

33976



Laid upon the Table and referred to the Finance Committee.

Progress Report from the Select Committee

12/28  
12/28  
on

Estate of the late P. H. Dwyer of Parramatta

260

together with the

Proceedings of the Committee

Minutes of Evidence

Appendices A-5  
and B-1 + 2 returned  
to the Clerk of the  
Committee on 7th  
March 1902  
and  
Appendix

Printed under No 15 Report from Printing Committee  
22nd December 1898.

1897.

Extracts from the Notes and Proceedings  
of the Legislative Assembly.

Notes No. 51. Tuesday 24 August, 1897

11. ESTATE OF THE LATE S. M. SWIFT, OF PETERSHAM:—Mr. Hughes moved, pursuant to amended Notice,—
- (1.) That a Select Committee be appointed to inquire into and report upon the alleged evasion of Probate duty in connection with the estate of the late S. M. Swift, of Petersham, squatter.
  - (2.) That such Committee consist of Mr. Brunner, Mr. Perry, Mr. McFarlane, Mr. Wood, Mr. McLean, Mr. Dick, Mr. Parkes, Mr. Thomas, Mr. McGowen, and the Mover.
- Debate ensued.  
Question put and passed.



1898  
(Second Session)

Extracts from the Votes and Proceedings  
of the Legislative Assembly

Votes No 49 Tuesday 13 December 1898.

18. ESTATE OF THE LATE S. M. SWIFT, OF PETERSHAM:—Mr. Hughes moved, pursuant to Notice,—
- (1.) That a Select Committee be appointed to inquire into and report upon the alleged evasion of probate duty by the executors in the estate of the late S. M. Swift, Esq., Petersham.
  - (2.) That such Committee consist of Mr. Brunker, Mr. McLean, Mr. O'Sullivan, Mr. McFarlane, Mr. Thomas, Mr. McGowen, and the Mover.
  - (3.) That the Minutes of Proceedings and Evidence of the Select Committee of Session 1897 be referred to such Committee.
- Question put and passed.

(Insert last Entry)

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1898  
(Second Session)

Estate of the late P. M. Swift of Petersham.

Progress  
Draft Report.

The Select Committee of the Legislative Assembly, appointed on 13<sup>th</sup> December, 1898 "to inquire into and report upon the alleged evasion of probate duty by the executors in the estate of the late P. M. Swift Esq. Petersham", and to whom was referred on the same date "the Minutes of Proceedings and Evidence of the Select Committee of Session 1897" have agreed to the following progress Report:-

Your Committee having examined  
the witnesses named in the List: have resolved  
owing to the advanced period of the Session,  
to report the evidence to your Honorable House,  
and, in view of the startling nature of  
such evidence, to recommend that the inquiry  
be resumed early next Session.

W. M. Hughes.  
Chairman

No. 1 Committee Room  
Legislative Assembly  
22<sup>nd</sup> December, 1898.

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Proceedings of the Committee

Wednesday 13 October, 1897.

Members Present:-

- Mr. Hughes, - Mr. McGowan,
- .. McLean - .. Parkes
- Mr. Thomas.

Mr. Hughes called to the Chair.  
Entry from rolls and Proceedings appointing  
the Committee read by the Clerk.  
Committee deliberated  
Adjourned till Tomorrow at 2:15 o'clock.

Thursday 14 October, 1898.

Members Present:-

- Mr. Hughes in the Chair
- Mr. McFarlane, - Mr. McGowan,
- .. McLean - .. Parkes

Mrs Elizabeth Swift called in sworn & x<sup>d</sup>  
witness hands to ~~Witness~~ attested copy  
of the will of the late Samuel Duffitt  
Swift of Petersham (Appendix A1) Extract from the  
Sydney Morning Herald of 22<sup>nd</sup> February, 1884 -  
Notice of application for probate of the will  
of the late S<sup>r</sup> Swift (Appendix A2) Copy  
of affidavit sworn & lodged with application  
to obtain probate (Appendix A3) Statement  
of S<sup>r</sup> Swift's liabilities & assets at the time  
of his death (Appendix A4) Statement showing  
the total assets in the estate of the late S<sup>r</sup>  
Swift to be £376,225 (Appendix A5)  
Witness withdrew

Adjourned till Wednesday next at 2:15 o'clock

Wednesday 20 October, 1897.

Members Present:-  
Mr Hughes in the Chair  
Mr Dick - Mr McLean  
Mr Thomas

Wm Thomas Ball (Accountant) called in  
sworn & examined.

Witness withdrew

Adjourned till Tuesday next at 2.15 o'clock

Tuesday 26 October, 1897.

Members Present:-  
Mr Dick, - Mr McGowan,  
" McLean, " Thomas.

In the absence of the Chairman Mr McGowan  
called to the Chair pro tem.

James William Johnston (Solicitor)  
called in sworn & examined.

Witness withdrew

Thomas W. Garrett (Registrar of Probates)  
called in sworn & examined.

Witness withdrew.

Wm Alex Balcombe (Chief Clerk in Equity)  
called in sworn & examined.

Witness withdrew.

Wm Thomas Ball recalled & further examined

Witness withdrew.

Re-assembly to be arranged by the  
Chairman

Adjourned.

Thursday

6

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Friday  
November

Thursday 28 October, 1897.

Members Present:-

Mr Hughes in the Chair.  
Mr McFarlane - Mr McGowan  
Mr Thomas. " Wood

The Clerk by direction of the Chairman read a letter from James Wm Johnston, intimating that neither the present firm of Johnston, Minter, Simpson & Co nor its predecessors ever acted for Mr Swift or his Executors or Executrix.

Wm Alex Balcombe recalled & further examined witness withdrew.

Re-assembly of the Committee to be arranged by the Chairman.

Adjourned.

Thursday 18 November, 1897.

Members Present:-

Mr Hughes

In the absence of the a Quorum the meeting called for this day lapsed.

Wednesday 24 November, 1897.

Members Present:-

Mr Hughes in the Chair.  
Mr McFarlane, - Mr McGowan,  
" Thomas " Wood.

The Clerk having informed the Committee that Mr John McDonald, the witness summoned for today was not in attendance.

Resolved (On motion of Mr Wood) That the non-attendance of Mr John McDonald, who was summoned to attend today, be reported to Mr Speaker.

7 Adjourned

Ordered - That Mrs John McDonald be  
summoned to give evidence next meeting  
Adjourned till Tell Tuesday next at 2 30 o'clock.

Tuesday 30 November, 1897.

Members Present -

Mr. Hughes in the Chair.

Mr. Dick, - Mr. McGowan,

.. McLean .. Thomas.

John McDonald called in sworn & examined  
Witness withdrawn.

Mrs Elizabeth Swift, recalled & further examined  
Witness produced a Copy of Memorandum

of Agreement of a Partnership between John  
McDonald & Mrs Swift dated 8<sup>th</sup> February, 1881.

(Appendix B1) Copy of letter written by McDonald  
to Hann, stating that original memorandum  
was drawn up by himself (Appendix B2)

Witness withdrawn.  
John McDonald recalled & further examined  
Witness withdrawn.  
Adjourned till Tomorrow at 2 30 o'clock.

Wednesday, December, 1897

Members Present

Mrs Hughes in the Chair

Mrs McFarlane - Mrs Parkes

Mrs Thomas.

John McDonald recalled & further examined  
Witness withdrawn.

Mrs Elizabeth Swift recalled & further examined  
Witness withdrawn.

John McDonald, recalled & further examined  
Witness withdrawn.

Adjourned till Wednesday next at 2 30 o'clock.

Wednesday 8 December 1897

Members Present

In the absence of a Quorum the meeting called for this day lapses 11/



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Proceedings of the Committee

Thursday 15 December, 1898.

Members Present:-

Mr McFarlane - Mr McLean.

In the absence of a Quorum the meeting called for this day lapsed.

Friday 16 December 1898

Members Present:-

Mr Hughes Mr McFarlane

" McLean " Thomas

Mr Hughes called to the Chair

Entry from Notes & Proceeding appointing the Committee and referring the Minutes of Proceedings and Evidence of Session 1897, read by the Clerk

Resolved (on motion of Mr Thomas) that the Minutes of Proceedings and Evidence of the Select Committee of Session 1897 be adopted by this Committee.

George Sandell, Chartered Accountant, called in sworn examined.

Adj'd till Tuesday next at 11 o'clock

Tuesday 20 December 1898

The House continuing to sit during the time appointed for the sitting of the Committee no meeting could be held.

Thursday 2<sup>9</sup> December 1898

Members Present

Mr. Hughes in the Chair

Mr. McLean - Mr. McFarlane

" Sullivan " Thomas

George Sawdell recalled of further work  
Chairman submitted Draft Progress  
Report

Same read papers to  
Chairman to report to the House

### List of Witnesses

Ball	W. G.
Balcombe	W. A.
Garrett	T. W.
Johnston	J. W.
Macdonald	J.
Sawdell	G.
Swift	W. E.



Mrs.  
E. Swift.  
14 Oct., 1897.

15. Did you know at that time that they had to apply for probate? No; I did not know what means they took when applying for probate.

16. *Mr. McLean*] At the time, or immediately after your husband's death, did you consult a solicitor or any other person as to what steps you should take? No; I did not know that that was necessary. I only knew afterwards that they should have brought the will to Hill Crest, opened it, and read it in my presence.

17. *Chairman*.] Did your solicitors not remind you of it, and notify you of it? To the best of my knowledge it was a month after that when I heard the will read. I was communicated with—I could not say exactly whether by Hann and Croaker or from Mr. Abbott's office—and asked to go to Mr. Abbott's office. I drove there one afternoon and Mr. Allen read the will for me.

18. The fact remains that you did not apply for probate? I did not apply personally, and I did not know they were applying in my name. I did not know what applying for probate was.

19. Did not the officials of the Ecclesiastical Court, when application was made by Hann and Croaker, and not by you in conjunction with them, send any official communication to you? No; not for a long time afterwards. I daresay the date could be ascertained in the Stamp Office. I then signed some paper in connection with the Stamp Office, but it was long after probate was granted.

20. At this time I suppose you had no reason to doubt but that the estate would be administered for your benefit and the benefit of your children in the usual way? It never entered my mind that anyone could take the estate from us, because it was left by my husband to myself and children wholly, and I had a good idea of what it consisted.

21. *Mr. McGowen*.] How many children did your husband leave, and what were their ages? Six children—four girls and two boys. The eldest then was, I think, about 12 or 12½ years; the youngest was 18 months or thereabout. There were about two years between each of them.

22. *Chairman*.] Has the estate been administered? No.

23. As far as you know? If it was administered we would have got the proceeds.

24. *Mr. McLean*.] Have you taken any part in the management of the estate since probate was taken out? They never allowed me to take any part. I think it was about the 18th October, 1884, that Hann and Croaker sent me down a mortgage given on one of the stations by them, and signed by them, to the Bank of New South Wales. They asked me to call at the bank and sign it. I wrote back and said I thought that under the will we, as trustees, had no power to mortgage any portion of Mr. Swift's property; that the instructions in the will were only to realise and invest it as the will directed; but that I would consult a solicitor and see if I was right. In the meantime I would not sign it. I asked to have the mortgage for a few days until I looked through it. I got the mortgage and took it to Mr. Abbott. Mr. Abbott wrote a letter to me saying that he had no power to give a mortgage over any of the property. I think that was the first time they asked me to take any prominent part in the estate matters.

25. *Mr. McFarlane*.] Did the executors request you to do that? Yes.

26. Was that done by letter? Yes; I can produce the letter. I have the letter-book.

27. Was it signed by the two trustees? No; it was a letter from Mr. Hann.

28. Have you got that letter? I believe I have. If not, I have a copy of it in Mr. Hann's letter-book in his own writing.

29. *Mr. McLean*.] Subsequent to that, did you sign any papers or take part in the management of the estate in any way? Not that I am aware of. I believe I have not signed any papers; in fact, I believe I can conscientiously swear that I did not.

30. With reference to the filing of these accounts, as to the value of his assets at the time probate was taken out, were those accounts submitted to you before they were filed in the Court? No; and I was never asked a question as to Mr. Swift's property, or anything in connection with it. Afterwards, I said that an accountant should be appointed; that Mr. Swift's properties were very large; that an accountant should collect all the assets and make up the accounts before probate was asked for, because how could two strange men living up at Wagga Wagga come down to Sydney and understand within a fortnight, or a few days, the extent of Mr. Swift's transactions and his properties. They could not possibly do so. There is not an accountant in Sydney who could have put his assets and properties and accounts together under at least three months.

31. When was that account filed? Probate was granted on the 5th April. I cannot tell when it was filed. They applied for probate on the 22nd February, and it was granted on the 5th April.

32. *Mr. McGowen*.] You did not take any steps, and you were not consulted until October? I was not consulted even then.

33. I mean in the administration of the estate? No.

34. You stated that, after consulting your solicitor, you refused to give your consent to the mortgage;—what happened then? The mortgage remained, and I believe the bank registered it.

35. Then the mortgage was effected? I believe so, because the bank still holds that station and that mortgage.

36. When you refused to sign the mortgage, did you know that probate was taken out? I knew, as far reports in the paper were concerned, that probate was taken out; but I did not understand what probate really was.

37. What was the next step? I may be allowed to go back to about May in 1884. I felt that, as they were not consulting me about the estate matters, that they might not quite understand all the things. They had sold 22,000 sheep in Queensland at what I considered to be under their value. They sold them for 14s. a head when they should have got £1 a head at that time when stock was very high. Then I inquired from one and another what was being done. I wrote a note to the General Manager of the Bank of New South Wales—Mr. Shepherd Smith. I thought that as my husband had such large banking transactions he would be the best one to assist me if anything was going wrong. He wrote a note to me, which I have, saying that he would be happy to see me at any time that I could make it convenient to call on him. I called on him some time in May, 1884, and he said he would be very happy to assist me in any way he could. Afterwards, when I called on him again, he said that he thought I had better go home and nurse my children, and let two honest men look after and administer my estate, and that I should not meddle in it at all.

38. Did you get any money? They opened an account for me at the bank, and paid in £100 and £50 at a time. They gave me, extending over two years, about £2,000. Mr. Shepherd Smith would never see me again after that.

Mrs.  
E. Swift.

14 Oct., 1897.

39. Did you try to see him? Yes; the bank, of course, and Hann and Croaker managed the banking matters in connection with the estate. In July, 1884, I went up to Wagga Wagga to see Hann and Croaker, and to see what they were doing with the estate. I remained there a few days, and Mr. Hann promised to give me accounts of what he had realised, and what he had done up to that time. Afterwards he sent me accounts, and then I went to Mr. Abbott. I consulted him for a number of years in the estate matters, as they were going wrong.
40. *Mr. McFarlane.*] Was Mr. Shepherd Smith managing the bank when this mortgage was lodged? Yes; he was the General Manager.
41. Was he managing the particular branch of the Bank of New South Wales where this mortgage was lodged as security? I suppose no.
42. That was the bank he was in? Yes; he resided at the bank in Sydney.
43. You understand the mortgage is the one they wanted your signature for? Yes. Then I had a communication from the bank over that mortgage, which I can produce. The manager of the bank wrote to me because I refused to sign the mortgage. The effect of the letter was that I was thwarting the winding up of my husband's estate by my obstinacy, and could not the solicitors for the bank and my solicitors confer together over it. Then I think Mr. Abbott replied to that. At any rate he directed me what to do in regard to that. I never signed the mortgage.
44. *Mr. McLean.*] Can you tell us when the stamp duty was paid in connection with this estate? Yes; I produce the cheque which was drawn. I cannot tell from what source it is drawn, or on what account it is drawn; but the cheque I produce is the one they paid the probate duty with.
45. Did you get that cheque from the bank? Yes; together with other cheques of Mr. Swift's on various accounts.
46. Is it signed by Hann and Croaker as executors? Yes.
47. *Mr. McFarlane.*] Have you any knowledge as to what was done with the money collected in the estate? It was paid into the bank.
48. By Hann and Croaker? Yes; and a greater portion of that which I realised I also paid into the bank.
49. To the same account? That I cannot say.
50. What account did you pay it into? Into an account which was supposed to be opened for the estate moneys in the bank.
51. Can you say whether it was a Trust Account? To the best of my knowledge, I do not think it was.
52. In what bank was it? The Bank of New South Wales, Sydney. I also produce copy of the affidavit sworn and lodged with the application to obtain probate. [*Appendix A 3.*]
53. *Chairman.*] Was there not accompanying this a detailed list of assets and liabilities? Yes; I produce it.
54. *Mr. McFarlane.*] Were you ever consulted before that cheque was drawn out? No.
55. It is signed by the two other executors? Yes.
56. *Chairman.*] Are these the details of the accounts filed with them? Yes.
57. Are these the full details as supplied to the Court? That is all that has been supplied to the Court as far as I know.
58. That purports to be the whole explanation of the estate, as supplied to the Probate Court? Yes.
59. And it was upon that that probate duty was declared and paid? Yes; the figures in the assets correspond with the figures in that affidavit.
60. Probate duty was paid on how much? £16,914 18s. 7d.
61. Do you propose to show that this does not contain the whole of the items in your husband's estate? Yes.
62. This divides the estate of Mr. Swift into three portions? Yes.
63. One portion is the private estate of S. M. Swift, another is Swift and Hann, and the third is John McDonald & Co.? Yes.
64. Do you declare that this is not an accurate statement of the estate? It is not by any means.
65. The private estate of Mr. Swift shows a balance of £2,996;— is that accurate? No.
66. Not even the private estate? No.
67. In what direction is it not accurate;—ought there to be more? I can hardly explain that. It is like the partnership accounts. They cannot be understood unless you go through the whole of them and get proper accounts, but I can prove some of these that are not correct.
68. Does this statement make the total of Mr. Swift's private estate less than it ought to be? Yes; very much less.
69. *Mr. McLean.*] Had you any knowledge of these partnership transactions prior to your husband's death? Yes.
70. Did you know he was in partnership with Hann? Yes, in some transactions; but I can prove that they were all settled in my husband's lifetime.
71. Did you know of any partnership existing between Mr. Swift and Mr. Hann at the date of Mr. Swift's death? No.
72. Did you know of a partnership existing between Mr. Swift and Mr. McDonald at the time of Mr. Swift's death? No.
73. *Chairman.*] Did you know of any arrangement or agreement tantamount to a partnership? No; as far as Mr. Swift's property is concerned.
74. But you would not like to say, with reference to other assets of Swift and Hann, and Swift and McDonald? There were partnerships in certain transactions; but those were finished, and the money paid over to them before Mr. Swift's death.
75. *Mr. McLean.*] They were joint speculations really? Yes; outside the properties.
76. *Chairman.*] What kind of transactions were these, according to your personal knowledge? They were purchases of stock, and Mr. Swift invariably paid all the money. He financed the transactions, and the droving and expenses altogether were taken out of the money first after the stock was sold, and then what was left was divided into two or three shares, as it might be, and Mr. Swift sent his cheque to Hann, or whoever it might be.
77. Who furnished the money for those transactions? Mr. Swift entirely.
78. As far as your personal knowledge is concerned, were all these transactions financed by Mr. Swift? Yes.
79. Do you hand in a statement of Mr. Swift's assets and liabilities at the time of his death? Yes.  
[*Appendix A 4.*]

Mrs.  
E. Swift.  
14 Oct., 1897.

