provided also** and I hereby declare that it shall be lawful for the said Trustees or Trustee for the time being during the suspense of absolute vesting of the share or portion of any child or grandchild of mine under this my will to raise any part or parts not exceeding in the whole one half of the then expectant or presumptive share of such child or grandchild under the trusts hereinbefore declared and to apply the same for his or her advancement or benefit as the Trustees or Trustee shall think fit **Provided always and I declare and appoint** that until sale of the remainder of the said hereditaments conveyed by the said Indenture of even date with the hereinbefore recited settlement pursuant to the trusts of such Indenture the same hereditaments and the rents and profits thereof shall (so far as I can hereby appoint the same respectively) be held upon and for the trusts and purposes by this my will appointed and declared concerning the trust premises to be comprised in and subject to the trusts of the hereinbefore recited settlement and the interest dividends and income of the same trust premises respectively or as near thereto as the nature of the property and other circumstances shall admit **And I declare** (but merely as an expression of my wishes and not so as to create any legal trust or obligation by virtue of the doctrine of election in equity or otherwise) that it is my earnest desire that upon the marriage of any daughter of mine who shall previously have acquired or who shall by such her marriage acquire a vested interest in a share or portion of the said trust monies and premises under the appointment or trust in that behalf hereinbefore contained a proper and reasonable settlement be executed of such share or portion for the benefit of such daughter her husband or intended husband and issue and whereby in default of issue and subject to the husbands life interest the eventual reversion of the share or portion of such daughter to and for the benefit of her own family may be provided for **And I appoint** my Brother **Christian Henry James Walker** of Ballarat in the Colony of Victoria Accountant and my Son **Henry Curwen Walker** to be **Trustees and Executors** of this my Will **And I hereby** declare that the receipt of the Trustees or Trustee for the time being of this my Will for any moneys stocks funds or securities payable or transferrable to or received by them or him by virtue of this my will 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 said trustees hereby constituted or any of them shall die in my life time or if they or any of them or any trustee or trustees appointed as hereinafter provided shall after my death die or be abroad or desire to be discharged or refuse or become incapable to act therein and in every such case it shall be lawful for the surviving or continuing Trustees 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) or for the acting executors or executor administrators or administrator of the last surviving or continuing trustee to appoint a new Trustee or new Trustees in the place of the Trustee or Trustees so dying or being abroad or desiring to be discharged or refusing or becoming incapable to act as aforesaid and upon every or any such appointment as aforesaid the 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 or 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 always and I hereby declare** that the Trustees for the time being of this my Will shall be respectively chargeable only for such monies stocks funds shares and securities as they shall respectively actually receive notwithstanding their respectively signing any receipt for the sake of conformity 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 banker broker auctioneer or other person with whom or into whose hands any trust monies or securities may be deposited or come nor for dispensing wholly or partially with the investigation or production of the lessors title on lending money on leasehold securities nor for otherwise lending on any security with less than a marketable title nor for the insufficiency or deficiency of any stocks funds shares or securities nor for any other loss unless the same shall happen through their own wilful default respectively and also that the said Trustees or Trustee for the time being may reimburse themselves and himself or pay and discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of this my Will **I devise** all the hereditaments which at my death shall be vested in me for an estate of inheritance or for an estate pur auter vie which would devolve on my heirs upon any trusts or by way of Mortgage and of which I shall at my death have power to dispose by Will unto the said Christian Henry James Walker and Henry Curwen Walker and their heirs upon the trusts and subject to the equities which at my death shall be subsisting or capable of taking effect therein respectively but the money secured on such Mortgages shall be taken as part of my personal estate **And I hereby empower** the acting Executors or Executor for the time being of this my will to pay and satisfy or compromise or compound any debts owing or claimed to be owing by or from me or my estate and any liabilities to which I or my estate may be or may be alleged to be subject and to accept any composition or any security real or personal for any debts owing to me or my estate and to allow such time for the payment of any such debt or composition (either with or without taking security for the same) as to them or him shall seem reasonable and to refer to Arbitration and settle all debts accounts questions and things which shall be owing or claimed to be owing from or to me or my estate or be depending or arise between me or my said Executors or executor and any other person or persons and generally to act in relation to the premises in such manner as they or he shall think expedient without being liable for any loss occasioned thereby **And I hereby appoint** my said Wife during her Widowhood and after her death or marriage again the said Christian Henry James Walker and Henry Curwen Walker guardian and guardians of my Infant Children during their respective minorities **In Witness** whereof I the said **John Curwen Walker** the Testator have to this my last Will and Testament set and subscribed my name this twentieth day of **April** in the year of our Lord One thousand eight hundred and Seventy — H. —

Signed by the said John Curwen Walker the Testator as and for his last Will and Testament in the presence of us present at the same time who in his presence at his request and in the presence of each other have hereunto subscribed our names as Witnesses

J. Curwen Walker

[illegible] Mitchell
Soly Ballarat

J. Kibble
Clerk to Russell Mitchell & Coward
Solicitors
Ballarat