80. *Mr. McLean.*] Do you hand in a statement showing the total assets in your husband's estate to be £376,225? Yes; and as we go along I can produce vouchers to show that there are a great many more assets, but I could not put them in and swear to them when I made up that statement. [Appendix A5]
81. The total assets shown in this estate amount to £376,225, and the liabilities to £188,475? Yes; as far as I know the liabilities.
82. Showing a surplus of £237,750? Yes.
83. You have handed in an inventory of assets and liabilities in your late husband's estate, upon which stamp duty was paid showing a surplus of £46,914? Yes.
84. The difference between that amount and the amount shown in your own statement is £190,735;—is that the amount upon which you say the Government have really been defrauded of stamp duty? Yes; and more to be added to it.
85. That is the lowest amount, according to your account, that we can estimate the Government have been defrauded of stamp duty upon? Yes; these assets actually existed at the time of my husband's death.
86. Where did you get the values that appear in this statement? I have documentary evidence for all but the stations. One station was sold for £5,000, and that would be the value of it. That money was paid into the Bank.
87. *Chairman.*] Do I understand that the items in this list that you have ticked in red ink are the items for which you have documentary evidence with you? Yes.
88. *Mr. McLean.*] There are a number of items such as this at the end of your account—No. 70—35,000 acres freehold, cost 45s. per acre, £78,750;—do you simply put that down as the cost price? Exactly; I just took it what it cost.
89. Are you in a position to say whether it was worth more or less at the time stamp duty was paid? I am in a position to say so with regard to a few months afterwards.
90. What is your own opinion as to the value of that? I was offered £4 an acre for it a few months after my husband's death, but I do not put that value down for it in the list. I thought it was better to put down what it really cost. That was 25s. to the Government, and £1 an acre for improvements. I took all the purchased land at that. To-day, if it was offered, I am sure more than £4 an acre could be got for it.
91. *Chairman.*] With reference to the accounts passed by the Court, do you think that their judgment in the matter is to be considered final? May I explain that Hann and Croaker, or the Trustees, never filed accounts in the usual way until 1889. That was four years afterwards. They then put in before Mr. Garrett a form of accounts that you had better get in order to see the particulars. After that no accounts were put in until they were asked to supply accounts to the children, and to administer the estate in that way. They put in balance-sheets before the Master-in-Equity as directed by the Judge. At one meeting before the Master-in-Equity I got Mr. James Robertson to go in and show the Master that there was a difference in these balance-sheets of about £18,000. One balance-sheet finished on the 18th February, and the other commenced on it—that was three years before and three years after 18th February, 1884. No partnership accounts were ever made up until Mr. Ball made them up afterwards. When Mr. Robertson appeared before the Master and showed the difference in the balance-sheets, the Master directed Mr. Robertson to make up true accounts of Mr. Swift's estate. Mr. Robertson said he was an auditing accountant, and told me to go to Mr. Ball, who would go through and search into the accounts, and make up true accounts. It took Mr. Ball three months to make up the accounts. He made up the partnership account (the banking account) of Swift and Hann in about three months, and he made an affidavit to the effect that S. M. Swift paid in £50,000 odd into that account out of his own private money, and that Hann never paid in a penny, and that there was no partnership in it. Then Mr. Ball went to the Court and filed these accounts as ordered by the Master, but the Master, because the word "surcharged" was not on the back of them, refused to allow them, and he threw the whole lot out and shut up the case. Those are all the correct accounts that have ever been before the Court.
92. *Mr. McLean.*] Were you represented at that time by counsel or attorney? Yes.
93. Before the Master? Yes; but the Master would not hear him, and would not hear anyone for me. I went to the Equity Court, and the same thing occurred there. The Judge would not hear me, or anyone for me. He said it was taking up the time of the Court, and that I should do something else besides what I had done. Hann and Croaker came to the Court then to compel me to sign a release to McDonald on his supposed partnership.
94. *Chairman.*] Was that in reference only to the McDonald-Swift account? Yes. I refused to sign the release. I said that the accounts of the supposed partnership were never made, and that he had no ownership in it. I would not sign it. I could not conscientiously sign any release to them, for that release meant that we, the trustees, were to bind ourselves to prevent the children from ever taking any action against McDonald for any portion of Mr. Swift's estate. Therefore I did not feel justified in signing such a document and defrauding my children. Then the Court put me in gaol. I went to gaol.
95. What for? For not signing, I suppose. They did not know how to state it when I went there.
96. *Mr. Parkes.*] I suppose they called it contempt of Court? I suppose so. However, I went to gaol, and stayed there a month. Then the same Judge, Judge Owen, made an order that I was to get out of gaol. I was to bind myself to enter an action against McDonald, and support that action until it was carried through, or completed. I had to pay about £58 costs, I paid it. Messrs. Russell and Russell entered an action for me, and appeared for me from time to time; that went on until the suit was to be heard against McDonald. McDonald entered a defence, and in that he swore that the purchase money for Mungie Bundie Station was supplied by his brother-in-law, J. H. Spiller, that J. H. Spiller gave McDonald his share of the purchase money, and that he also gave Swift his share of the purchase money. Then my solicitor subpoenaed Mr. Spiller. Mr. Spiller's evidence was taken by the Chief Clerk in Equity, because he wanted to go to England. We were willing to have his evidence taken, and to allow him to join the boat. That was about, I think, the Easter holidays. Mr. Spiller swore that he never supplied any money to Mr. Swift, and that he never supplied any money to Mr. McDonald. Then, on the Monday after that, our case came on for hearing, and the first thing Mr. McDonald's barrister—Mr. A. H. Simpson, now the Judge—asked was that he might withdraw that paragraph in the statement for the defence where McDonald swore about the purchase money of Mungie Bundie, and the Judge said he could not allow him to withdraw it. Then he raised three points of law why I should not be heard in the suit, and the Judge decided that they

they would argue those points before they would hear the suit. They argued the three points of law for three and a half days, and the Judge decided that because Hann and Croaker had already signed the release it was quite sufficient without my signing it, and yet I had been sent to gaol to compel me to sign it. I was not heard, and I have not been heard since. McDonald has the release signed by those two men.

Mrs.  
E. Swift.  
14 Oct., 1897.

97. *Chairman.*] McDonald was not a trustee, and how did he come in? Hann swore that he was a half partner.

98. You must have known something, if not much, of the transactions of your husband with Mr. McDonald; what was he? He was a drover for my husband. He was employed by my husband. My husband opened an account with the Bank of New South Wales, at Tumut, and paid money into it. McDonald went and bought cattle, drove them, and sold them. As Mr. Swift directed him, he drew on that account. My husband supplied him and the account with the money.

99. Did he do that on more than one occasion? That extended over two years.

100. On the face of it, would it not seem rather improbable that he was a half partner? He was not an owner at all. He had no money of his in with Mr. Swift. There was no money of McDonald's in Mr. Swift's transactions, and there was no money of Hann's. I can prove this. Now I would like to refer to the probate. I will show you a few wrong things in this, and I will be able to show you more. For instance, with regard to the ownerships. They say that it is the deceased's half share. They do not say that it is theirs. He was the owner of the half share and the owner of the whole of it. They think they will get out of it by saying that it was Mr. Swift's half share. It was the same thing with regard to Swift and Hann. Mr. Ball's accounts will show that. With reference to the books and papers in my husband's estate, Hann and Croaker took them to Wagga Wagga, and they have not returned them. In fact, there are none of Mr. Swift's books to the fore. I would have no trouble if I had those books in showing the whole of Mr. Swift's transactions and assets.

101. Has Mr. Hann got them? I really believe he has. And I believe he is keeping them away on purpose.

102. How do you propose that the Committee should assist you? The Committee can make an order to produce them.

103. *Mr. McFarlane.*] Who took away the books and papers? Hann and Croaker took nearly all the books.

104. Where did they take them from? From Mr. Swift's office in Sydney.

105. About what time? Just about the time probate was granted.

106. *Mr. Parkes.*] Where was Mr. Swift's office? At Pitt, Son, and Badgery's, in George-street. Hann and Croaker told me I could not touch those books until the probate matter was gone through—that they actually belonged to the Court, and that I must not touch them until then. Hann and Croaker were down in Sydney over the probate matters when it was granted. That was about April. Mrs. Spiller was staying with me at the time, and I went to the railway station to see her off to June. Hann and Croaker were going in the same train. I saw them take a box that came back afterwards to the Court with some papers in, and when I went in the next day to Mr. Swift's office to get the papers, they were all gone to Wagga Wagga; yet when I said to them at the railway station, that I supposed I could go in tomorrow and take the papers, they said, yes, I could; and at the same time they had them with them in the train. I drove into Pitt, Son, and Badgery's office, and to my surprise there was not a paper or book in it.

107. *Mr. McFarlane.*] Did they ask you for the books prior to the time they took them away? No; they came to Hill Crest; Mr. Swift had a room upstairs with a desk in it. I let them go there, not having any idea that they would destroy or do anything to the books and papers.

108. Do you say that they took the books and papers? I let them go into his room and his office, and they commenced to tear up papers. Then I objected, and would not let them touch any more papers at Hill Crest. They had a few papers that they took before from Hill Crest. Then they went and took all the papers from the office.

109. Did they ask you anything in connection with the books in the office? No; they told me at the railway station that I could go in next day to the office and get them. They never told me they were taking them with them.

110. How came it to your knowledge that they took the books from the office? When I went in the next day, the books were gone. I wrote to them, and I received a letter from Mr. Hann and another from Mr. Croaker, saying that they were only old papers and were only fit to be destroyed. I wrote and told them that if they destroyed any of them I would hold them both responsible, although I hardly knew at that time what I was saying.

111. I would like a direct statement as to the proof that it was they and no others who could have taken the box? I saw them with this box, and now I have this box in my possession; I can swear to that box; I can swear I saw them lift the box into the van at the railway-station.

112. It does not follow that Mr. Swift's books were in the box? They gave them back as Mr. Swift's papers.

113. Was it Mr. Swift's box? No; they bought it at Lassetters, and charged it to the estate.

114. *Mr. Parkes.*] When they returned it had it any books in it? No books of Swifts; only a few papers.

115. Were they from Mr. Swift's office? I do not know, but they related to Mr. Swift's business. They might have been from Hill Crest.

116. *Mr. MacFarlane.*] Did you ever get any acknowledgment in writing, or verbally, that they had the books belonging to Mr. Swift? Yes.

117. An acknowledgment that they took the books? Yes; I have got the letter, or I can produce their letter-book, with a copy in it.

118. *Mr. McLean.*] Did Mr. Swift employ any secretary or clerk in his office? We lived in the country up to 1880, and then he had an office at Pitt, Son, and Badgery's.

119. *Mr. Parkes.*] Was not Mr. Muckeridge his clerk? Yes; originally; but he is now one of the firm of Pitt, Son, and Badgery, and they will not give me any information, because I have one or two heavy charges to make against them.

120. *Mr. McLean.*] You say you are very conversant with Mr. Swift's business matters? Yes.

- Mrs. E. Swift.  
14 Oct., 1897.
121. Did he keep a complete set of books relating to his business transactions? He did not keep accountant's ledgers, because he had such a fearfully big business. He merely made entries of the different transactions, and to my knowledge I can swear to three large books that he had in his possession. I have made entries in them myself.
122. Are you aware whether he kept a cash-book relating to his banking business—cash receipts and bills? He must have, because I fail to see how he could conduct a big business without a cash-book.
123. Did he have more than one banking account? He had about nine. I can produce all his pass-books for those accounts, and he financed them all himself. I have the pass-books from the beginning up to his death.
124. *Mr. Parkes.*] Do you know of two cheques of Mr. Hann's that went into his private account, which were estate cheques? They belonged to the account of Swift and Hann, and should not have gone there.
125. Do you positively state that they went into Mr. Hann's private account? Yes.
126. Was that prior to Mr. Swift's death? One cheque was drawn by Hann—an open cheque—purporting to be for a drover's account. That was paid into Mr. Hann's private account within twelve or fourteen days of Mr. Swift's death.
127. Have you those cheques? Yes. Another cheque, purporting to be drawn to pay for rams within a few days of Mr. Swift's death, and that was paid into Hann's private account. Those two cheques together were an asset in Mr. Swift's estate, and Hann should have accounted for them when he was applying for probate, and he should have paid them back. While the action was going on in the Court for the release, my solicitor applied for a discovery order to get hold of those books. It was served on Hann and Croaker, and on McDonald, and they replied by affidavit. I suppose that they had no books other than what they had put into the Court. Then Mr. Russell served a subpoena on the book-keeper of Mungie Bundie. Mr. Granger, the solicitor, went out and searched, and took an inventory of the books in the office at the time, and I have that here. Although McDonald swore he had no books there are a great number shown.

WEDNESDAY, 20 OCTOBER, 1897.

Present:—

MR. DICK.

MR. MCLEAN.

MR. THOMAS.

W. M. HUGHES, Esq., (IN THE CHAIR).

William Thomas Ball, Esq., called in, sworn, and examined:—

W. T. Ball.  
20 Oct., 1897.

128. *Chairman.*] Are you a professional accountant? Yes.
129. Have you gone through all the papers in connection with the Swift and Hann account? Yes.
130. *Mr. McLean.*] What connection had you with this estate, and in whose interest did you become connected with it? I think it was on behalf of the late Mr. Swift's children.
131. Who retained you? Mrs. Swift.
132. Who paid you? I have not been paid anything yet.
133. Did you undertake the work on behalf of Mrs. Swift and her family? Yes.
134. Did you make a thorough investigation into the accounts? Yes; into the whole matter of the partnership of Swift and Hann—into all their dealings. I have got copies of the accounts I made up, and which were lodged in the Court.
135. Is this the balance-sheet on which they swore probate? That is a copy. I had a copy from the Court to compare with the statement I was preparing. I have a statement prepared after investigating all the books. I have a statement of assets and liabilities at the time of Mr. Swift's death; that is, for Swift and Hann.
136. *Mr. Dick.*] Can you make a general statement in reference to that matter? I have hardly had time to refresh my memory. It is three or four years since I did this work.
137. *Chairman.*] Here is an item, Baden Park Station, £50,715? That is the valuation I put on it.
138. *Mr. McLean.*] That is to say, your valuation of Baden Park Station corresponds with the valuation which was made for probate? Yes.
139. *Chairman.*] It is alleged that half this estate belonged to Hann;—have you any idea how Baden Park Station was purchased? I have not the information at present, but I will produce it at another meeting.
140. Take the Snubba property;—how was that purchased? It was purchased for £600 by Mr. Swift.
141. Was that unstocked? Mr. Swift had rented it before that, and he had paid £200 on account of rent. I reckon the station cost him £800.
142. *Mr. McLean.*] When did he pay that? A cheque was given by Mr. Swift on 1st August, 1877; it went through his Bank at Tumut. That was for £300. The other payment was a promissory note, dated 1st August, 1877, for twelve months, for £300. That is the way it was bought.
143. At the date of that purchase—1st August, 1877—were there any business relations to your knowledge between Swift and Hann? No.
144. They were not in partnership at that time? No; the partnership occurred afterwards.
145. Did Hann have any business relations of any kind that you know of with Swift? Not that I know of. There is nothing in the books and documents to show that there was.
146. What books and documents had you access to that would throw any light upon the partnership, if there was any? I had all the bank-books, cheque books, and deposit slips. I have gone through the whole of them. I have a summary of them. I can show where everything paid into the bank came from, either from Mr. Swift or the sale of wool.
147. *Mr. Thomas.*] Were you in any way connected with Mr. Swift before his death? No; I did not know him. Mrs. Swift was the first I knew, and she came to me.
148. *Mr. McLean.*] Were those books which you had in your possession or had access to made up to the time of Mr. Swift's death? Yes, I think they were. I have not seen them for a long time. It must have been made up from the information we got from them—the bank-books especially. They were all right. There were a few small books there that you could not make head or tail of—they were sheets of foolscap pinned together.
149. Was there anything in connection with the accounts of Snubba Run which you gathered from the books that would lead you to believe that Mr. Swift was in partnership with anyone else in connection with that property? No; nothing that I can remember.



150. Was there any account of any kind from Mr. Hann in the books of that Snubba Run? I cannot answer that question just now from memory. I do not think so; but I cannot speak from memory. W. T. Ball
151. Was there ever a distribution of profits in connection with that particular property? No; there was no distribution of profits in connection with any of the properties. 20<sup>th</sup> Oct., 1897.
152. *Chairman.*] In your professional experience have you ever come across a case where one man put in all the capital and divided the profits with anybody else? I have known a case, but only in a small way, where a man would provide the capital and another man would provide the brains to carry on the business.
153. Have you any reason to believe that it was so in this case? No.
154. *Mr. McLean.*] In the course of your investigation did you come across any document or any information that would lead you to believe that Mr. Hann had any interest in these properties? No.
155. *Chairman.*] To the best of your knowledge and belief, did you have access to all the important papers? With regard to Swift and Hann, I had as far as the banking account would show you, and any books Mr. Swift had.
156. Is it the usual custom for a firm to pass all the moneys through a bank? Yes.
157. *Mr. Thomas.*] In your investigation, were you assisted at all by Mr. Hann? I never saw Mr. Hann.
158. In this inquiry, had you any standing which would enable you to demand any papers? Yes; we got all the cheques and deposit-slips from the bank.
159. But supposing Mr. Hann had any papers in his possession—could he refuse to show them to you if he chose? Certainly.
160. Did you ever ask him for any papers? There was an order from the Court for the production of all papers in the case "Swift and Hann."
161. Who obtained that order? Mr. Parsons, for the children.
162. Did you apply for papers yourself? I used to instruct the solicitor as to what papers I wanted, and he would apply to the Master for an order for their production.
163. Was he able to get every paper you asked for? I do not think so.
164. Can you tell us about any of those papers? We wrote on the 25th May, 1893, for the following books and papers:—All settlements sent by drovers, all orders drawn by drovers, a copy of Hann's pass-book, his accounts, and his dealings with the Commercial Banking Company of Sydney, at Wagga Wagga, from January, 1878, to January, 1893. Those we could not get.
165. Did you write to Hann for them? Mr. Parsons wrote, I suppose. I gave Mr. Parsons a memo., but he was unable to get those papers and books. I sent in the order for the production of books and papers.
166. You actually got an order of the Court for the production of these papers, and still you could not get them? Yes.
167. Was there any reason given by those people? The order was served on them, and the course would be to produce them at the Master's office. We sent up there, and found they were not deposited.
168. Did you take any further action? No.
169. *Chairman.*] As the Court ordered Hann to produce those papers, and he did not do so, I suppose the presumption is that they were not likely to be particularly favourable to Hann's contention? It would bear that construction.
170. *Mr. McLean.*] Did your people take any action when those papers were not produced? No; I attended the Court for some time, to see if they had been deposited there.
171. Was the attention of the Court called to the fact that its order was not complied with? I do not think so, but I cannot say positively. It would be for the solicitor to do that.
172. What was your reason for asking for all Hann's banking transactions from January, 1878, to January, 1893, to be produced? The desire was to go through them and see what moneys had passed through his account, and where they came from.
173. Why did you take the 1st January, 1878? That was the date the partnership was supposed to start from.
174. What partnership? The supposed partnership of Swift and Hann.
175. Did Hann produce any document at all showing that there was a partnership? No, not that I know of; I never saw such a document, and I never heard of one.
176. There are four station properties mentioned in this balance-sheet of Swift and Hann, having a total value of £100,365 10s.;—were they under mortgage to the Bank of New South Wales, or to any other bank? I cannot answer that question right off. There was an overdraft at the bank, which, presumably, would be for that. It amounted to £17,000.
177. You are not aware whether these properties were mortgaged? I could not say which of them, if any, were mortgaged.
178. Have you inspected any mortgage securities held by the Bank of New South Wales? No.
179. Have you endeavoured to inspect any of them? I asked for certain information at the bank, but I always got the cold shoulder—they would not recognise us.
180. *Mr. Thomas.*] Not after the orders of the Court? They produced whatever the Court ordered. We did not ask for mortgages. From what I gathered, some of the mortgages were given after Mr. Swift's death.
181. *Mr. McLean.*] I suppose there were considerable freehold properties in connection with those stations as well as the ordinary leasehold areas? Yes; but I could not give any definite information about that, except what was paid.
182. Did you ever see any deeds in connection with those properties? No; evidently the account would be in the name of Swift and Hann. This account at the Bank of New South Wales was in the name of Swift and Hann—that is, from 1878 up to the time of Mr. Swift's death. I have got all the amounts here which were paid into the bank, showing from what source the amounts came. They were paid into the credit of Swift and Hann with the bank at Wagga Wagga.
183. Does the debit balance of the Bank of New South Wales correspond with the amounts shown in the liabilities of the firm? The debit balance was £47,838 13s. 7d.
184. On what date? Up to the date of Mr. Swift's death.
185. That balance stood to the debit of the firm of Swift and Hann? Yes.
186. *Chairman.*] Do you know what Hann was doing on any of those properties? I cannot say.

- W. T. Ball. 187. *Mr. McLean.*] In your opinion, would this account, standing in the name of Swift and Hann at the Bank of New South Wales, and showing a debit balance of £47,638 13s. 7d., make Mr. Hann jointly liable with Mr. Swift for that indebtedness to the bank? That would all depend whether he signed the security or not. Mr. Swift would arrange the account, and say he was going to trade as Swift and Hann. Mr. Swift could choose to trade in the name of Swift and Hann, without Hann being necessarily a partner.
- 20 Oct., 1897. 188. But is it not an established principle in connection with the law of partnership that a man who allows himself to be published as a partner in a concern becomes liable for the debts of the firm? There is no doubt about that. I might make a statement of this kind. It appeared to me, in going through the books, that Swift and Hann had been in the habit of dealing in cattle and sheep. That is how I think the partnership originated. They used to buy mobs of cattle and flocks of sheep, sell them off, and divide the profits. The cheques paying these profits to Hann were S. M. Swift's cheques on his private account.
189. Have you seen any accounts of their cattle-dealing transactions? I can produce them.
190. *Mr. Dick.*] Have you any evidence concerning the account of Swift and Hann in the Bank of New South Wales? Yes.
191. Can you give us the particulars from 1878 up to 1884? Yes; I have a copy of the payments made from May, 1878, up to 31st March, 1880. The amounts paid into the Bank of New South Wales at Tumut, where the account was kept at first, were as follows:—Moneys advanced by S. M. Swift, £18,204 1s. 7d.; proceeds of wool, sheep, &c., £37,983 18s. 1d.; proceeds of sale of corn and sundry other things, £7,465 18s. 3d.—total, £63,653 17s. 11d. From 5th April, 1880, to the 31st December, 1880, moneys received from Mr. Swift, £731 10s.; from sheep and wool, £26,095 13s. 8d.; from corn and sundries, £3,791 18s. 4d.—total, £30,619 2s. 1d. From 1st January, 1881, to 31st December, 1881, from S. M. Swift, £8,491 16s. 7d.; from sheep and wool, £53,672 4s. 8d.; corn and sundries, £7,241 12s. 3d.—total, £69,405 13s. 6d. From 1st January, 1882, to 31st December, 1882, from S. M. Swift, £5,319 15s. 9d.; from sheep and wool, £104,565 9s. 5d.; corn and sundries, £7,102 9s. 7d.—total, £116,987 15s. 1d. From 1st January to 31st December, 1883, from S. M. Swift, £9,618 0s. 5d.; from sheep and wool, £63,992 10s. 9d.; corn and sundries, £10,101 9s. 9d.—total, £83,692 0s. 11d. From 1st January to 11th February, 1884, S. M. Swift, £273 13s. 11d.; sheep and wool, £229 14s. 8d.; corn and sundries, £1,754 7s. 5d.—total, £2,257 16s. There were further amounts paid into the account of Swift and Hann with the bank in Sydney. The figures I have given were paid in at Wagga Wagga and Tumut, where they had the accounts. The following moneys were paid into the bank at Sydney from 9th September, 1882, to 4th January, 1884; S. M. Swift, £8,055 14s. 10d.; sheep and wool, £10,060 1s. 10d.; corn and sundries, £1,122 5s. 2d.—total, £19,947 1s. 10d.
192. *Chairman.*] In this account I see that the capital put in by Hann is nil? Yes.
193. *Mr. McLean.*] The amounts you have put down as coming from Mr. Swift were advances on capital account? Yes. Swift's own cheques paid in to Swift and Hann.
194. Have you traced his own cheques from his own banking account corresponding with those amounts? Yes; I have done that.
195. *Chairman.*] There are some big transactions here; how were they completed—with bills or what;—here is one item, 5th December, 1879, £3,499, made up of seventy-one items, "Sale of sheep and wool"? That was James and Spratt's bill for sheep sold. It was a bill.
196. Here is another item, 5th August, 1879, £3,813 10s.? That was for sheep sold; 6,917 ewes at 10s., 142 rams at 50s.
197. *Mr. Dick.*] There is an item of £3,441 5s. 6d., 18th August, 1882—what is that? That was S. M. Swift's cheque.
198. Was that paid into the account of Swift and Hann? Yes.
199. *Chairman.*] Did both Swift and Hann operate on this account? I think both of them did.
200. What were the signatures on the cheques? I produce a cheque—it is signed "Swift and Hann."
201. *Mr. McLean.*] Whose signature is on that cheque? Looking at the different documents, I think it is Hann's signature.
202. From your knowledge of the documents signed by Mr. Swift, is it his handwriting? No; he writes a different handwriting altogether from the signature on this cheque.
203. *Chairman.*] In any of the accounts with reference to this Swift and Hann statement, have you any evidence as to a division of profits? I can show that with reference to cattle and sheep.
204. What kind of division was there? I think it was an equal distribution between them of the profit. I have all those figures.
205. *Mr. Thomas.*] Have you any evidence of profit from the stations being divided? No; simply in the dealings with cattle and sheep.
206. *Chairman.*] Will you be able to give evidence at the next meeting with regard to Baden Park and Mimosa properties? Yes; I will get the particulars.

TUESDAY, 26 OCTOBER, 1897.

Present:—

MR. DICK, | MR. MCLEAN,  
MR. THOMAS.

J. S. T. MCGOWEN, ESQ., IN THE CHAIR.

James William Johnston, called in, sworn, and examined:—

- J. W. Johnson. 207. *Chairman.*] Are you member of a firm of solicitors in Sydney? Yes; senior member of the firm of Johnson, Minter, Simpson, & Co.
- 25 Oct., 1897. 208. Is that the firm which took out probate of the will of S. M. Swift? I really could not tell you.
209. Can you identify this memo.? Not in the least. All I can say about it is that I believe Mr. F. G. Fosbery was a clerk in our office in 1889, but he left us some years ago, and is now practising in Melbourne.
210. Then, as a matter of fact, it is not your firm that took out probate of that will? I do not know anything about it. All this document says is that probate was lodged, and was delivered to Mr. Fosbery in January, 1889. It also says that probate was lodged by my firm—that is, a previous firm of Want, Johnson, & Co. I was in England in 1889. I know nothing about this matter. 211.

211. Although at that time Mr. Fosbery was a clerk in your office? I think so.
212. Would it be possible for your firm to do the business while you were absent in England? Quite so.
213. Cannot you find anything in the records of your office? No. When I got this notice, I spoke to two or three clerks as to what this was about. I said I knew nothing about it. I am called upon to produce the probate of the will. From the inquiry I have made, we have not got it. We have not got it now, if we ever had it.
214. *Mr. McLean*] Have you any knowledge of the affairs of this estate? None whatever.
215. Have you ever been professionally connected with the executors of this estate? No; I daresay my firm have. There were at that time four members of the firm, and we all have different work to attend to.
216. Were you a member of the firm in 1889? Yes.
217. Under whose special department would this business come? I cannot tell, we have a very large staff, something like thirty, besides the partners.
218. Is it possible that this might have been done in your office without your knowing it? Yes; quite possible.
219. Can you inform us what partner or officer of your firm would be likely to give us any information about it? No.
220. If your firm took out probate, in whose department would it be? I can name eight or ten clerks, in the hands of each of whom it might have been. Probably it would have been in the hands of this Mr. Fosbery. That is most probable.
221. I presume some member of the firm would have some information about the probate? I do not think it is very likely. In a matter of this kind Mr. Fosbery would be the solicitor. It would be given to him to attend to, and he would attend to it.
222. Was he an employee or member of the firm? He was an employee.
223. In that case the firm would be responsible for any of the acts of Mr. Fosbery? Certainly.
224. This probate, I presume, belongs to the trustees; and as the matter has been transacted by your firm, would it not naturally follow that some member of the firm would know something about it? I do not think that would follow.
225. Is it the custom in your firm to allow clerks to transact business in this manner, without any of the firm knowing anything about it? Yes; when it is in the hands of competent clerks, especially when they are solicitors. We have six or seven solicitors in our firm. We do not employ anyone unless we know he is thoroughly competent, and we take all responsibility.
226. *Mr. McLean*.] Do you swear that this probate is not in the custody of your firm at present? To the best of my belief.
227. Do you swear you never saw the document? Yes; and I swear, also, that I know nothing about the matter.
228. *Chairman*.] If the transaction was carried out in the manner you have indicated, even by a qualified solicitor in your office, would not your firm receive some monetary consideration for the services of that solicitor? There would be a book containing entries of any cash we received; but that would not show what was done with the documents. It would show all the disbursements and receipts.
229. Have you looked in your books for January, 1889? No.
230. *Mr. McLean*.] Did Mr. Fosbery keep a diary of his transactions on behalf of the firm? He would, appertaining to his own work.
231. That, I presume, is in the possession of the office still? I am not so sure of that. We do not keep those diaries for ever. They are destroyed in about six years.
232. Would it be possible for you, by looking up the books, to be sure whether this transaction was carried out in your office in 1889? Yes; I have every reason to believe that the memorandum which you have put into my hands is correct. I do not suppose anybody would write a falsehood there.
233. This is an extract from the Registrar-General's Office, and that is why we are somewhat surprised that you, as head of the firm, have no knowledge of the transaction? It is quite possible that this is correct, namely, that probate was delivered to Mr. F. G. Fosbery on the date mentioned; that is in or about January, 1889; but I know nothing about that, as I was in England. Even if I were not in England I would not know anything about it. If you will tell me what you want I will be happy to supply it.
234. We want you to identify this memo.? I will take a note of it. I am not aware that we acted for S. M. Swift. I will look up the matter, and send you an official communication.

J. W.  
Johnson.  
25 Oct., 1897.

Thomas William Garrett, called in, sworn, and examined:—

235. *Chairman*.] What position do you hold? Registrar of Probates and other offices.
236. Do you know anything about the Swift estate? I have the papers in that estate.
237. Have you the papers with regard to the application by the executors of the estate of Samuel Moffatt Swift? I have the application for probate.
238. Do you produce it? Yes.
239. Would a document of the kind I show you, signed at Wagga, come to your head office? Yes; this is copied from our office. As far as this document is concerned, it is only filed for the purpose of the assessment of duties, and not for the purpose of probate.
240. Will you state what the estate consisted of and what duty was paid? I cannot tell you that. The Commissioner for Stamps is the only person who can deal with that. No duties are paid to our Office.
241. Can you briefly tell us the particulars of the estate? I have made a statement from the Stamp Commissioner's affidavit, showing the different portions of the estate and the amount on which duty was paid.
242. When was the application made for probate? On the 9th April, 1894, it was granted. Mr. Swift died on the 18th February, 1884. It was granted to Phineas Hann, Charles Hawthorne Croaker, and Elizabeth Swift.
243. In April, 1894, was probate granted to those three executors? Yes.
244. Did they have to sign any document in your office? They swore an affidavit to well and truly administer the estate, and the ordinary affidavits to support it.
245. In this case did the three executors do that? Yes.

T. W.  
Garrett.  
25 Oct., 1897.

T. W.  
Garrett.  
25 Oct., 1897.

246. *Mr. McLean.*] Were those affidavits sworn on the same day by each of the executors? These are merely the ordinary affidavits setting forth the death, the execution of the will, and that they will well and truly administer the estate. Only one copy of the stamped affidavit was filed. That was forwarded to the Stamps Commissioner. Two years afterwards a rule was passed that the affidavit should be filed in duplicate.
247. *Chairman.*] Were those three affidavits signed by the executors under the will? Yes.
248. On the strength of that, as far as your office was concerned, was probate granted? Yes; there is an affidavit as to the due execution of the will.
249. In a case of that kind, does your office look to them to file accounts? Yes; they file accounts at the expiration of twelve months. Accounts were filed in this case in 1819.
250. Then it is not imperative that they should file accounts? Before 1890, when the Probates Act was passed, it was not imperative.
251. Has there been any other account furnished except this one? Not in our office.
252. Is it not required? I fancy that the accounts were subsequently filed in the Equity Court.
253. Who furnished the accounts? It is sworn by Hann and Croaker.
254. Does the Act compel you to take the three executors or a majority? Neither. The affidavit of one executor binds them all, except on the ground of fraud.
255. Supposing one executor furnished an account at the end of twelve months, and you did not hear anything from the other two, would that be satisfactory? Yes, unless exception was taken by the other two, or by any person beneficially interested in the estate. These accounts were taken by me, and I think Mrs. Swift attended on the passing of the accounts.
256. Was that in 1889? Yes.
257. Was Mrs. Swift there? Yes.
258. *Mr. McLean.*] Did Mrs. Swift enter any objection? Mrs. Swift did not. There was a letter from Want, Johnson, & Co., on behalf of the Australian Mortgage, Loan, and Finance Company, and Mr. Minter attended.
259. *Mr. Dick.*] Did Mrs. Swift make any appeal in person? I am only speaking from memory. I think she was before me on several occasions, and I fancy she objected to the accounts; but there were no formal objections filed.
260. *Chairman.*] You say an objection was made by Want, Johnson, & Co.;—look at this memo., and see if it has anything to do with that? No; this memo. is in connection with an application under the Real Property Act. That is signed by the Deputy Registrar-General.
261. *Mr. McLean.*] Have you any knowledge as to the position of this estate at the present time? Not the faintest.
262. Is it still in the Probate Court? No; as soon as probate is granted, we are finished with it. Then the accounts are filed.
263. Are these accounts of 1889 final accounts? No; before the passing of the Probates Act of 1890, there was no way of compelling executors to file accounts, and the Probate Court had no jurisdiction over trustees, and it has not now, except the jurisdiction voluntarily given by trustees.
264. And at the same time the executors may not be discharging their trust? No; they do not accept a trust. Trustees accept a trust. There is a thin line between the two, which to the lay mind is very imaginary. These accounts have never been passed by the Court; they were passed by me.
265. Do you put in these papers? Yes; if they are required. I have made a rough extract from the stamped affidavit.
266. Will you hand in that extract? It is endorsed on the papers. The estate was divided into three different portions. The private estate was valued at £26,021 10s. 9d.; private debts, £23,024 15s. 7d.; leaving a net credit of £2,996 15s. 2d. to the private estate. Partnership, Swift and Hann: total assets, £51,392 4s. 2d.; debts, £33,723 17s. 9d.; leaving a net credit balance of £17,668 6s. 5d. Partnership, Macdonald and Swift: assets, £53,250; debts, £27,000; balance, £26,250; leaving an aggregate balance in the whole estate of £46,915 1s. 7d. on which duty was paid.
267. Are these the exact figures from the stamp affidavit? Yes.
268. *Chairman.*] Have the three executors furnished you with any statement beyond what you have mentioned since 1889 as to what was done with the balance of £46,914 18s. 7d.? No.
269. As far as you know did your office or the stamp office demand such a statement from them? No.
270. Did you say that those accounts have not been through the Court? These accounts have not been passed by the Court. Vouchers were produced to me by the executors for the different payments, but the accounts were never passed by the Court.
271. Does that mean that they could not operate on them until they were passed by the Court? No; it only means that the formal allowance by the Court of the accounts passed by me has not been given.
272. But the executors could operate on the estate? Yes; the moment probate was granted.
273. *Mr. Dick.*] In that statement of accounts, does it set forth the operations of the executors up to the date of the statement of the accounts? It sets forth the operations of the whole estate, I presume.

William Alexander Balcombe, called in, sworn, and examined:—

W. A.  
Balcombe.  
25 Oct., 1897.

274. *Chairman.*] What position do you hold? Chief Clerk in Equity.
275. Do you know anything with regard to the estate of S. M. Swift? No.
276. Have you been informed as to what you were required to give evidence about? No; I had a note to produce the papers in the case. There are several matters in the Equity Court with regard to Mrs. Swift, Swift and Hann, and Swift and Macdonald. There are an immense number of books and papers—in fact about 1 cwt. and to bring them down is rather a large undertaking. If there is any way of singling out the papers or books required, I will produce them at once, or if all of them are required, I must be supplied with the means of getting them here. I can send for them. I laid the matter before the Judge, and he instructed me to produce the documents, but they are to be returned to the office every time the Committee rises.
277. Can you tell me what suits are pending in the Equity Court? I think they are all finished. The books were lodged in the office under the direction of the Master in Equity during the time the accounts were

were being taken. The suit has been disposed of. I was going to suggest that Mrs. Swift or the parties entitled could obtain an order for the books to be given up. Then they could go back to the proper owners, who could do what they liked with them. While they are in the custody of the Court we have to take care of them.

W. A.  
Balcombe.  
25 Oct., 1897.

278. If the Chairman gives an order as to what books are required, I suppose that is all that will be necessary? Yes.

272. *Mr. McLean.*] Can you give us particulars as to the equity suits and the decisions? Yes; I will bring down the pleadings and the decrees.

William Thomas Ball, recalled, and further examined:—

280. *Chairman.*] Have you any further evidence to tender? The only evidence I can give definitely is with regard to the partnership accounts of Swift and Hann. I have the accounts that I made up myself. I hand in a copy of the affidavit which I filed when I filed the accounts.

W. T. Ball.  
25 Oct., 1897.

281. Have you been all through the books? I have been all through the books and documents that I could get—the bank-books and cheque-books.

282. Did you come across any record of the partnership, other than the one between Hann and Swift? No.

283. Did you come across anything about a partnership with Macdonald? I did not go into that. I only dealt with the Swift and Hann matter.

284. *Mr. Thomas.*] Last week you were asked some questions which you said you would reply to on this occasion? Yes; one was with reference to Swift's capital account. There does not appear to be any capital account in any of the books I had. The only things I can trace are the cheques drawn, and which went through the bank. They show that there was no capital paid in by Hann.

285. *Mr. McLean.*] Do you remember that at the last meeting you were not able to give any particulars about some of the properties? The only particulars I can give are about Snubba and Mimosa. I have nothing with regard to Baden Park. Baden Park must have been owned by Swift when the partnership of Swift and Hann commenced. On the last occasion I produced two cheques of Mr. Swift in payment for Snubba station. One cheque was for £300, dated 1st August, 1877, and a promissory-note for £300, dated 1st August, and due twelve months afterwards. Both of these are Swift's. There is a cheque for the overdue rent of Snubba, £200, payable to Robert Downey. In reference to Snubba station, in going through the correspondence, I have made certain extracts. On 21st January, 1884, Hann writes to S. M. Swift: "I have no money or desire to buy Snubba. I do not want the use of Tooma Falls. You refused to let or stock Snubba, and only wanted to sell." It appears from that there must have been some intention to sell Snubba. I will give you all the reference I have to Mimosa. It appears that on 5th December, 1877, Swift sent Hann a cheque for £1,500. This, with the letter following, seems to have been an offer as a deposit on the property. On the 30th January, 1878, Swift sent a cheque to Wagga Wagga for £2,500 to pay for Mimosa. Then, on the 23rd January, 1878, there appeared in the *Sydney Morning Herald* a telegram from Wagga Wagga, as follows:—"The Mimosa run, embracing an area of 53,000 acres, and which is considered just now one of the best watered runs in the district, was sold to-day by the mortgagees for 19s. a head, with 8,800 sheep." On 31st January, 1878, the following paragraph appeared in the *Sydney Morning Herald*: "Elliott, Fosbery, & Co., sold Mimosa West station to Mr. S. M. Swift, with 8,900 sheep, at 19s. The sale was forced by the mortgagees, and most people say the run has been absolutely thrown away at the price."

286. *Chairman.*] In that transaction the name of Hann does not appear? No; the report in the *Herald* says it was sold to Swift.

287. *Mr. Thomas.*] And Swift signs the cheque? Yes. About the time this transaction took place, Hann was in partnership with Wilkinson. The firm was Wilkinson, Hann, Minchin, & Co. They were stock and station agents. I produce the delivery note, and the cheque for the purchase money of Mimosa station. I produce the extracts I have referred to from the *Sydney Morning Herald*. There are further extracts from the papers with regard to Mimosa. "7th February, 1878. Wilkinson, Mann, Minchin, & Co. sold 2,000 maiden ewes and 5,000 toothed to S. M. Swift." That shows Hann was still in partnership with Wilkinson, and the sheep were sold to Swift. I think that is all the information I can give about those two stations.

288. *Mr. McLean.*] Have you any information about Baden Park station? No; I found no record in the books at all.

289. Have you seen all the books and accounts relating to Swift and Hann? All that were produced to the Equity Court.

290. You can find no record with regard to Baden Park station? No.

291. Have you a copy of the balance-sheet of Swift and Hann put in with the affidavits lodged with the application for obtaining probate? I have the copy made up by the executors at the time probate was granted.

292. Do you see an item in the assets "Baden Park station, as per valuation, £50,715";—have you any evidence to show that that station was worth more than is set forth in that affidavit? No.

293. Then, for all you know, that may have been the true value of the station? Yes; as far as I know.

294. Then there is the item "Mimosa station, as per valuation submitted, £29,123";—have you any evidence to show that that valuation is wrong? No.

295. Have you any evidence as to the value of the Browley and Snubba properties? No.

296. Then, as far as you are concerned, you cannot question the values set down in this balance-sheet? Not with regard to those stations. I have a record of the promissory-notes.

297. Were those valuations in the balance-sheet of Swift and Hann, presented at the time the application for probate was made, taken from the books of Swift and Hann? I cannot say whether they were taken from them, or whether a separate valuation was made for probate.

298. Have you ever seen a valuation? No.

299. I asked you a question last time about the overdraft on the liability side of that account, Bank of New South Wales, £47,581 15s. 11d.;—do you know exactly what was the nature of the security given, or have you found out anything regarding that since? No; I mentioned last time that the bank could produce the mortgages, and that that would settle the matter.

300.

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- W. T. Ball. 300. *Chairman.*] Do I understand that you have gone through all the books and papers that were filled in the Court? Yes.
- 25 Oct., 1897. 301. In going through those, did you see anything about a partnership existing between Mr. Swift and Mr. Hann? No; except in name. I have made out a statement here showing the moneys paid into the account of Swift and Hann.
302. As far as you could see by going through the books there is no account of Mr. Hann paying anything into the credit of the firm? No; not one penny.
303. *Mr. McLean.*] Did he ever lend any money to the firm? Yes; Mr. Hann lent a sum of £6,000 to the firm of Swift and Hann. It was drawn out about two years afterwards.
304. Did he receive interest on that money? On the 14th October, 1881, Hann lent £6,000 to the firm. On the 15th February, 1883, Hann drew out the £6,000. On 19th April, 1882, Hann received an account of interest, £180; and on the 16th February, 1883, £114 7s. 4d. on account of interest.
305. *Chairman.*] Does it not appear from the evidence you have given that, in looking through the books, at certain periods Mr. Swift used to pay Hann a certain sum of money? Yes.
306. How do you account for that if you have no record of a partnership? These amounts are obtained by going through Swift's banking account. I produce cheques drawn on Swift's private account. These are all cheques payable to Hann. There are also promissory-notes. These date from December, 1887, to February, 1883, and they amount to £4,979 17s. 9d.
307. *Mr. McLean.*] Do you say that these cheques represent payments made to Hann as his share of the profits on certain transactions? Yes; outside of the stations. Here is a settlement of one lot. The balance paid was £78 17s. 3d., which is included in the cheques I have mentioned.
308. *Chairman.*] As far as you have traced them, are all those cheques made payable from the private accounts of S. M. Swift? Yes.
309. In your opinion there must have been some speculations in buying and selling stock between Mr. Swift and Mr. Hann, which they shared jointly? Yes.
310. *Mr. McLean.*] Was there anything like a cash-book kept in connection with Swift and Hann? No; I never saw one.
311. Then the whole of your accounts were compiled from the bank pass-book? Yes; I got them from the bank pass-book, the butts and cheque-book, and the deposit slips.
312. Were any payments made out of that account, so far as your knowledge goes, that showed there had been any distribution of profits at any time? Not with regard to the stations.
313. Were there any cattle-dealing transactions represented by payments made from the Swift and Hann account? No; not that I remember.
314. Were there any advances made either to Swift or Hann from the Swift and Hann account? No; Swift had his own private account at the time this account was running.

THURSDAY, 28 OCTOBER, 1897.

Present:—

MR. HUGHES, MR. THOMAS,  
MR. MCFARLANE, MR. MCLEAN,  
MR. WOOD.

W. M. HUGHES, ESQ., IN THE CHAIR.

William Alexander Balcombe, Chief Clerk in Equity, recalled and further examined:—

- W. A. Balcombe. 315. *Chairman.*] Have you all the papers and documents in the Equity suits which have been heard in connection with this case? Yes.
- 28 Oct., 1897. 316. Are you in a position to say how many Equity suits were instituted? There was the suit of Swift and Hann. There was afterwards the suit of Swift and McDonald, which was dismissed, I think, for want of prosecution or some technicality. Another suit was stated of Swift and McDonald, which went to a hearing, and afterwards to the Full Court on appeal. I have brought the documents in connection with the two suits which went to a hearing.
317. *Mr. McLean.*] What was the suit Swift and Hann? It was a suit brought by Margaret Moffat Swift, Agnes Winnie Swift, Mary Elena Swift, Elizabeth Jane Swift, Samuel Moffat Swift, and Richard Dean Swift, infants, by John Brown, their next friend, against Phineas Hann, Charles Hawthorne Croaker, and Elizabeth Swift, defendants. In that suit they prayed that an account may be taken of the trust property and effects which have, or but for their wilful default and neglect, might have been received by the defendants, Phineas Hann and Charles Hawthorne Croaker, or either of them. That, if necessary, an account may be taken of all partnership dealings and transactions between Samuel Moffat Swift, the said testator, and the said defendant, Phineas Hann, and that the said defendant, Phineas Hann, may be decreed to pay to the credit of the estate of the said testator what shall, on taking such accounts, be found to be due by him. That the defendants may be removed from being trustees under the said will, and that the trusts thereof may be carried into execution, and the real and personal estate of the said testator administered under the direction of this Honorable Court, that the defendants, Phineas Hann and Charles Hawthorne Croaker, pay the costs of this suit, and that the plaintiff may have such further relief, &c.
318. What was the date of that suit? It was filed on the 28th August, 1889.
319. How was the suit disposed of, and what was the decree? What I have read was the prayer of the statement of claim. The defendants, Hann and Croaker, put in a defence to it. It came on for a hearing to the 26th March, 1890. The following is from the decree: This Court doth order and decree that the following inquiries and accounts be made, that is to say:—(1.) An account of the personal estate not specifically bequeathed of Samuel Moffat Swift, the testator in the pleadings named come to the hands of the defendants, Phineas Hann and Charles Hawthorne Croaker, or either of them, or to the hands of any other person or persons by the order or for the use of the said defendants. (2.) An account of the testator's debts. (3.) An account of the testator's funeral expenses. (4.) An account of the testator's legacies and annuities (if any) given by the testator's will. (5.) An inquiry what parts (if any) of the testator's said personal estate are outstanding or undisposed of, and it is ordered that the testator's personal estate not specifically bequeathed be applied in payment of his debts and personal expenses in a due course of administration, and then in payment of the legacies and annuities (if any) given by his will. And it is ordered that the following further inquiries and accounts may be made and taken, that

that is to say:—(6.) An inquiry what real estate the testator was seized of or entitled to at the time of his death. (7.) An account of the rents and profits of the testator's real estate received by the defendants, Phineas Hann and Charles Hawthorne Croaker, or either of them, or by any other person or persons by the order or for the use of the said defendants. (8.) An inquiry of what incumbrances (if any) affect the testator's real estate, or any and what parts thereof. (9.) An account of all dealings and transactions between the said Samuel Moffatt Swift, the testator, and the defendant, Phineas Hann, as copartners; and it is further ordered that on the taking of the aforesaid accounts, the accounts mentioned in the defendant's statement of defence as filed in the Ecclesiastical Court, and the accounts as investigated by Mr. R. J. Mackenzie and by Messrs. Peel, Borrodaile, & Co., as in the said statement of defence mentioned, be received as *prima facie* correct, except as to items not vouched by the said Mr. R. J. Mackenzie and Messrs. Peel, Borrodaile, & Co., and in the Ecclesiastical Court; and that the plaintiffs be at liberty to surcharge and falsify any of the items and charges so vouched in any and all of the accounts as they shall be advised. On that decree the Master proceeded on the accounts, and certified the result to the Court. This is from his certificate:—That the defendants, Phineas Hann and Charles Hawthorne Croaker, two of the executors of Samuel Moffatt Swift, the testator, have received personal estate not specifically bequeathed, or there has come to their hands personal estate of the testator to the amount of £34,175 4s. 9d.; that they have paid or are entitled to be allowed on account thereof sums to the amount of £41,139 10s. 9d., leaving a balance due to them of £6,964 6s. on that account. That is the personal estate. The debts of the testator (with the exception of the two items referred to in the preceding paragraph) have been allowed as brought in by the said defendants, Hann and Croaker. They amount to £24,991 9s. The whole of the debts have been paid, with the exception of the item "amount owing by testator to Messrs. Pitt, Son, & Badgery, stock agents, Sydney, on an account stated, £350." The funeral expenses amount to £123 15s. 9d., which is allowed. The legacies and annuities given by the testator's will amount to £750, and, with interest thereon, remain due to the persons therein named. The outstanding personal estate of the testator consists of £4,436 16s. 1d., now lying to the credit of John M'Donald & Co., at the head office of the Union Bank of Australia (Limited), Sydney. Now, this amount represents the testator's interest in the station properties, known as Mungie Bundie, Gravesend, Boolooroo, resulting from the realisation of the said properties, and consists of the particulars set forth in the balance-sheet prepared by Peel, Borrodaile, & Co., and shown in the first schedule thereto. He certifies that on the appointment to proceed with the accounts before him, on 10th August, 1892, all the parties were represented, and consented to the said sum being paid into the Court to the credit of this cause; and he approved of the authority of the three executors of the said deceased being given to John M'Donald to pay the sum into Court to the credit of the cause. Then he certifies as to the real estate of the testator, that is contained in a schedule—"Hillcrest," the private residence of testator, Petersham, near Sydney. This at the date of the testator's death, was under mortgage to the London, Liverpool, and Globe Insurance Company, to secure £2,400, and interest at 6 per cent. It was sold by order of the mortgagees, and realised £3,000. Thus producing a surplus which was, however, absorbed by the Australian Mortgage Land and Finance Company under an attachment. This property was leased for six months by the defendant, Elizabeth Swift, who received the rent and applied it to the maintenance of the testator's family. The amount of the rent was not known to the defendants, Hann and Croaker. Then there were 23 acres of land, part of the King's Grove Estate, situated at Cook's River, near Sydney, and held by the testator at the date of his death, and since sold by the defendants to John M'Donald for £900. Mungie Bundie, Boolooroo, and Gravesend.—Testator was possessed of an equal half interest with John M'Donald in the above named station properties situated in the Gwydir district, near Moree, consisting of freehold and leased land. These properties have been mortgaged since testator's death by the surviving partner, John M'Donald. These properties had been under mortgage to the bankers of the firm John M'Donald & Co., for a number of years, and part of them, Mungie Bundie and Boolooroo, were sold by order of the mortgagees on or about 8th August, 1888, and realised the sum of £76,036 15s. 1d., the remaining property, Gravesend, was sold on or about 22nd May, 1889, and realised £11,020 9s. 5d. Both these purchase amounts were made payable by bills extending over periods of four years and three years respectively. Those bills were retired under rebate as per sale contract before maturity and on the statement of accounts between the testator and his partner, John M'Donald, as prepared by Peel, Borrodaile, & Co., the accountants of the firm. It is shown that the balance of £4,436 16s. 1d. remains in the hands of the said John M'Donald to the credit of the estate of the testator. Baden Park, Mimosa West, Browley, and Snubba.—Testator was possessed of an equal half share and interest with the defendant, Phineas Hann, in the above pastoral properties, which comprised freehold and leasehold lands. These properties had been mortgaged by the testator and the defendant Hann. Testator was also possessed of one-third share or interest with Frank Badgery and W. Piper in the Tooma Falls Run. It was eventually sold by the Sheriff under a writ of *fi. fa.* for a nominal sum. Since the death of the testator the properties known as Browley and Snubba have been sold by the defendants. Browley was sold on the 1st May, 1884, and Snubba on the 12th January, 1885. Shortly after the death of the testator the Bank of New South Wales, as mortgagees, went into possession of the properties known as Baden Park and Mimosa West, and are still in possession. The rents and profits were allowed as in the accounts. He certifies that the accounts of the partnership have been correctly kept as between Swift and Phineas Hann. They were properly vouched before the Master, and he allowed them. He certifies that these documents have been investigated by Mr. R. J. Mackenzie, professional accountant, from the beginning of the partnership to the testator's death, and by Messrs. Peel, Borrodaile, & Co., professional accountants, from the date of the testator's death, on the 18th February, 1884, up to the 18th February, 1887. Both accountants, Mackenzie and Peel, appeared before the Master and disposed on oath as to the mode of their investigation and its correctness, and they agreed in certifying that the partnership accounts for that period were correct. He certifies that the accounts of his dealings with the assets of the partnership have been carried by the defendant, Phineas Hann, from the 18th February, 1887, to September, 1888, when the properties were taken possession of by the Bank of New South Wales under their mortgage. The plaintiffs have not succeeded in establishing any surcharge or falsification in respect of the accounts for any of the periods mentioned. Afterwards there were applications to the Court to vary this certificate. Eventually, on the 20th August, 1897, the Court made a decree. (Decree read).

320. Are Hann and Croaker still the executors of this estate? Yes, they have never been removed.

TUESDAY.

W. A.  
Balcombe.  
28 Oct., 1897.

TUESDAY, 30 NOVEMBER, 1897.

Present:—

MR. HUGHES,  
MR. MCGOWEN,|  
MR. McLEAN.MR. THOMAS,  
MR. DICK,

W. M. HUGHES, ESQ., IN THE CHAIR.

John McDonald sworn and examined:—

- J. McDonald. 321. *Chairman.*] You have been called to give evidence in connection with an allegation by Mrs. Swift, as to an evasion of the probate duty; do you know anything of it? No; I know nothing at all of the probate duty.
322. Did you know Mr. Swift, personally? Yes, very well.
323. Were you engaged in any business transactions with him? Yes.
324. Of what nature were they;—were you a partner of his? Yes.
325. Was there ever a deed of partnership drawn up between you? Yes.
326. Is it, or a copy of it, in existence? I have no doubt there is; Mrs. Swift would have them.
327. Have you any objection to tell the Committee what chiefly were the transactions between yourself and Mr. Swift;—were they stock dealings? Principally stock dealings—stock and station matters.
328. For what length of time were you a partner of or engaged in transactions with Mr. Swift? I should think for about twenty years.
329. Then you would have rather an intimate knowledge of Mr. Swift's business transactions in general? Yes.
330. Were you, during the whole of the time you have mentioned, a partner of Mr. Smith? I think a deed of partnership was drawn out at a date subsequent to that at which we first started to deal.
331. Were you ever, during any part of this time, an employee of Mr. Swift? No, never.
332. You were all the time either a partner or were in business relations with him as an agent? Yes.
333. It is alleged by Mrs. Swift that a large portion of the estate of which her husband was seized when he died, and which should have come to her and her children, has not been administered, and that she has received nothing;—do you know anything at all of the matter? I know nothing about it.
334. Are you acquainted with her co-trustees, Mr. Hann and Mr. Croaker? Yes.
335. But you know nothing of the matter of your own personal knowledge? I know nothing of their business relations; I only know that they are trustees.
336. You are aware, of course, that Mrs. Swift has been engaged in litigation in the matter? Yes, I am aware of that.
337. Have you been before the Court in that connection? Yes; several times.
338. What was her object, or purpose, in calling you before the Court;—what did she hope to do? She challenged the accounts.
339. The accounts of the partnership between Swift and McDonald? Yes.
340. She asked you, I believe, to produce the books? Yes; they were produced.
341. You produced them? Yes.
342. I see that according to her statements a number of books were produced in Court;—were they the whole of the books in your possession in connection with the estate? Yes.
343. You have never had, in your possession, any other books relating to your partnership except those covered by your affidavit? I have only the books connected with the partnership between Mr. Swift and myself.
344. You have no other books? None relating to the accounts except those which I handed over.
345. I see from the Equity Court proceedings that you handed in some books and papers held by Peele, Borradaile & Co, in connection with Mungie Bundie;—do you remember that? I remember that that firm of accountants were appointed by Mrs. Swift, as they had had some business relations with her late husband. They audited the accounts for and on behalf of Mrs. Swift and her co-trustees. The books necessary for that purpose were handed to them by me.
346. I see that the receipt of the Equity Clerk for these books is dated the 5th September, 1890;—we may presume, therefore, that they were handed in? Yes.
347. There was one ledger containing entries from 1884–85 until 1890 in connection with the estate, and one cheque-book containing also a journal of entries from the years 1884–85 to 1890; there was also one station-ledger, one transaction-book, and four pass-books—three of the Union Bank of Sydney, and one of the Bank of New South Wales, Moree? Yes.
348. I see that your affidavit, after alluding to the books I have just enumerated in the schedule marked "A," says:—"I further say that according to the best of my knowledge, remembrance, and information, and belief I have not in my possession, custody, or power, or in the possession, custody or power of my solicitors or agents, or in the possession, custody, or power of any other person or persons on my behalf, any deed, account-book of accounts, voucher, receipt, letter, memorandum, paper or writing, or any copy of, or extract from any such document, or any other document whatsoever relating to the matters in question." So that according to your affidavit these were the only books or papers you had in your possession, or knew anything at all about? Yes; they were all I knew of.
349. It appears that on the 3rd April, 1896, Mr. Grainger, a solicitor at Moree, went to Mungie Bundie to subpoena a Mr. Jones and a Mr. Harkness in connection with this matter;—do you know those persons? Yes.
350. Who is Mr. Harkness? He was an employee of mine.
351. It appears that while subpoenaing Mr. Harkness, Mr. Grainger took a list of the following books in connection with this matter:—A wool-book, from 1875 to 1883, which was not included in your affidavit, and which it is alleged has some connection with the Swift-McDonald accounts;—do you know anything at all about that book? No.
352. In addition to that it is alleged that he found five day-books, dating from the 18th September, 1888, to 3rd March, 1894, and that part of some of these books had something to do with the Swift-McDonald accounts;—do you know anything of them? No; and if I may be permitted to say so, it seems rather an absurd thing that a man going out to serve a summons should take particulars of these books.



353. It is alleged also that there was one store-book, dating from 26th August, 1876, to August, 1878; a J. McDonald. day-book dating from the 1st January, 1884, to the 18th February, 1887; a shearing-ledger dating from 1888 to 1893; a general ledger dating from 1879 to to 1880; "F. S. Falkiner," dating from 1889 to 1890; <sup>30 Nov., 1897.</sup> a ration-book dating from 1880 to 1888; a ledger for 1876, '77, and '78; part, 1888, '89, and '90; day-book (Gravesend), dating from 1883 to 1889; Letts' Diary, 1874; a bills receivable-book, day-book, March 1st, 1876, to December, 1878; land-book, showing lands purchased by Mungie Bundie, at Government auction sales, from 1875 to 1882; ditto, land improved; and a journal dating from 1879 to 1883. There were also, it is alleged, numerous stock returns, and papers connected with the station. It is further alleged that these books, or some of them, are wanted in connection with this matter, and that according to your affidavit you have not them in your possession. I should like to know from you—if you want any particulars as to the books you can have them—whether any of these books, or all of them having any relation to the Swift-McDonald accounts, may have been in your possession at that time? There were no books whatever relating to those accounts beyond those which I landed over. I handed over all the books bearing upon those accounts to the accountants.
354. Were you connected with Mr. Swift in 1875? Yes.
355. At that particular time did you carry on business wholly or partly as a partner of Mr. Swift, or partly on your own account? There were three partners at one time.
356. Who was the other partner? Mr. Spiller.
357. The whole of the transactions were carried on for the joint benefit of the three partners? Yes.
358. Were you then carrying on business on your own account? No.
359. Supposing there is a wool-book, dating 1875, having to do with transactions of Mungie Bundie in and during that year, to what transactions can that book allude other than to those with which you, Mr. Swift, and Mr. Spiller were concerned? I have no idea without seeing the book.
360. You said just now the book had no connection with any matters between yourself and Mr. Swift. You were quite positive about that; Mr. Grainger's letter, under date 3rd April, 1896, is addressed to Messrs. Russell and Russell, solicitors, 359, George-street, Sydney. He gives a list of books which I have already read to you, and in the list is that wool-book dated 1875;—have you any recollection of a ledger covering the years 1876, 1877, and 1878, other than the book you put in in reply to the subpoena of the Equity Court, and covered by your affidavit? No; I do not remember any.
361. The affidavit mentions a ledger covering a period of 1884, 1885 to 1890, but there is no further mention of any ledger? There may be some explanation of this kind, although I do not know whether it would apply. When we bought Spiller out we had the accounts audited up to that date.
362. *Mr. McLean.*] About what year was that? I do not know. It was a long while ago.
363. Was it previous to 1884? Yes.
364. *Chairman.*] It was somewhere between 1875 and 1884? Yes. So that with the auditing of the accounts after Mr. Swift's death, one would necessarily begin from the point up to which we had settled. It is possible that there may have been old books not bearing at all upon the accounts as between Mr. Swift and myself. There will be accounts, for instance, applying to the period of the partnership between Mr. Swift, Mr. Spiller, and myself. All the books bearing upon the accounts between Mr. Swift and myself were sent to the auditors.
365. Cannot you fix a date with approximate accuracy when you and Swift went into partnership? There was the partnership between Mr. Swift, Mr. Spiller, and myself.
366. What was the date of your partnership with Mr. Swift only? There was none until Mr. Spiller joined us.
367. During the whole time you, Mr. Swift, and Mr. Spiller were in partnership you kept a joint account? Yes.
368. With regard to this general ledger dating from 1879 to 1880, does it cover any portion of the time in which Mr. Spiller, Mr. Swift, and yourself were in partnership? I really could not say unless I saw the dates.
369. Will you discover the date from which you and Mr. Swift alone were in partnership? It would be from the date when Mr. Spiller went out.
370. You could furnish us with the date when Mr. Spiller went out? I think I could.
371. At this moment you cannot say whether the general ledger, covering the period from 1879 to 1880, embraced operations during a period when you and Mr. Swift only were in partnership? I could not say. I can only repeat what I said before—that all the books relating to the partnership between Mr. Swift and myself were handed in to the auditors, and the accounts were made up from them.
372. The books enumerated cover a period from 1875 to 1893—a period of eighteen years; that is a good long time; but you are not prepared to say to-day, during what portion of that period you were in partnership with Mr. Swift alone? We were certainly in partnership during portion of that period.
373. Any book covering transactions in connection with Mungie Bundie Station can refer only to transactions between yourself, Mr. Swift, and Mr. Spiller, or between yourself and Mr. Swift, during that period? That is probably the case; but I could not say definitely without seeing the books.
374. Did you say that Mr. Hann had in his possession any of the books for which you were asked? I do not think he had, but I could not say definitely, at all events all the books bearing upon the accounts were handed over to the accountants. Mr. Hann and Mrs. Swift were constantly with the accountants. Both Mr. Hann and Mrs. Swift had access to the books, but the accountants could tell you more of that matter than I could.
375. I notice that under date of March 18th, 1887, in a note from yourself to Messrs. Peele, Borradaile, and Co., you say that you forwarded all the books or vouchers that they are likely to require;—are we to infer from that that you did not send all? I have just explained to you that Mr. Spiller was bought out; consequently, any transactions in the books previous to his being bought out would not be likely to be required for the purpose of auditing the accounts. It was only after Mr. Spiller being bought out—between that date and the date of Mr. Swift's death—that any of the accounts would be of use. We necessarily had to go into the accounts when we bought Mr. Spiller out to arrive at the value of the estate.
376. You do not think it possible that of the transactions in which Mr. Spiller was engaged can bear upon the matter? I feel sure they cannot.
377. You had a settling-up when you bought Mr. Spiller out? Yes.

Elizabeth

Elizabeth Swift, sworn and examined:—

- E. Swift. 378. *Chairman.*] We have here an affidavit by Mr. McDonald from which it appears that he handed in to your accountants a number of books and papers in connection with the estate? Yes; that was on a discovery order obtained by my solicitor before my case was heard in the Court.
- 30 Nov., 1897. 379. We have also a letter written by Mr. Grainger, a solicitor, of Moree, to Messrs. Russell and Russell, solicitors, of Sydney, in which he says that having to go to Mungie Bundie station to subpoena a man named Harkness, he made a list of books of which he furnished a list: we have asked Mr. McDonald about those books, and although he was unable to give us accurate information, the matters having transpired so long ago, he seemed to think that they were in connection with the partnership of Mr. Swift with Mr. Spiller and himself;—did you know anything of that partnership? Yes; at the end of 1873 my husband sent for Mr. McDonald who was then droving for him.
380. You mean to say positively that in 1873 Mr. McDonald was droving for Mr. Swift? I do; in that year and in 1872. I can produce the accounts at that time. Here are a few of the leaves of the accounts kept by Mr. McDonald when he was droving.
381. *Mr. McGowen*] Do you swear that Mr. McDonald was in your husband's employ as a drover in 1872, 1873, and 1874? No; at the end of 1873 he went out and bought Mungie Bundie.
382. May he not have been droving and yet have been a partner of your husband? No; he was not a partner at that time. Mr. Swift opened an account at the branch of the Bank of New South Wales at Tumut, for Mr. McDonald's purposes as a drover, as he did also in the case of other drovers. He paid money out of his private account into that account. I have the pass-books showing the accounts, and I could produce to-morrow also the affidavit of the Bank manager.
383. Who is Mr. Spiller? Mr. McDonald's brother-in-law. In the early days Mr. Spiller was a general hand on Tubbo station.
384. Was he working for your husband? No. Tubbo station belonged to Mr. John Peters, a wealthy man in England. Mr. McDonald's sister was a housemaid there and she married Mr. Spiller. The manager got killed and after some time Mr. Spiller was made manager; then Mrs. Spiller sent for her brother and he came out. He was for some years on Tubbo station carrying and doing all kinds of rough work.
385. How did Mr. Spiller come to leave the partnership? Mr. McDonald ran away from his sister and went on the roads droving; then he turned up at Ellerslie station near Adelong, close to where Mr. Swift was living. The station belonged to Messrs. Petersen and Sargood, of Melbourne. They sent home for their nephew to manage it, and when he came out Mr. McDonald was sent away. He then came on to Mr. Swift's station as a drover. He went out and inspected cattle and sheep and bought them. Mr. Swift paid the money into the account and McDonald drew upon it and paid the accounts.
386. Had Mr. Swift any other drovers in his employ whom he treated in the same way? Yes.
387. Can you name any? Yes, a number. There were Thomas Miller, B. P. Radford, J. M. Flanagan, and S. M. Byrnes. I could give you a whole list.
388. Did Mr. Swift pay into an account at the Bank money upon which these men could operate in the same way as he did in the case of Mr. McDonald? Yes.
389. *Chairman.*] Can you prove it? Yes; from the pass-books.
390. Could you produce them to-morrow? Yes; I have every one of them.
391. You are sure Mr. Swift paid money into the account of each of these men in exactly the same way as he paid money into Mr. McDonald's account? Yes. They were in charge of the stock and they had generally two or three men under them. When they sold the stock they sometimes received money which was always paid into Mr. Swift's private account, and never into their own accounts.
392. The transactions as far as you are aware, between Mr. Swift and Mr. McDonald, were identical with the transactions with the other men you have named? Yes.
393. *Mr. Thomas.*] You have never seen any deed of partnership drawn up between them? I have seen what purported to be a copy of a deed of partnership, but I think that when you see it you will not be able to say what it is. Mr. McDonald refuses and has always refused to produce the original.
394. He said in his evidence this afternoon that you had it? Yes; I may mention that during the fourteen years my husband was in business, commencing in 1870-71 he paid into his own private account and his other accounts no less a sum than £1,374,548 2s. 8d. These figures are compiled from the books. I mention that to show that he did not want any money from Mr. McDonald—to show you that he really was possessed of money.
395. *Chairman.*] What we want to arrive at is the nature of the books to which Mr. Grainger refers in his letters. For instance, there is the wool-book covering transactions from 1875 to 1883;—was your husband a partner with Mr. McDonald for any portion of the period between 1875 and 1883? He was. Perhaps it was thought at another time that he was a partner, because, it being difficult to communicate between Tumut and Mungie Bundie under two or three months in those days, when there was no railway and nothing but the boat and the coach which often broke down, Mr. Swift often gave him a power of attorney. Mr. Swift directed him what to do.
396. Can you prove that Mr. Swift gave him a power of attorney? Yes; if you will give me time, but I do not think I could do so by to-morrow.
397. You hand in a memorandum of agreement of a partnership between Mr. McDonald and Mr. Swift under date of 8th February, 1881? Yes; it is in Mr. Hann's handwriting. [*Appendix B1.*]
398. In whose handwriting was the original? According to what Mr. McDonald says in one of his letters it was in his own handwriting.
399. You hand in a copy of a letter which Mr. McDonald wrote to Mr. Hann, in which he states that the original memorandum was drawn up by himself? Yes;—[*Appendix B2*—he says "I will hunt up the partnership memo., for such it was, drawn up by myself; I think it is either with A. and A. or Bank; will find it and send you copy."

John McDonald recalled and further examined:—

- J. McDonald. 400. *Chairman.*] The Committee would like you to bring, to-morrow, the date of the partnership between yourself, Mr. Spiller, and Mr. Swift? I could get the date when Mr. Spiller went out; but as to any other date I am doubtful.
- 30 Nov., 1897. 401. You said early in your evidence that there was a deed of partnership between yourself and Mr. Swift? Yes.

402. Will you be able to obtain a copy of it? Mrs. Swift has it; she will give you all the papers and dates. J. McDonald.
403. Is the original document lodged with the Bank? I do not know where it is. 30 Nov., 1897.
404. I suppose it was drawn up by solicitors? Yes.
405. Mr. McGowen.] You have no copy? No.
406. You have not the original? No; when the equity suit was on, I gave up the whole of the books and papers I had bearing upon the partnership.
407. Mr. Thomas.] You say a firm of solicitors drew up the deed? Yes; Messrs Piggott and Trickett.
408. Mr. McGowen.] You had at one time a copy of the deed? Yes; some years ago.
409. Did you not send a copy to Mr. Hann? I think it very likely; I do not know where it is now. I handed in the whole of the papers in the course of the Equity Court proceedings.
410. Was it the original draft that you sent to Mr. Hann? I could not say whether or not it was the original copy. I do not know that I did send it to him; but it is very likely that I did. I have no recollection of having sent it. The date of the deed would be when Spiller was bought out.
411. Have you any idea of the terms of the agreement between yourself and Mr. Swift in reference to Mr. Spiller being bought out? I know that we bought him out between us.
412. Have you any idea what you agreed to pay him? I think it was £16,000.
413. Mrs. Swift has handed us a number of cheques; here, for instance, is a cheque upon the Bank of New South Wales, drawn 10th February, 1881, in favour of John McDonald & Co., for £1,950, signed by Mr. Swift; have you any recollection of the receipt of that large sum of money? It would be impossible for a man to carry all these things in his memory; I dare say I could give you a possible explanation of a number of these things: Mr. Swift was a very large dealer, and he used often to be in monetary trouble and on these occasions I used to assist him. Probably he would get a p.n. from me, and he might redeem it before the due date. Probably many of these things would be explained by transactions of that sort.
414. Were you in the habit of doing that sort of thing for Mr. Swift;—did you occasionally take his liabilities in that way? Yes.
415. He was a large speculator was he not? Yes.
416. None of these cheques had anything to do with the purchase of stock or of Mungie Bundie station? No; the dates would show that.
417. Was the deed of partnership between yourself and Mr. Swift drawn in 1881? No, I think it must have been drawn in 1870.
418. Are you sure of that? As sure as a man can be of anything which has happened so long back.
419. Have you anything else which will help to fix the date in your mind? I believe the place was bought in 1874; consequently, the deed must have been drawn some time thereabouts.
420. I suppose you would not like to swear that it was not in 1881 that the deed of partnership was drawn. I would not.
421. Suppose the deed was drawn on the 8th February, 1881, two days from the date of the cheque I have shown you, would not the inference be that the £1,950 had some connection with it? It might have, taking that view of it.
422. But to the best of your knowledge and belief the date of the agreement was removed by some years from the date of the cheque? Yes.
423. Mr. McGowen.] Before entering into your partnership with Mr. Swift, you were in his employ as a drover were you not? No; never.
424. Were you not droving for him in 1872 and 1873? No; for myself, and him occasionally.
425. Were there any other men—for instance, Miller, Radford, Flanagan, and Byrnes, working as drovers with Mr. Swift? That was years afterwards.
426. You say that in 1872 and 1873, you were not in Mr. Swift's employ as drover? I was never in my life in his employ.
427. Were you working in conjunction with him? Yes.
428. In what way? I used to buy fat stock and take them to Melbourne, and at other times store cattle, and take them to other places.
429. What interest had Mr. Swift in those transactions? He had one-half.
430. Was there a partnership? Yes; but there was no deed of partnership before Mr. Spiller joined us.
431. Mr. Spiller was not in partnership then in the droving business? No.
432. But you say that in 1873 you were buying cattle for yourself and Mr. Swift? Yes.
433. Did you also find men to buy the cattle? Yes.
434. And the transactions with Mr. Spiller came on much later? Yes.
435. Did you give any evidence in this case to the effect that Mr. Spiller supplied you with money with which to purchase Mungie Bundie station? I do not think so; although I believe Mr. Spiller found part of the money. I could not, however, say for certain. I know that there was some difference in the money transaction which was adjusted later on.
436. Did you enter any defence when Mrs. Swift was attempting to fight you as to the existence of any partnership in Mungie Bundie station—that your share of the purchase money of Mungie Bundie was supplied to you by your brother-in-law, Mr. Spiller? No; some bungling was made by my solicitor in that matter. We rectified that afterwards.
437. Did Mr. Spiller, as a matter of fact, supply you with the money? No.
438. The previous transactions between yourself and Mr. Swift in the purchase of cattle and the delivering of them to market for sale were transactions in a *bona fide* partnership? Yes.

WEDNESDAY, 1 DECEMBER, 1897.

Present:—

MR. HUGHES,  
MR. VAENKY PARKES,MR. MCFARLANE,  
MR. THOMAS,

W. M. HUGHES, Esq., IN THE CHAIR.

John McDonald, recalled, and examined:—

- J. McDonald. 439. *Chairman.*] Have you tried to obtain the information which I asked you to get? Yes. I find that the information is most likely to be found in the Equity Court. I thought I could get it through the bankers. The nearest I could get was that it was 1880 or 1881 when Mr. Spiller was bought out.
- 1 Dec., 1897. 440. Can you fix a date for the earliest partnership transaction between yourself, Swift, and any other person? I should say it was about 1870.
441. Are you fixing the date by any transaction? No; from recollection.
442. Have you given any thought to those other books;—is there any other explanation which you can offer, except that which you gave yesterday, as to what Mr. Grainger speaks about? No other explanation.
443. You believe they were books connected with the joint partnership of McDonald, Swift, and Spiller? I think that is probably what they would be.
444. Was that account wound up in 1880 or 1881? When Spiller was bought out.
445. So that whatever they contained they cannot bear upon the Swift-McDonald account? No.
446. Have you any recollection as to who audited the accounts when you bought out Spiller? Spiller, Swift, and I had a meeting. We mutually arrived at the assets and liabilities.
447. Are you quite sure there was never any relationship between you and Mr. Swift as employer and employee? Quite sure.
448. Are you disposed to tell the Committee who found the capital of the stock transactions between you and Swift, before Spiller joined you? Swift and I had each our joint capital; in fact any capital there was in it originally, I had it. Swift was a civil servant and had little or no capital.
449. At the time you and Swift had the original transactions, was Swift not a man of means? He was quite the reverse.
450. Was he a very smart business man? Yes, he was a good business man.
451. When you, Spiller, and Swift were together, did Spiller bring any capital into the business? Yes, he brought his one-third.
452. You put in an amount of capital, and drew out a separate proportionate return? Yes.
453. Do you still own Mungie Bundie station? Yes.
454. Did you come to an arrangement with the trustees with reference to that property? No; the Bank took possession and sold it.
455. Did you buy it? No; I bought it subsequently from the party who bought it at the sale.
456. Was the property sold for an amount equivalent to what it was valued for probate purposes? I do not know what it was valued at.
457. For what amount did the Bank sell the property? £75,000, as near as I can remember.
458. Was it security for an overdraft or mortgage? It was necessarily an overdraft, or they could not take possession.
459. What was the amount of the overdraft? That I cannot remember; but that will be seen in the pass-book in the Equity Court.
460. Do you say that you never, during any portion of your time, were an employee of Swift's, and that all the transactions in which you and Swift, and you and Spiller and Swift, were engaged, were transactions in the nature of an ordinary partnership? Yes.
461. That although a deed of partnership was not drawn up between you and Swift in your early transactions, yet they were of that nature? Yes.
462. The nature of the partnership was that the capital was supplied either by both parties equally, or originally by yourself alone? Yes.
463. And that at the first stage Swift had no capital at all? Yes.
464. What was he? He was a Crown lands bailiff.
465. In reference to an item in 1872 and 1873, it is alleged that you were droving for Mr. Swift, and in support of that it has been sworn that there was an account opened by Mr. Swift with the Bank of New South Wales at Tumut; do you know anything at all about that? I could not tell you; I know I was not droving for him. Who makes that allegation?
466. Mrs. Swift? What support has she got for the allegation?
467. The only support we have seen is an extract from a ledger or day-book in which there was an account opened in the Bank of New South Wales, at Tumut, by Mr. Swift, which was operated upon by you? Very likely; if I remember rightly, we each had an account at Tumut.
468. *Mr. McFarlane.*] Had Mrs. Swift any intimate knowledge of Mr. Swift's business? Up to the time of his death, to the best of my knowledge she did not know anything about his business. To the best of my belief, when I was with him she knew nothing at all about his business.
469. Would she have any knowledge of the partnership or banking account? No; only what she may have picked up since she got crazy about this matter. She is a woman of indomitable courage, when she gets an idea into her head she goes right at it.
470. Would she have a knowledge of the value of station property prior to Mr. Swift's death? She could not have any knowledge of it; she never lived on a station.
471. Was she in the habit of visiting the station properties? No.
472. She made certain statements that there was no partnership further than joint business transaction concerning certain speculations, and that there was no fixed partnership? Up to the time Spiller joined us.
473. Was Spiller a partner? He was a partner, as Swift and I. When he joined us we had a proper deed of partnership drawn up, because he would not join us in the loose way of business we had. We trusted each other with anything. When Spiller joined us we went on a business footing.
474. Has that deed of partnership been produced? It is in the Equity Court.
475. Was the Mungie Bundie property sold by auction? Yes.

476. Did it realise the amount for which the firm were liable to the bank? Yes; there was a credit balance. J. McDonald.
477. What became of that balance? It was divided in proportion to the right of the estate to it. The balance was handed over to the trustees of Swift's estate. 1 Dec., 1897.
478. *Mr. Parkes.*] Have you any idea whether the property of Swift's estate, when it was wound up, realised the amount on which probate was paid? To the best of my recollection, probate was paid on a greater value than the estate was worth.
479. That is, it was paid in anticipation of the estate being of a certain value, which it did not actually realise? Yes. Moreover, the trustees had probably an object in making it as valuable as possible.
480. Might it not be that for financial purposes they made it of greater value? Yes; that was the impression given to me at the time.
481. Was Mrs. Swift paid £2,000? I do not know.
482. Did you know anything of the trustees' business? No.
483. At the time, you were under the impression that they paid more as probate duty than the estate would realise, and that they did that for financial purposes? Yes; that was my opinion.
484. *Chairman.*] This is a copy of your account with the Bank of New South Wales at Tumut;—how do you account for the fact that cash is paid in uniformly by Swift and not by yourself into this account; there are various amounts all paid in by Swift;—what is your explanation of that? We each had an account, and I would want to see a copy of the other accounts.
485. Here is your private account covering £926 8s. 6d.;—£600 in this private account of yours corresponds with this deposit slip of Mr. Swift's for the purchase of Mungybundie? That is the kind of thing I should like to look into. I cannot remember what occurred twenty years ago.
486. Here is your partnership account presumably, in which all the cash is paid in by Swift? This is one and the same account; there is no private account in either of these. They are both private, as far as my business with the bank is concerned, yet they are both partnership accounts.
487. How do you account for it that in your private account the cash is paid in uniformly by Swift;—where is the contra account? Show me Swift's account with the same bank, and you will probably find me paying into his credit.
488. Is that your explanation? That is the way we used to work in those days.
489. *Mr. McFarlane.*] Do you remember operating on this account at the Tumut branch of the Bank of New South Wales;—I see it is in your name, John McDonald? Yes.
490. In making these deposits, were they made by you in Swift's name? No; it was put in my own name, and he kept his own account in his name.
491. Am I to understand there were two banking accounts in this bank at Tumut? Yes; one of his, and one of mine.
492. Did you operate on Mr. Swift's banking account? No; on my own.
493. Would Mr. Swift operate on his own account? Yes.
494. You did not operate on each other's accounts? No; every now and again we used to have a straightening up. I used to pay to him, or he used to pay to me, as we finished each transaction or speculation.
495. In the event of a sale of property or stock, would the money be first paid into one account in the bank? Very likely; it might be paid into my account, and I would give him a cheque, or he would give me a cheque.
496. Would you adjust it before paying it in? No. We did not keep any books; we used to trust each other. I used to give him money if he wanted it, or he might give it to me. I bought a station from a man named Ryrie. At that time Swift was a stock and station agent. He, of course, sold the place for Ryrie, and I bought it. That accounts for Ryrie's name appearing in these banking accounts. I gave Ryrie so much in cash and the rest in bills. The promissory-note appearing in the account calls that back to my recollection.
497. *Mr. Parkes.*] Did you travel about very much? Yes, a good deal.
498. Did Mr. Swift travel about? Yes.
499. Was there any arrangement between you as to one doing the clerical work and the other doing the actual travelling? No.
500. There would not be one partner who would pay in constantly? No.
501. *Chairman.*] Here are some leaves from a book;—are they in your handwriting? Yes.
502. Was that a petty cash book, or what was it? I could not tell you.
503. Anyhow, it is a book you kept, and it is dated 1873? Yes.
504. Were you in partnership with Swift at that time? I can hardly say whether I was or not. It seems to be very mixed up memoranda. There are men mentioned here who I had in my employ, and it refers to transactions at this place of Ryrie's.
505. You must have been in partnership with Swift at that time? Not in this station. He had nothing to do with this place. It was a place at Little River, near Yass—Cooradigby.
506. Some of these dates coincide with the banking account during the time you were operating on the account at Tumut? These are so mixed up that I cannot explain them, and I am sure nobody else can.
507. Here is a cash entry for a dog? Possibly, I bought a cattle-dog; that is twenty odd years ago.
508. According to these entries somebody was droving? It was a cattle station, and we had dogs to get the cattle.
509. Did you ever travel with mobs of your own cattle? Yes.
510. During 1873 there was an account opened;—were the operations on that account entirely out of the hands of Mr. Swift? Yes; he had nothing to do with that station except that he sold it. He used to sell stock off it for me. It was after I sold that place to which those figures relate that I joined Swift.
511. *Mr. Parkes.*] There is an item of £3,000 odd in that account;—can you throw some light on that? You mean the item £3,417?
512. Was that a deposit by Swift and yourself conjointly? Yes; that was when we bought the place that I am now on; that was the deposit money.
513. Paid by whom? Paid by both of us. The whole of the money that Swift and I had, to the best of my recollection, was lying to Swift's credit. I went up North to see if I could see any place suitable, and I saw this place then and arranged on a proper business footing that Swift, Spiller, and myself should buy

- J. McDonald. buy it. This, as far as I can see was a transfer to the head office in Sydney of the Bank of New South Wales of our cash to pay this deposit on the property.
- 1 Dec., 1897. 514. That would be paid out of Swift's account, being the conjoint money lying to Swift's credit? Yes, at Tumut.
515. For convenience? Yes.
516. Would that account for all the deposits being in Swift's name? Yes. Spiller paid in his proportion independently.
517. *Mr. McFarlane.*] How long was the partnership in existence between yourself, Spiller, and Swift? It started about 1874, and ran on until about 1890 or 1891, when Spiller was bought out. He was dissatisfied with Swift's speculative propensities. He got frightened, and finally he offered to sell his share for, I think, £16,500. Swift and I bought him out.
518. During the time of the partnership, how often would you have a settlement of accounts, either before or after Spiller left? Pretty well every year before Spiller went out.
519. In adjusting the different shares, was everything amicably arranged, or was there any dispute? We never had a dispute.
520. Was Mr. Swift always perfectly satisfied with the adjustments made in connection with the partnership? Yes; it was only Spiller that was dissatisfied. Swift and I never had a word. We trusted each other with anything and everything.
521. Did he take sufficient trouble to see that the accounts were correct? I think he did so, because I remember the books being sent down here. I insisted on their coming down to some accountant he had in Sydney, so that there should be no doubt about it.
522. What was the result of that? He returned the books. He was perfectly satisfied. I forget who was the accountant, but it was one of his own.
523. Was it agreed upon by both of you to submit the books to an accountant? He did not want to bother about it, but I insisted upon it.
524. Was it merely an audit? Yes.
525. Were you both satisfied? Yes.
526. Did the partnership extend to all the stations? Yes, to all the operations we had; but he was in lots of places that I had nothing to do with. When I was moderately successful where I was, we got in with other partners. He got in with a man named Hahn, and they got stations down near Wilcannia and Wagga. I had nothing to do with those transactions; in fact, he got into all sorts of speculations.
527. Was he successful generally in his speculations? Yes; he was very successful up to a point.
528. What point was that? Until within a few years of his death.
529. Did you meet with losses after that? No end of losses. The drought set in. He had a lot of stock floating all over the colony. He dragged me into one speculation much against my will, and to relieve the trustees I took his interest and my own also. There was a third party in it. I lost £4,000 by my good nature.
530. It has been previously stated that the accounts were operated upon after Mr. Swift's death for partnership accounts? Yes; the properties were carried on a year or two after his death by the trustees and myself.
531. The trustees represented the estate of one of the partners and yourself? Yes.
532. Would the moneys that would be received in connection with the sale of stations and stock be treated precisely in the same way as if Mr. Swift was alive? Yes.
533. Was his estate credited with the amount due to it? Yes.
534. Are there books to show exactly the nature of those transactions and the result? Yes; every transaction.

Mrs. Elizabeth Swift, recalled and examined:—

- Mrs. E. Swift. 535. *Mr. Parkes.*] How do you know that the amount paid into the banking account at Tumut was Mr. Swift's money? Because my solicitor, for the purpose of the suit that was coming on, searched out every payment by Mr. Swift from the beginning of his account up to his death.
- 1 Dec., 1897. 536. Who was that solicitor? Mr. Russell. He got the bank to come in and make these affidavits with regard to that. The very interest on account of McDonald is charged to my husband's private account.
537. Where did the money come from that was paid into that account? Out of Mr. Swift's private account.
538. Have you got that private account? Yes.
539. Do you know whether Mr. McDonald paid any money into Mr. Swift's private account, and trusted him to hold the lot? I know of my own knowledge that Mr. McDonald never had any money, and never paid any money into my husband's account, or to him personally.
540. What proof can you give beyond your statement? The bank pass-books right through.

John McDonald, Esq., recalled and examined:—

- J. McDonald. 541. *Chairman.*] Here is a list of items of Mr. Swift's account in Mr. Swift's handwriting; here is an item—John McDonald, drover, £30 5s. 9d.;—can you explain that? He may have paid a drover of mine; I cannot say.
- 1 Dec., 1897. 542. Do you still adhere to your statement that you were not droving for him, and that the money was not paid to you as an employee? Yes.
543. We examined you with regard to the account at Tumut, in which moneys were paid in by Swift; you said that Swift's account would very likely prove that you had paid money into his account; here is Swift's account;—what is the explanation? The only explanation is that which I have given, that he was a stock and station agent, and in selling stock he used to frequently sell them on bills, and here is a proof of that in the entries for discount.
544. How do you account for the fact that in all banking transactions with yourself and Swift, Swift is the man whose name appears as paying in the cash? Not in all cases; if he sold the stock he would naturally get the cash.
545. You say that in the original transactions you advanced money to Swift to start it? I say that any money we had, I had it.

546. Did you pay it into any account? No; we bought stock with it.
547. Did it pass through the hands of any banker? Yes; the Tumut bank was where we operated.
548. In whose name was that account opened? I had an account there, and he would have one if he had any money.
549. Who opened the account for him;—did you pay in the money? I suppose he had an account of his own in a small way before we got into a large way.
550. What do you call a small way? I presume he had nothing; I lent him money once before I joined him. I never go into a man's private business to ask him what he has.
551. Have you any recollection as to how many sheep were on Mungybundie when Mr. Swift died? No; but the accounts will show that.
552. Here is a copy of a report made by yourself to the trustees in May, 1887, in which you state there were on the station 85,241 sheep at the date of Mr. Swift's death? Yes.
553. Here is a return made by you, under the Stock Protection Act, in which you state that on Mungybundie and Gravesend there were 42,000 sheep;—how do you account for these figures not tallying? One of these returns was for 1887, and I think the other was for 1884.
554. How do you account for the increase from 42,000 to 85,241? The property consisted of two stations; one return would go to one office, and the other return would go to another office.
555. Here is a copy of a memo. of yours;—is it in your own handwriting? Yes.
556. It is addressed to Hahn and Croaker; you here state that there are 60,000 sheep on the stations Mungybundie, Gravesend, and Boolooroo;—how do you account for the difference between 85,000 and 60,000? There must be a further explanation of these figures. There is no date to that; you cannot tell whether it refers to another date or not.
557. There were 85,000 sheep on the stations at the time of Mr. Swift's death; this document has to do with what happened at the time of Swift's death, at which time, according to this statement of yours, there were 60,000 sheep; you say that at the time of Swift's death there were 85,000 sheep;—which of these statements is correct? I see what you mean now; but you should read the whole of the report. I say there:—

I will commence my report by referring to the returns of sheep, cattle, and horses with which I have furnished you copies. *Re* sheep, in the year 1883 I sheared 60,204 sheep, and my returns show that 24,657 lambs were marked during that year. After adding 7,480 ewes purchased, and deducting 7,100 sold, there were 85,241 sheep on the properties at date of death of late S. M. Swift. Starting from that point it will be seen from my detail statement that amongst the sheep purchased in 1884, 911 rams are shown. Those rams, I may explain, were originally bought by the late S. M. Swift as a private speculation on his own account. They were taken over from Hahn and Croaker as his trustees by our firm; 202 were afterwards sold to Messrs. W. Armstrong and Co., of Milroy, at a profit on the original price paid. The sales after 1884 shearing aggregated 8,771 sheep, and do not call for any comment. You will, however, notice that I show 1,629 sheep to have been lost over an exchange with Messrs. Swift and Hahn. I sheared the 10,309 sheep and kept the wool and their lambs as a set-off against the deficiency in numbers received from Mercadool.

It is a long account, but it shows here that the losses were very heavy.

558. Is that the explanation? Yes; there must have been loss according to my report.
559. Do you adhere to your statement that you advanced Mr. Swift the original capital, or found the original capital, to start these transactions? I did not say I found the original capital to start these transactions. I said, whatever capital was there he and I found it, but neither of us had very much. We were not millionaires in those days.
560. Are you quite sure he did not find the capital? Quite.
561. You are quite sure you did not drove for him? Quite; I did not drove for him.
562. Your explanation in reference to this account is that it was a joint account, operated upon jointly;—although his name is at the bottom of the deposit-receipts we are not to assume that he paid in the money any more than you did? No; it was joint moneys.
563. *Mr. McFarlane.*] Were you at any time engaged on a salary from the time you first joined Mr. Swift? No; never at any period.
564. That is, a salary for services in connection with working the stations? I charged a salary as against Swift and Spiller, and if I went away I put a man in my place.
565. Was that when the three of you were in partnership? Yes. I credited myself when the three of us were in partnership with a salary for looking after their business.
566. *Mr. Thomas.*] Did you simply pay yourself so much for managing for the three partners? Yes.
567. That was on behalf of yourself and the other two? Yes; it was so arranged.
568. *Mr. Parkes.*] If you were absent would your substitute be paid? Yes.





1898.  
(SECOND SESSION.)

LEGISLATIVE ASSEMBLY.

NEW SOUTH WALES.

## MINUTES OF EVIDENCE

TAKEN BEFORE

THE SELECT COMMITTEE

APPOINTED TO INQUIRE INTO THE

### PROBATE DUTY PAID ON THE LATE S. M. SWIFT'S ESTATE.

FRIDAY, 16 DECEMBER, 1898.

Present:—

~~MR. DICK,~~  
MR. THOMAS,

MR. MCFARLANE,  
MR. MCLEAN.

W. M. HUGHES, Esq., IN THE CHAIR.

George Sandell sworn and examined:—

1. *Chairman.*] What are you? A chartered accountant of England and Wales.
2. I understand you know something of this case; will you explain how you propose to proceed? I propose to exhibit the accounts in the same form as they were formerly submitted to your Committee. I refer to the accounts filed by the executors under the A.B.C. Statement. I have filed an account on much the same lines. G. Sandell.  
16 Dec., 1898.
3. *Mr. McFarlane.*] What is your competency to investigate these accounts—have you been any length of time engaged in the capacity of chartered accountant in England? I have had upwards of twenty-five years practical experience in my profession.
4. Have you had any experience in New South Wales? Yes.
5. Have you undertaken to examine the accounts in the estate of S. M. Swift? Yes.
6. Did you go into these accounts from an accountant's standpoint? Yes, most minutely.
7. In what state did you find the accounts generally? I have had a large mass of evidence, books, papers, and documents presented to me from which I have constructed an account which I say should have been the account, and should have taken the place of that prepared by the trustees.
8. Have you seen the accounts prepared by the trustees? Yes, they are inaccurate, misleading in numerous instances, the assets were undervalued, and there has been great concealment of assets therefrom.
9. How does that statement compare with the result of your investigation—that is in the first place, with regard to the amount declared by the trustees to the Probate Court? The total surplus as per filed accounts by the trustees was £16,000 odd. I make a surplus of £236,268 5s. 8d.—roughly speaking £190,000 in excess of what they filed.
10. Did you go carefully into these accounts? Most minutely.
11. Are you prepared to swear that their statement is incorrect? The executors filed accounts are absolutely incorrect.
12. On what did you base your investigation;—what are the facts that induce you to swear so positively that the accounts are incorrect? After my examination of the books and documents I found that the executors suppressed a large number of assets belonging to the estate, and the greater portion of the assets which they did bring into the estate were undervalued. I also found that some of the assets of the estate as entered in the statement made for probate as liabilities should have been entered as assets; that has had a double effect.
13. Seeing that it is some time since these valuations were made—how did you arrive at the fact that they were under valuations? I have examined the executors' letter books, the executors' account filed in the equity suit, and have estimated all the figures upon their further accounts; therefore, no valuation that I used in my accounts is my own manufacture; it is entirely the valuation of the executors themselves.

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MINUTES OF EVIDENCE TAKEN BEFORE THE SELECT COMMITTEE APPOINTED TO

G. Sandell.

Division A.—Under-valuation of the Estate Assets.

1. I have carefully inspected and examined the original valuations filed by the said executors, Mr. P. Hann and Mr. C. H. Croaker, with the application for probate, and that I find as follows:—  
Baden Park and Moira Plains were supposed to have been valued by James Smith Lavender and H. Webb; Mimosa West, Browley, and Snubba, by Harvey Welman and Thomas Hodnett; and Mungie, Boolooroo, and Gravesend, by Mr. R. M. Pitt and Mr. H. S. Badgery.

The Valuator's connection with Mr. P. Hann.

The said valuator, James Smith Lavender, was a former partner of the said Mr. P. Hann's, *vide Gazette* notice, 6th September, 1878: "Mr. P. Hann retired from the firm of Messrs. Wilkinson, Hann, Minchin & Co. Witness—Hy. Berkley Fitzhardinge, solicitor, Wagga Wagga"; that the said Henry Webb was an employee in the services of the testator; that the valuator, Harvey Welman, was also a former partner of the said Mr. P. Hann, *vide Gazette* notice, 10th March, 1880; "Mr. P. Hann retired from the firm of Messrs. Welman, Hann, & Co. Witness—Hy. Berkley Fitzhardinge, solicitor, Wagga Wagga"; that the valuator, Thomas Hadnett, was also an employee in the services of testator. The said valuator, Messrs. R. M. Pitt and H. S. Badgery, had for many years prior to testator's death extensive business dealings, and at the time of his death testator occupied chambers in the same house of business. I am of opinion that these valuations were arranged by the executors, Mr. P. Hann and Mr. C. H. Croaker, with the object of under- valuing the estate.

Baden Park and Moira Plains Valuation, mortgaged after Testator's death by Mr. P. Hann and Mr. C. H. Croaker.

2. Extract from station press-letter copybook, No. 11, page 365, written by the said Mr. P. Hann to the said valuator:—"James Smith Lavender, 24th March, 1884. My dear Lavender,—I must get the assets certified to and valued by two competent disinterested persons. Now, I wish to know if you, from your general knowledge of the Baden Park country and stock, are willing to give a valuation for me, if I supply full details and particulars for you to do it on. Can you find another person about there who would do the same? Perhaps some person may be travelling through. Boulton, as sole valuator, would not do it without inspection of the station freeholds, &c. You might see Webb; he would be the very man."

Extract from press-letter copybook, No. 11, page 377, written by Mr. P. Hann to valuator, J. S. Lavender:—"26th March, 1884. My dear Lavender,—I have your message re Baden Park valuation, and have replied offering to send all particulars by wire if you can arrange with Webb to act as valuator with you, and I will send all particulars and my view by wire."

Extracts from press-letter telegraph book, No. 5, page 175, written and sent by Mr. P. Hann to valuator, Henry Webb, a station employee:—"26th March, 1884. See Lavender about particulars for valuation; he will explain." Same book, page 176, same date, telegram written by the said Mr. P. Hann to the said valuator, J. S. Lavender:—"Webb explains leaving to-morrow. If will act value with you, will supply all information by wire to complete to-day."

Extract from same book, page 177, same to same, same date:—"Baden Park, known as Moama Blocks S and T, Moira Plains A, worked together as one station, comprising an area of 208,000 acres; rental £75 per annum; fenced and improved; divided into eleven sheep paddocks and three small paddocks, one well, twenty-four large and small tanks, house, woolshed, huts, and buildings, working plant, including horses worth £1,800; stock, £31,000, as follows:—3,141 aged ewes, 7,032 four-tooth ewes, 9,124 two and four tooth ewes, 4,038 two-tooth wethers, 6,948 weaners, 200 ration sheep, value £50,000, with everything given in; 100 bales of wool, £1,000. 120 words."

Copy of J. S. Lavender and Henry Webb's valuation, filed by said executors, Messrs. P. Hann and C. H. Croaker.

Estimated value of Moira Plains and Baden Park station, the property of Swift and Hann:—

	£	s.	d.	
Sheep.....	15,000	0	0	
Country.....	17,000	0	0	
House, Working Plant, and Woolshed.....	5,130	0	0	
General improvements, Tanks, &c.....	13,085	0	0	
				£50,715 0 0

	£	s.	d.
Tanks, 105,900 yards at 1s.....	5,295	0	0
Fencing, 121 miles at £45.....	5,445	0	0
"   67   "   £35.....	2,345	0	0
	£13,085	0	0

(Signed) JAMES SMITH LAVENDER,  
HENRY E. WALL.

Witness—C. H. ROOKS, Solicitor, Hay."

(No particulars or details of land or sheep.)

Copy of original in handwriting of Mr. P. Hann.

"Baden Park—Sheep shorn.....	23,382
"   Expected stragglers.....	400
"   Lambs.....	13,000
	36,782

Cattle and a number of Horses not wanted for working the place that Webb thinks ought not to be given in—Price £60,000.  
Terms—Half-cash, balance 1 and 2 years, bearing 7½ per cent. per annum."

The following extract from Mr. P. Hann's letter to the Testator, dated 2nd May, 1883 (see press-letter copybook No. 31, page 153):—

	£	s.	d.	
"Baden Park, 128,000 acres with 21,000 sheep at 40s.....	42,000	0	0	
Moria Plains with 12,000 sheep at 35s.....	21,000	0	0	
				£63,000 0 0"

Points to the fact that the arranged valuation was an under valuation.

Extract from Mr. P. Hann's letter, press-letter book No. 11, page 398, 29th March, 1884, to Valuator J. S. Lavender:—"Dear Lavender,—I have yours of yesterday with the Baden Park valuation, and thank you for being so prompt. I think the first memo. of Webb rather a high valuation, and should be glad to see such come out of the place. I find you did not estimate the value of about 100 bales of wool that Webb thought was on the place; and as your views exceeded mine by about £700, I am going to leave the wool out of the schedule altogether."

Extract from original letter written by Mr. R. M. Pitt, 9th April, 1884, to Mr. P. Hann:—"I have a buyer for Baden Park if you are willing to sell. I mentioned £50,000 as the probable price."

Extract from press-letter book No. 5, page 200—Telegraph from Mr. P. Hann to Mr. R. M. Pitt, 10th April, 1884:—"Want sixty thousand Baden Park; left map in room; if you cannot find it, advise; will bring mine down."

Extract from press-letter book No. 11, page 455, 10th April, 1884,—Mr. P. Hann to Mr. R. M. Pitt:—"My dear Pitt, Yours of the 9th to hand. I wired you to-day £60,000 for Baden Park. Lavender and Webb for valuing the place went into figures and brought it a little over £60,000 in its present state; with a change, and favourable season, it should bring £75,000 to £80,000 with 60,000 sheep on it."

Extract from press-letter copybook No. 12, page 63, written by Mr. P. Hann to Messrs. F. Bacon & Co.:—"Gunnedah, 20 June, 1884. Dear Sirs,—Your favours of the 12 and 16 to hand. Baden Park—I am not inclined to sell this property yet, as I consider season and everything else against doing so profitably just now. Although only 31,000 sheep now on it, and never having had stock losses there worth mentioning, still the property has cost me over £60,000, and no buyer would care to give £70,000 for it."

Extract from press-letter copy book No. 12, page 304, written by Mr. P. Hann to Mr. W. Bates, of Melbourne:—"15 June, 1885. Dear Sir,—Baden Park is for sale. I want £70,000 for it." Can





	£	s.	d.	£	s.	d.
5,512 sold to Pope (Bates' 1.1)	1	7	2	6	0	0
8,614 ,, Winter (Bates' 108)	4	5	2	7	0	0
1,000 ,, Halloran (Exa. 69)	4	2	0	0	0	0
163 ,, ,,	3	1	0	0	0	0
6,800 Hann's						
90 rams unsold	1	8	0	0	0	0
2,081 sheep unsold	7	8	0	0	0	0
				7	7	0
24,260						
Realized				£12,889	15	6

G. Sandell.  
16 Dec., 1888.

Mr. F. S. Falkiner, per Pitt, Son, and Badgery's sale-note, gives the following as the settlement:—

	£	s.	d.
Cash	2,388	5	0
P.N., 12 months	1,250	0	0
P.N., 24 months	1,250	0	0
Interest, bills	262	10	0
Advertising	6	15	0
Commission	125	0	0
	£5,262	10	0

Can Mr. P. Hann state that this property was overvalued for financial and business purposes?

6. If further confirmation of my statement that the following estate properties were undervalued is necessary, I refer to Mr. P. Hann's letter of 2nd May, 1883, written to testator, *vide* press letter copy book, No. 31, page 157, in which he gives the value of the properties as follows:—

	£	s.	d.	£	s.	d.
"Baden Park, with 21,000 sheep	42,000	0	0			
Moirs Plains, ,, 12,000 ,,	21,000	0	0			
				63,000	0	0
Mimosa West, ,, 23,000 ,,				28,750	0	0
Browley, ,, 37,700 ,,				13,714	0	0
Snubba, none				2,500	0	0
				£107,964	0	0
59,770 ,,						
Add thereto increased number of sheep at 18th Feb., 1884, 101,074						
Less, included in above 69,770						
	41,304	at 7s 6d.	15,489	0	0	
Additional value, Mimosa West			2,000	0	0	
Undervalue of Snubba			2,500	0	0	
				19,989	0	0
				£127,953	0	0

These various properties were represented by Mr. P. Hann and Mr. C. H. Croaker, as per their application for probate, on the 5th of April, 1884, to be of the value of £100,365 10s., or nearly 28 per cent. under his on statement of May 2nd, 1883.

Mungie Bundie, Boolooroo, and Gravesend Valuation.

7. Extract from letter of said Mr. P. Hann to Mr. John McDonald, Station Manager, March 19th, 1884, *vide* press letter copy book, No. 7, page 373:—"Dear McDonald,—To-day I have yours of the 14th from Boonooks. I think it would have been much better to have talked over matters, and we could then have made out the statement of the station accounts necessary before we can ask for probate."

Extract from original letter of Mr. John McDonald, "Oxford Hotel," Sydney, March 20th, 1884, to said Mr. P. Hann:—"Dear Hann,—Herewith I send you approximate statement of our places, which you can make out to your own liking; these are quite near enough."

"Total leasehold, 190,000 acres, fenced and improved. Original freeholds on whole, 35,000 acres.

Sheep	60,000
Cattle	4,000
Horses	200
Plant, &c., worth (say)	£2,000

Extract from letter of said Mr. P. Hann to Mr. H. S. Badgery, March 24th, 1884, *vide* press letter copy book, No. 11, page 364:—"My dear Badgery,—You and Pitt kindly offered to give me the Mungie Bundie valuation, and if you are still prepared to do this I should be glad. Enclosed I send all the particulars that McDonald sent me to work upon, and I trust they will be sufficient for you."

Extract from original letter of Mr. R. M. Pitt, Sydney, to said Mr. P. Hann, 28th March, 1884:—"My Dear Hann,—Valuation of the station is as follows:—

	£	s.	d.
Land	45,000	0	0
Sheep	24,000	0	0
Cattle	8,000	0	0
Horses	1,000	0	0
Runs	10,000	0	0
Plant	2,000	0	0
	£90,000	0	0

"Do you consider this too low? If so, wire in the morning. I don't think it would realise any more just now even if as much, but with rain, of course, it would be worth considerably more."

Extract from letter of said Mr. P. Hann to Mr. R. M. Pitt, March 29th, 1884, *vide* press letter copy book, No. 11, page 393:—"I have yours of yesterday, and I think you are altogether too low in your valuations as a whole; separately they are right enough, but at least £10,000 more has to go on for value improvements on the freeholds and leasehold lands, and £3,000 to £5,000 more on the sheep. I think you overlooked the improvements; the bare cost of 35,000 acres of land at 25s. would nearly be £45,000. We had better put a reasonable value on, so as not to have any questioning over the matter, and I do not think that undervaluing will do the estate and partners good generally."

Extract from letter of said Mr. P. Hann to Mr. H. S. Badgery, 29th March, 1884, *vide* press letter copy book, No. 11, page 395:—"My dear Badgery,—I have your wire about wanting the separate quantities of freehold and selected lands on Mungie Bundie, Gravesend, and Boolooroo, and have wired McDonald to send them direct to you. I do not see any reason for specifying the acreage of each block and on each run, as it entails so much trouble and gives no better result. You can only give a general value of the land, and not separately value each block. The whole of the 35,000 acres is freehold. If they had any selections there in other names they could not place a value on them, and must treat them only as private leased lands. I am also writing to Pitt, as the valuations are too low. You only allow cost price for the land, and nothing for the value of improvements over the whole freehold and leasehold lands."

Extract

G. Sandell.  
16 Dec., 1892.

Extract from original letter of Mr. H. S. Badgery to the said Mr. P. Hann:—"31st March, 1884. I have made the valuations, and handed them to Abbott and Allen."

After arrangements, the following appears agreed upon, and, as such, was filed by the executors, Mr. P. Hann and Mr. C. H. Croaker:—"31st March, 1884. We, the undersigned, hereby certify that we have personal knowledge of the runs hereunder mentioned, in which the late Samuel Moffatt Swift was interested at the date of his death, and that the fair and reasonable values of the same and the stock thereon are as hereafter set forth:—

"Mungie Bundie, Gravesend, and Boolooroo Stations, county of Couralie, Gwyder district, New South Wales.

"Total original leaseholds, about 190,000 acres, all fenced and improved.

" Freeholds land, about 35,000 acres, at 30s.....	£52,500
" Leaseholds and improvements thereon.....	15,000
" Plant and belongings .....	2,500
" 60,000 sheep, more or less, at 9s. ....	27,000
" 4,000 cattle, more or less.....	8,000
" 200 horses, more or less .....	1,500
	£106,500"

The valuers never inspected the stations, and no details of the various portions of lands were given.

On the 4th May, 1887, Messrs. Peels, Borradaile, and Co., of Sydney, prepared a statement of accounts, made up to the 18th day of February, 1884. This said statement was signed by the said firm and Mr. John McDonald, with following certificate:—"The above balances have been taken from the ledger accounts prepared by us from the books and vouchers of Messrs. John McDonald and Co." The value of the freehold lands being therein stated to be 45s. per acre.

Extract from letter of testator to Mr. Maiden, 26th August, 1882, *vide* press-letter copybook, page :—"Testator's valuation of these properties, with 75,000 sheep and 4,000 cattle thereon, was £150,000."

There can be no doubt that the number of sheep on the stations was improperly stated, and in place of 60,000 sheep there should have been 85,211, the cattle being also under-stated as to numbers and values.

Extract from report written by Peel, Borradaile, & Co., and signed by said John M'Donald, 4th May, 1887 (see press-letter copy):—"There were 85,211 sheep on the properties at date of death of late S. M. Swift," and this is confirmed as per original stock assessments made on the station returns—

42,000 sheep on Mungie Bundie, and
37,000 " on Boolooroo.
79,000

closely agreeing with the number given in the report of 4th May, 1887, proving John M'Donald withheld 25,211 from the number stated to the valuers; there were also other properties withheld from the valuation, and will be found in Division B, Nos. 41 to 54, which should have formed part of the testator's estate and upon which duty should have been paid, bringing the total net value of this portion of the estate to £173,250 11s. 2d., instead of £106,500 as in the filed account for Probate—under Schedule B.

Can Mr. P. Hann say that these properties were over valued for financial and business reasons?

*Division B.—Concealed Estate Assets, &c.*

1. Credit bank balance at Head Office, Bank of New South Wales—entered on the filed accounts as a liability, diverting probate duty double the amount, viz., £798 8s. 10d. (see Equity suit 5060, page 3)	£	s.	d.
2. Credit bank balance, Blackall branch, Bank of New South Wales—credit of T. Miller, <i>vide</i> Mr. P. Hann's letter, 5 August, 1884, page 352 .....	399	4	5
3. Credit bank balance, at Wilcannia, credit Edward Luttrell, Commercial Banking Company of Sydney .....	232	0	0
4. 7,900 ewes purchased by testator, 11 October, 1883, of Mr. W. Bates, acting agent for vendors, Messrs. T. Brown & Co., for which testator gave his P.N., due 14 July, 1884; 7,580 of these ewes were sold by Mr. Bates, and delivered to Messrs James and Martin, for £4,614 17s. 6d. less commission (Mr. Bates' ledger is in my possession proves this statement) .....	100	19	7
5. Statement of the late Mr. Swift's horses, &c., left at Mungie Bundie by Halloran (see press-letter copybook, B 694), as follows:—	4,490	0	3
1 Bay horse .....	£	s.	d.
1 Cheanut and roan .....	12	0	0
1 Cheanut .....	10	0	0
1 Bay draught mare .....	8	0	0
1 " horse .....	25	0	0
Cart and harness.....	20	0	0
2 Saddles .....	10	0	0
2 Tents, 35s. ; 2 axes, 10s. ; oven, 5s. ....	4	0	0
Sundries .....	2	10	0
	0	10	0
6. The following are admitted as having been received by Executors—Mr. P Hann and Mr. C. H. Croaker—and entered in the "Receipts" portion of the account filed in the Equity suit 5060 (see pages 62 and 63). Not one of these assets were included in the accounts filed for Probate:—	92	0	0
W. Sloane, 22 October, 1884 .....	87	12	7
" 5 August, 1885 .....	55	5	9
Broade, 30 April, 1885 .....	299	16	8
Wilkinson, 28 July, 1885 .....	188	15	0
Leeds, 7 July, 1885 .....	70	4	0
" 7 " 1885 .....	118	14	8
2 cows and 2 calves, 23 July, 1884.....	75	0	0
1 horse, 10 October, 1884 .....	67	3	6
1 " 4 November, 1884 .....	15	10	3
Frauenfelder, 28 March, 1884 .....	3	4	0
Brown Bros. ....	1	18	0
Eddy, 4 horses .....	82	13	9
Horses .....	35	0	0
Drover's plant .....	18	0	0
" .....	83	17	6
Horses, Whittenham.....	6	12	0
McDonald .....	14	17	0
Menzies and Martin .....	8	18	6
Mortgage, horses and plant .....	44	16	0
" .....	65	13	8
Bnggy and 2 horses, Hann and Croaker .....	50	6	10
Refund .....	77	0	0
Stock sold to Hann and Croaker.....	44	16	0
Stock, Hann .....	8	8	0
	6	3	0
	1,530	6	8



	£	s.	d.	£	s.	d.	G. Sandell.
7. Badgery Bros., Money advanced by testator, on the following dates, viz. ....				1,772	1	2	G. Sandell. 16 Dec., 1898.
24 September, 1883 .....	200	0	0				
20 " 1883 .....	100	0	0				
1 October, 1883 .....	100	0	0				
5 November, 1883 .....	100	0	0				
27 " 1883 .....	404	0	0				
11 December, 1883 .....	800	0	0				
and proportion of profit of Avington contract, 9 July, 1883.							
8. Cox, Dowling, & Co., bills cancelled by trustees, Mr. P. Hann and Mr. C. H. Croaker. See Division F No. 2 .....				9,808	2	6	
9. Avington herd contract, contingent profit, as per Mr. Sandell's account .....				1,482	6	4	
10. Haynes promissory note entered on the filed account for probate as a liability, viz., "Federal Bank overdraft bill," should have been entered as an asset, diverting probate duty for double the amount .....				100	0	0	
11. F. Stephenson. Entered in Suit No. 5,060, page 14, as received and paid to A. M. L. and F. Co., Limited .....				678	2	3	
12. C. W. Menzie. Entered in Suit 5,060. Received 14 August, 1884 .....				558	14	5	
13. A. Langheim. Entered in Suit 5,060. Received 2 June, 1884 .....				1,000	9	10	
14. G. T. Evans. Entered in Suit 5,060. Received 27 March, 1885 .....				46	12	3	
15. S. W. Wood .....				20	0	0	
16. Mr. Bradley. Cash advanced by testator from 9 January, 1884, to 9 February, 1884, for the purchase of fat cattle—no returns .....				2,119	0	0	
17. Wool venture with Peele, Borradaile, & Co., vide press letter, copy book B, page 500 .....				350	0	0	
Extract, same book, page 703;—"27 February, 1884. Executors of the late Messrs. Peele, Borradaile, & Co., Bank Chambers. Dear Sir,—We beg to own receipt of your favour, dated 22 inst., with copies of letters from the late Mr. S. M. Swift, from which we gather that there are certain wool venture in existence, in which you are concerned with Mr. Swift, and which we recognise and confirm. We are, &c., P. HANN, C. H. CROAKER, Executors of the late S. M. Swift."							
Extract from original letter of Mr. R. M. Pitt to Mr. P. Hann, 19 September, 1884:—"Peele was telling me that old Swift's share in some wool specs was about £350, for which he was sending you a cheque."							
18. Wool in transit with Harrison, Jones, and Devlin, Sydney. See Suit No. 5,060. Received by executors 12 August, 1884 .....				383	7	4	
19. 1,000 Mont de Piete shares, No. 40,771 to 41,770, inclusive, transferred by the executors on 22 April, 1884, to Mrs. Swift. See memo. from company, 13 June, 1898 .....				1,000	0	0	
20. $\frac{1}{4}$ share Kimberley Pastoral Association .....				146	5	5	
Cash paid by testator, 30 May, 1882 .....	£100	0	0				
" " 14 February, 1883 .....	46	5	5				
21. 250 Kiandra Gold-mining Co.'s shares. Vide Messrs. Thompson's offer, 22 May, 1894 .....				56	5	0	
22. 282 bales of wool on Baden Park, Mimosa, Browley and Snubba Stations, at testator's death, taken by Mr. G. Sandell, at the average of the wool sold. Part of this wool was sold and paid to the executors account, 15 August, 1884, for 128 bales—a large number of Mr. P. Hann's letters are in my possession, which clearly prove Mr. Hann was fully aware of the existence of this .....				5,393	5	0	
23. Wool surplus from wool shipped prior to death of testator, and not stated in filed account in application for probate. Received per Bank New South Wales, ex Lashingam and Dharwar, less reclamations .....				358	14	1	
24. New Zealand Loan and Mercantile Agency Co., Limited .....				2,131	12	0	
Amount entered in filed account for probate by executors, as .....	£5,303	12	9				
Should have been .....	4,805	9	3				
Liability overstated .....	498	3	6				
Surplus from wool shipped prior to testator's death—amount credited to September, 1884, less charges .....	1,633	8	6				
That Mr. P. Hann was aware of this wool and the actual balance on the 18 February, 1884, the following extract from his letter will prove— <i>vide</i> press letter, copy book, No. 11, page 390:—"29 March, 1884 (before the accounts were filed for application for probate). With regard to the 188 bales of scoured, shipped at Adelaide, I do not wish an over advance, and think a fair price will be £18 per bale. If you think this right please credit the account with it at that rate."							
25. Messrs. J. and A. Mack, for proportion of rent of Browley— <i>vide</i> press letter, copy book, No. 12, page 29, in Mr. Hann's writing .....				49	19	0	
26. Mr. S. Payne's I.O.U. See original .....				220	4	2	
27. Mr. John Hay, debt, for proportion of dividing fence. Received by executors, 17 December, 1887 after very long correspondence. See originals by Webb and Hann .....				300	0	0	
28. J. McDonald, debt, for proportion of droving. Received by executors, 21 February, 1884. See Suit No. 5,060, page 8 .....				50	0	0	
29. Messrs. Wynde, Hudson & Co., debt, ( $\frac{1}{2}$ ) half share in 18 $\frac{1}{2}$ miles 8 chains of fence on Moira Plains, and Teryanyaina boundary, at £46 10s. per mile .....	£426	12	9				
Credit cheque 28 November, 1883, £150; and wire account, £117 17s. 6d. ....	267	17	6				
Received by executors and paid to the credit of account Bank of New South Wales, Wagga Wagga, 18th August, 1884. See Bank receipt and Mr. Webb's original letter to Mr. P. Hann, 28 April, 1884.				158	15	3	
30. Thomas Halloran, for one waggon, harness, and sundries. <i>Vide</i> Mr. P. Hann's statement, press letter, copy book, No. 12, page 298, November 4, 1884. ....				94	19	6	
31. Messrs. James and Martin sold brown mare and water-keg. <i>Vide</i> letter-book, page 440 .....				20	10	6	
32. Meahr, grey mare. <i>Vide</i> press letter, copy book, page 444 .....				13	10	0	
33. Mr. G. Desailly, debt, for 10 miles of fencing, £30. <i>Vide</i> original receipt of Mr. Webb, 23 February 1885. This was due at testator's death .....				300	0	0	
34. Catherine Gold-mining Co.'s shares. <i>Vide</i> original statement and valuation made by Mr. P. Hann, as at 18 February, 1884 .....				216	13	4	
35. 94 horses, per Manager Webb's original returns of stock on station, taken at average selling price on station .....				940	0	0	
36. 80 head of cattle, per Manager Webb's original statement of returns of stock on station, 23 February, 1884 at average selling price on station—£5 .....				400	0	0	
37. Rent adjustment—Station rents for Baden Park, Moira Plains, Mimosa West, and Snubba stations having been paid for the year on 3 January, 1884, less proportion to 18 February, 1884 .....				146	6	0	
38. Refunds received by executors 5 April, 17 June, and 18 July, 1884, for rabbit subsidy for the year 1883. <i>Vide</i> original notices .....				88	14	4	
39. Mr. P. Hann—debt due at testator's death for cash, &c., received by Mr. Hann and not accounted for .....				2,970	2	8	
							40.

G. Sandell.  
18 Dec., 1898.

	£	s.	d.
40. Mimosa West lands, not included in valuation. See Division A, No. 2 (at end) .....			5,780 0 0
41. Mungie Bundie and Boolooroo sheep, not included in valuation. See Division A, No. 7 (at end) ..			12,605 10 0
42. Mungie Bundie, Boolooroo, and Gravesend cattle, understated and undervalued. See original Stock Assessments for 1884 .....			13,580 0 0
Mungie Bundie .....	450		head.
Gravesend .....	3,217		"
Boolooroo .....	1,330		"
	4,997		"
Less horses .....	200		"
	4,797		"
Average selling price on station—£4 10s .....	£21,586	0	0
Less entered on valuation .....	8,000	0	0
	£13,586	0	0

43. Mungie Bundie wool in transit at Testator's death .....	1,814	18	7
Extract from letter of Testator to Mr. Sharp, of Newcastle, December 27, 1883. <i>Vide</i> press-letter copy book, marked B, page 609:—"Dear Sir,—Enclosed memo. refers to balance of Mungie Bundie clip of 1883. Please send me bills for it as soon as shipped and oblige." Clip of 1884 commenced October, 1884. See station ledger folio. On September 23, 1884, the Union Bank credit the account of John McDonald & Co. with this amount. See copy of Union Bank of Australia pass-book.			
44. I. Seaton & Co. (debt to Mungie Bundie), due at time of Testator's death. 3,000 ewes sold and delivered by Drover Halloran, January 7, 1884. Mr. John McDonald received a six months' p.n. See station ledger folio 577 .....	1,200	12	0
45. Mr. G. Cook, debt to Mungie Bundie, due at time of testator's death. 2,100 ewes sold and delivered by Drover Sinclair, Feb. 8, 1884; cash received 21 Feb., 1884, and 18 April, 1884. See pass-book and station ledger, folio 571 .....	413	10	0
46. Mr. P. McCormack, debt, entered in suit 5060, page 14, due at time of testator's death .....	129	0	0
47. Mr. R. Child, debt, entered in suit 5060, page 14, due at time of testator's death .....	88	0	0
48. Mr. J. Jurd, debt, entered in suit 5060, and bank pass-book as received 21 Feb., 1884 .....	12	16	6
49. Cash in hand, entered in suit 5060, page 14 .....	15	4	2
50. Gwydir River Pumping Co., entered in account filed in suit 5060, page 14, as an asset at time of testator's death .....	912	10	0
51. Refunds from Treasury, for 1883, received 8 March, 1884, £23; C. Wyndham, selection, £164 10s.; W. Emmett, selection, £160; see original H. H. Brown and Co.'s account .....	347	10	0
52. Rent adjustment. The rent for Boolooroo, Mungie Bundie, and Gravesend being payable for the year in advance, viz., £288, a proportion of these only should be debited to the station account to 18 Feb., 1884, and the other forms an asset .....	241	8	3
53. Testator's sheep on Mungie Bundie and Boolooroo, viz.:—8,184 Mercaool ewes, at 8s. 6d., £3,478 4s., purchased by testator from McLauchlin, see station ledger folio, 576; 5,641 ewes at 10s., £2,820 10s., see station ledger, folio 595 .....	6,298	14	0
54. John McDonald, debt, overdrawn salary account at testator's death, see station ledger, folios 19 and 466 .....	310	7	8

I state that there are a considerable number of other assets that I have not been able to fully prove to my own satisfaction, and, therefore, have omitted them from my affidavit.

#### Division C.—Partnership Claims.

1. Mr. Phineas Hann's.—This executor and trustee under the will of testator claims one-half share of the assets as disclosed in the accounts filed in the application for probate under balance-sheet "B." After most carefully examining the estate books, papers, and documents I have been unable to trace a single penny of the capital as ever having been introduced by him for the purchase of any part of the station properties; there is evidence that he was a co-partner in sheep transactions and divisions from time to time of such profits, and also with other persons; testator, on numerous occasions, offered Mr. P. Hann to share transactions in which testator engaged—"In or out, as you like."

Mr. Hann purchased from Mr. Bates, Melbourne, from 19th September, 1883, to 4th January, 1884, during testator's lifetime, for his own speculations, 30,646 sheep, and I find in numerous letters of Mr. Hann's to different people "that we are now speculating separately."

That Mr. Hann had been in several partnerships, and some of such were dissolved as per *Gazette* notices. It cannot be assumed he was unacquainted with the necessity of such deeds; but, without a balance-sheet of any kind, prepared before testator's death, and without any proof that Mr. Hann introduced a penny of capital, I am of the opinion that this claim is a fraudulent one.

2. Mr. John McDonald claims one-half share of the assets as disclosed in the account filed on application for probate under balance-sheet "C." I have examined certified copies of testator's banking accounts, from 29th June, 1867, till the date of his death, viz., 18th February, 1884, and have carefully examined certified copies of Mr. John McDonald's banking account, from 30th September, 1873, till 2nd December, 1880, which conclusively prove to my mind that Mr. John McDonald was never, up to that period, a man of means; the banking accounts were nearly always in debit, and he was, during that period, charged every half-year by the banks with interest on his small overdrafts. At the period when Mungie Bundie was purchased, Mr. J. McDonald gave to Mr. J. H. Spiller on 13th February, 1874, a p.n. at three months for £105, which, at its maturity, his banking account was unable to meet, and that Mr. Spiller received payment from testator on 18th May, 1874. Mr. J. H. Spiller then endorsed Mr. J. McDonald's p.n. to testator, "without recourse," for a brother-in-law and future partner, to do so places no financial confidence in Mr. J. McDonald. P.N. in my possession. Mr. John McDonald was the station manager, at a salary of £200 per annum, and, after testator's death, seems to have increased it without any authority to £500 per annum. See station ledger, folios 20 and 466. No partnership, no *Gazette* notice, and without sanction of the Equity Court, he seems to have carried on the stations to the present date. As in Mr. Hann's case, I have been unable to trace any capital as having been introduced by Mr. J. McDonald, and am of the opinion that this claim is also a fraudulent one.

Both these claimants fully understood the position, and, in conclusion, I produce an extract from a letter written by Mr. P. Hann to Mr. J. McDonald, see press letter copy book, No. 7, page 389: "May 13th, 1884.—The bank and different lawyers have laid it down very clearly that nothing can be bought for either station except such as is necessary for the working of it towards the desired intention of sale and liquidation on behalf of the estate. Your bank solicitors explain the same. Death dissolves all partnership, and the surviving partners are the persons to wind up, and they are responsible to the executors for realisation."

#### Division D.—Lands Acts—Evasions and Dummies.

1. My affidavits of 26th April, 1898, submitted to the Minister for Lands, is now under the consideration of that Minister, disclose a systematic revision of the Land Acts, and I have a considerable quantity of evidence in support of my allegations as to the estate Mungie Bundie and Mimosa West.

#### Division E.—Administration of the Estate by the Executors, Messrs. P. Hann and Charles H. Croaker.

After an experience of upwards twenty-five years, I can say that never have I seen such a mass of corrupt and fraudulent transactions; but as the scope of my investigations was to prove the value of testator's assets and liabilities as on 18th February, 1884, I have not thought it necessary to fully investigate this branch of the estate; but that portion that I have, from necessity, been called on to examine is most discreditable to all concerned, and most disastrous to those interested in 1854 sheep transactions.

Division F.—Reply to Mr. Phineas Hann's unsworn statement of 27th September, 1898.

G. Sandell.

1. That the said Mr. P. Hann affects to think his general denial, coupled with a modicum of abuse, an answer to the serious specific allegations contained in my affidavit of the 2nd of June last. Mr. P. Hann states, in paragraph 1, "That for financial and business reasons the whole of the station properties were over-valued when probate duty was paid." That this statement is untrue Mr. P. Hann proves by his admission, in paragraph 3 of his said statement, as he therein states: "There may have been individual items somewhat under-valued." My answer is that I challenge Mr. P. Hann to point out a single instance of any valuation being over-valued. The only properties that have been sold, viz., Browley and Snubba, were valued for probate at £20,527 10s., and realised £29,588 3s. 4d., proving that these properties were under-valued by nearly "fifty per cent." For particulars see Division A, Nos. 4 and 5.

2. That the said Mr. P. Hann, by paragraph 2, states that "The Cox, Dowling, & Co. papers did not belong to Mr. Swift, and that his estate had no interest in them." I say this statement is also untrue. The testator, by agreement dated 9th July, 1883, purchased from Messrs. Pitt, Son, and Badgery, acting as agents for the vendors, Messrs. Oliver, Smith, & Co., the Avington herd of about 10,000 head, at 45s. per head, and paid as deposit the sum of £250 to Messrs. Pitt, Son, and Badgery; subsequently one-third of the said agreement was endorsed by testator to and accepted by, Messrs. Badgery Brothers.

Extract from press-letter copy-book "B," page 217, of testator's own letter to Mr. C. S. Byrne:—11th July, 1883. "I bought Avington herd, 6,000 B's. and 4,000 Fm's.; good delivery."

Extract from same book, page 218, testator's letter to Mr. G. Ray, same date:—"I bought Avington; contract enclosed; see and arrange country safe and right."

Extract from same book, page 235, date 14th July, 1883, of testator's telegram to G. R. Ray, Blackall, "Avington contract posted 10th," &c.

Extract from same book, page 241, 17th July, 1883, of testator's letter to Mr. G. R. Ray:—"Mr. Badgery will explain to you how we are thinking of working this herd of Avington's."

Extract from same book, page 243, 17th July, 1883, of testator's letter to Messrs. Mann, Melbourne:—"I have bought the Avington herd on the Barcoo, near Blackall. As they are a grand herd they might suit your buyer," &c.

Extract from same book, page 258, 21st July, 1883, of testator's letter to Messrs. Pitt, Son, and Badgery:—"Re purchase of Avington cattle. If Messrs. Oliver, Smith, & Co. will not accede to request of allowing time for Mr. Badgery or Ray to arrange country with manager at Avington, I accept the contract in its entirety, country as specified in contract," &c.

Extract from same book, page 265, 23rd July, 1883, of testator's letter to Messrs. E. and E. Mann. "Yours of 20th instant to hand, re Avington's female cattle, &c."

Extract from same book, page 274, 25th July, 1883, of testator's letter to Messrs. W. Sloane, & Co., Sydney:—"I bought Avington herd—10,000, &c."

Extract from same book, page 348, 18th September, 1883, of testator's letter to Mr. T. Miller:—"I have sold all the females at Avington, about 4,500, to be delivered by me, Commara, Cox, and Dowling." I had a hard fight, as I had to take delivery of the females, &c. (a long letter.) Mr. F. Badgery who has one third share in them, goes up this boat with your Murdock. I pay his fare up, and from commencement of work give him £5 per week."

Extract from same book, page 354, 19th September, 1883, of letter signed by Frank A. Badgery to Mr. G. Murdock, drover:—"I have this day engaged you to proceed to Avington Station, Barcoo River, to assist in mustering and delivering cattle," &c.

Extract from letter written by Mr. P. Hann to testator, 30th September, 1883, vide press letter copy-book, No. 31, page 374. "Ray, in a letter to me, said the Avington's were 'a first rate thing; a lot of money in them, and he regretted I was not in them."

Extract from press-letter, copy book "B," page 464, of testator's letter to Mr. T. Miller, 19th November, 1883. "Badgery reports getting on well with Avington's."

Extract from same book, page 481, of testator's letter to F. A. Badgery, 26th October, 1883:—"I am trying Dowling at 45s. for the 82 steers."

Extract from same book, page 495 of testator's letter to F. A. Badgery, 2nd November, 1883:—"I have your wires, re Avington cows and steers. I hope there will be no difficulty with Dowling over short numbers."

Extract from same book, page 610 of testator's letter to Messrs. W. Sloane, & Co.:—"Sydney, 27th December, 1883. Dear sir,—I acknowledge receipt of your letter of this date, enclosing a p. n. from Messrs. Cox, Dowling, & Co. for £3,061 stg. at six months from 19th November, in payment for first draft of Avington cattle, also cheque for £191 12s. in payment for plant, being net amount after deducting commission on sale, &c."

The testator drew upon his account with the Bank of New South Wales the following cheques for the working expenses:—

1883—dated Sept. 28.	Cashed Oct. 8, 1883, for.....	£200 0 0
" " " 29.	" " 9, " ".....	100 0 0
" " Oct. 1.	" Nov. 16, " ".....	100 0 0
" " Nov. 5.	" " " ".....	100 0 0
" " " 27.	" Dec. 5, " ".....	404 0 0
" " Dec. 11.	" " 11, " ".....	600 0 0
		£1,504 0 0

Testator sold to Messrs. Cox, Dowling, & Co., portion of the Avington herd, purchased through Messrs. Pitt, Son, and Badgery, agents, which testator delivered by his drovers, G. Murdock and Murial, on the following dates to Cox, Dowling, & Co.:—

1883—Nov. 19.	1,041 cows at 45s. }	£3,061 0 0
" " "	575 yearlings " 25s. }	
" Dec. 3.	794 cows " 45s. }	2,560 5 0
" " "	619 yearlings " 25s. }	
Dec. 26.	—1,220 steers, at 42s. 6d. ....	2,592 10 0
1884.		
Jan. 21.	—135 steers, at 42s. 6d. ....	1,594 7 6
" "	335 cows, at 45s. ....	
" "	244 yearlings, at 25s. ....	
" "	24 bulls, at 300s. ....	

Testator received from Messrs. Cox, Dowling & Co., four promissory notes, of which the following are true copies, viz.:—

£3,061. 19th November, 1883—due 22 May, 1884.  
Six (6) months after date, we promise to pay S. M. Swift, Esq., or order, the sum of three thousand and sixty one pounds sterling. Value received.  
Payable at the Bank N.Z., Sydney. Cox, DOWLING, & Co.  
L.C.B., 2,665. Bank N.Z. Paid May 22, 1884. (On back in circles.)  
Endorsed and signed,—S. M. Swift, Frank A. Badgery, and Pitt, Son, and Badgery.

£2,560 5s. 3rd December, 1883—due 6 June, 1884.  
Six months after date, we promise to pay S. M. Swift, or order, the sum of two thousand five hundred and sixty pounds five shillings sterling. Value received.  
Payable at the Bank N.Z., Sydney. Cox, DOWLING & Co.  
London C.B., 2,665. Bank N.Z. Paid June 6, 1884. (On back in circles.)  
S. M. Swift, Frank A. Badgery, Pitt, Son, and Badgery.

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G. Sandell.

£2 592 10s. stg.

26th December, 1883—due 29 June, 1884.

18 Dec., 1883

Six (6) months after date, we promise to pay S. M. Swift, Frank A. Badgery, or order, the sum of two thousand five hundred and ninety-two pounds ten shillings sterling. Value received.  
 Payable at the Bank N. Z., Sydney. Cox, DOWLING, & Co.  
 L.C.B., 2,666. B.N.Z. Paid June 30, 1884. (On back in circle.)  
 P. Hann and C. H. Croaker, Executors in the Estate of S. M. Swift; Frank A. Badgery, Pitt, Son, and Badgery, for the London Chartered Bank of Australia; J. Millet, *pro* Manager.

£1,594 7s. 6d. stg.

21st January, 1884.—due 24 July, 1884.

Six months after date, we promise to pay S. M. Swift and Frank A. Badgery, or order, the sum of fifteen hundred and ninety-four pounds seven shillings and sixpence, sterling value received.  
 Payable at Bank N. Z., Sydney. Cox, DOWLING, & Co.  
 L.C.B. 2,667 and B.N.Z. Paid July 21, 1884. (On back in circles).  
 P. Hann, C. Croaker, Executors in the estate of S. M. Swift; Frank A. Badgery, for the London Chartered Bank of Australia (Limited); Pitt, Son, & Badgery.

For the cattle so sold to Messrs. Cox, Dowling, & Co., being part of the Avington herd, Messrs. Pitt, Son, & Badgery sent the following invoice to the testator. [This original invoice is in the handwriting of Mr. R. M. Pitt.] :—  
 (Exact copy.) "Pastoral Chambers, Bank Chambers, Sydney, Jan'y 8th, 1884.

Mr. S. M. Swift.

Dr. to Pitt, Son, & Badgery.

1883.

Account Rendered.

The following cattle delivered on Avington Station, and being portion of the herd in terms of contract of date July 9, 1883 :—

Oct. 13th—	To 1,195 head delivered.
"   31st—	"   "   990 "   "
Nov. 15th—	"   "   1,239 "   "
"   30 —	"   "   782 "   "

4,196 head at 45s.

£9,441 0 0

Payable by p.n. at 6 months, dating from 31st Oct., 1883."

The p.n. given by testator to Messrs. Pitt, Son, & Badgery, acting as agents for Messrs. Oliver, Smith, & Co., included 631 head of cattle that had not been sold at date of testator's death. These were afterwards sold by Messrs. Pitt, Son, & Badgery to Messrs. Dangar & Bell, at 63s. per head.

Extract from letter written by Mr. P. Hann to Mr. Ray, March 1st, 1884 (see press-letter copy-book, No. 11, pages 248 and 249):—"Croaker and I met Frank Badgery and McDonald together in Pitt, Son, & Badgery's office, and had a good talk over the cattle transactions and arranging matters. It now stands as follows—that Badgery and McDonald relieve us from responsibility and working of the matter, just accounting to us for the balance either way when the transaction is finished. Under the Avington arrangement you will want to make up the accounts in full of all the moneys you spent on that account, &c., so that we may get repaid this money from Badgery & McDonald from the proceeds of the cattle sold to Dowling & Co."

Extract from letter written by Mr. P. Hann to Mr. W. Neild, March 4th, 1884, same book, page 259 :—  
 "Messrs. Badgery & McDonald are going to manage Avington stock."

In the Supreme Court, in Equity, No. 5,060. The executors, P. Hann and C. H. Croaker, admit having received (see page 3) the sum of £1,000. Extract from affidavit, viz. :—"Amount received from Pitt, Son, & Badgery, auctioneers and station agents, George-street, Sydney, as the amount advanced by testator in his lifetime to Messrs. Swift, Badgery, and McDonald, in connection with the purchase of Avington herd, £1,000."

Extract letter from Mr. P. Hann and Mr. C. H. Croaker to the General Manager, Bank of New South Wales :—  
 "21st April, 1884. Dear Sir,—In consideration of your handing over to us two bills made by Cox, Dowling, & Co., for £3,061 and £2,560 5s., maturing 22nd May and 6th June respectively, we hereby undertake to, when required, give the bank security over Baden Park and 20,000 sheep thereon, provided the debt owing thereon to the Bank of New Zealand be paid by you now—about £5,500.—Yours faithfully, SWIFT & HANN. P. Hann, C. H. Croaker, executors in estate of S. M. Swift."

Extract not in my affidavit :—Hann's letter to my dear Lavender. April 25, 1884. Book 11, page, 500. "We have also arranged that the other partners in the Avington Cattle transaction shall take the whole thing into their own hands, so that we are gradually reducing our responsibilities."

Extract from original letter of Mr. R. M. Pitt to Mr. P. Hann, 6th May, 1884 :—"I have release of Avington, signed by Badgery; am sending it on to McDonald for his signature."\*

Extract from original letter of Mr. F. S. Badgery to Mrs. Swift, 27th September, 1887 :—"Amount paid to the credit of Swift and Badgery, Blackall, by testator—

28th September, 1883	£200 0 0
29. h " "	100 0 0
1st October, " "	100 0 0
5th November, " "	100 0 0
27th " "	404 0 0
Ray's payments	432 8 0

Amount received by executors	£336 8 0
Pitt's cheques	1,000 0 0

£1,336 8 0

1,336 8 0

Can Mr. P. Hann say that testator had no interest in these transactions?

3. Mr. P. Hann's admission in paragraph 3, "there may have been individual items somewhat under-valued," is in direct conflict with paragraph 1, wherein he states the "whole of the station properties were over-valued." We had no desire to under-value or any-thing to gain by doing so." I reply by quoting a few extracts from Mr. Hann's letters, which I may reveal his motive for under-valuing the estate properties.

Extracts from letter written by Mr. P. Hann to Mr. Webb, 10th March, 1884, *vide* press-letter copybook No. 11, pages 286 and 287 :—"I shall make a struggle to retain Baden Park." "I want to keep on Baden Park, and must try and do so."

Extract from letter written by Mr. P. Hann to Mr. Webb, 25th April, 1884, same book, page 494 :—"I shall not sell Baden if I can possibly hold to it."

Extract from letter written by Mr. P. Hann to his former partner, Mr. James Smith Lavender, 25th April, 1884, *vide* press letter book, No. 11, page 500 :—"If I could sell Mimosa by-and-bye, of course, at a loss, I would then try and stick to Baden Park for myself."

4. Mr. P. Hann states "he regards some of the statements by George Sandell as impudent libels." I suppose he refers to the old adage, "Greater the truth, greater the libel." His discrimination is great and his self-condemnation complete, as some of the serious allegations are admitted and the others proved.

5. Mr. P. Hann says that the allegations of No. 7 of the affidavit "have already been the laughing-stock of the Court of Equity;" but I can aver that had the Court of Equity been in the possession of the evidence now before me a more serious conclusion might have been arrived at.

6. That I have been prompted and inspired solely by my professional duties to lay before the Select Committee the true facts as to the value of the estate the late Mr. S. M. Swift died possessed of, and that during that investigation I have been compelled to wade through some of the most noisome and fraudulent transactions, perpetrated by the executors, Mr. P. Hann, Mr. C. H. Croaker, and others, and, if the necessity should arise, shall not shrink for fear of threats from disclosing them.

Sworn by the deponent on the day first above-mentioned at Sydney, before me,—

GEO. SANDELL.

O. P. CLAYTON, J.P.

\* Not in affidavit. Book 12, page 51, 21st May, 1884. Hann to Pitt :—The copy of the Avington contract will do for us; you keep the original.

ESTATE OF THE LATE S. M. SWIFT, OF PETERSHAM.

APPENDIX.

A 1.

[To Evidence of Mrs. Elizabeth Swift.]

COPY OF WILL OF SAMUEL MOFFITT SWIFT.

I, SAMUEL MOFFITT SWIFT, of Petersham, near Sydney, in the Colony of New South Wales, grazier, hereby revoke all testamentary dispositions by me at any time heretofore made, and declare this to be my last will. I appoint Phineas Hann, of Wagga Wagga, in the said colony, grazier; Charles H. Croker, of the same place, bank manager; and my wife, Elizabeth Swift, trustees and executors of this my will; and I declare that whenever the words "my said trustees" shall be found in this my will the same shall be taken to include, not only the said Phineas Hann, Charles H. Croker, and Elizabeth Swift, but the survivors and survivor of them and the heirs, executors, and administrators of such survivor, and other the trustees or trustee for the time being of this my will. I direct the payment of my debts, funeral and testamentary expenses, as soon as conveniently may be after my decease and subject thereto. I give, devise, and bequeath all my real and personal property, of what nature and kind soever, and wheresoever the same may be situate, unto my said trustees, according to the nature and quality thereof respectively, upon the trusts and with, under, and subject to the powers, provisions, directions, and declarations hereinafter contained concerning the same—that is to say, upon trust, with all convenient speed, to sell and convert into money the whole of my said real and personal estate, or so much thereof as shall not consist of money either altogether or separately, and either by public auction or private contract, and with such conditions and upon such terms, either as to time and manner of payment, otherwise and generally in such manner as to my said trustees shall seem most advisable: Provided always and I hereby empower my said trustees to postpone the sale of the whole or any part of my said real or personal estate to such time or times as they shall in their discretion think proper. And upon such sale and conversion as aforesaid, I direct that my said trustees shall stand possessed of the proceeds of such sale and conversion and of the money forming part of my personal estate upon trust, thereout in the first place to pay to my brother, Richard John Swift, of Keriagh, in the county of Longford, Ireland, the legacy or sum of five hundred pounds, free of legacy duty, and also to pay to my sister, Mary Cody, wife of Matthew Cody, of Mimosa Station, near Wagga Wagga, aforesaid, station manager, the legacy or sum of two hundred and fifty pounds, free of legacy duty. And after payment of such legacies, upon trust to invest the residue of my said estate and the proceeds thereof in or upon Government or real securities in: S. M. Swift; witnesses—J. P. Abbott, John A. K. Shaw: the colony of New South Wales, or the shares of any joint stock company carrying on the business of banking in the said colony, with power from time to time to vary any of such investments for others of the nature hereby authorised. And I direct that my said trustees shall divide the said investments into so many equal shares as shall be equal to one more than the number of my children living at my death, and appropriate one of such shares for the benefit of my said wife, and one of such shares for the benefit of each of my said children, and shall hold and apply the same in manner hereinafter directed. I direct that my said trustees shall stand possessed of the share appropriated for the benefit of my said wife upon trust during her life, or until she marries again, and pay to her the interest, dividends, and annual income of such share by equal half-yearly payments, with power to advance to my said wife out of the capital of such share such sum or sums as they shall think necessary for her maintenance, if the interest, dividends, and annual income shall be insufficient for that purpose; and in the event of her marrying again I direct that my said trustees shall settle the said share upon trust during the life of my said wife for her sole and separate use, without power of anticipation, and after her death in trust for such persons as my said wife shall, notwithstanding coverture by will, appoint, and, in default of any such appointment, or so far as the same if made shall not extend, in trust for such of my children as shall be living at the death of my said wife, and, if more than one, in equal shares. But if my said wife shall not marry again, then I direct that at her death her said share shall be held by my said trustees upon the same trusts upon which I have hereinbefore directed that it should be settled after her death in the event of her marrying again. And as to the shares hereinbefore directed to be appropriated for each of my said children, I direct that my trustees shall stand possessed of such share upon trust to pay and apply the interest, dividends, and annual income thereof for the purpose of maintaining and educating the child for whose benefit such share shall be so appropriated until such child, if a son, shall attain the age of twenty-five years, or, if a daughter, shall attain that age or marry with the consent and approval of my said trustees. And I empower my said trustees out of the capital of any such share: S. M. Swift; witnesses—J. P. Abbott, A. K. Shaw: to advance such sum or sums as they shall think proper for the maintenance, education, and advancement in life of the child for whose benefit such share shall have been appropriated. And I direct that the share of every son who shall attain the age of twenty-five, or die under that age having issue, shall, upon the happening of either such events, be held by my said trustees in trust for such son, his executors, and administrators absolutely; and that the share of every daughter who shall attain the age of twenty-five years, or marry under that age with the consent and approval of my said trustees, shall, upon the happening of either of such events, be settled by my said trustees upon trust for such daughter for her separate use during her life without power of anticipation, and after her death in trust for such persons as such daughter shall by will appoint, and in default of such appointment in trust for the persons who, if she had died intestate and unmarried, would have been entitled under the Statute of Distributions to participate in her estate. Provided always, and I hereby direct, that if any child of mine shall die under the age of twenty-five years without having lawful issue, if a son, and without having been married, if a daughter, the share of the child so dying shall go and be divided amongst my other surviving children, share and share alike. I devise and bequeath all estates vested in me as trustee or mortgagee to my said trustees, upon the trusts and subject to the equities affecting the same respectively. In witness whereof I have hereunto set my hand, and declare this to be my last Will and Testament (written on three sheets of paper), this twenty-second day of December, in the year of our Lord one thousand eight hundred and eighty-one.

Signed by the said testator, 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, the alteration in the thirty-first and thirty-fourth line of the first page having been previously made.

S. M. SWIFT.

J. P. ABBOTT, Solicitor, Sydney.  
JOHN A. K. SHAW.

We certify that the writing contained in this and the three preceding pages of brief paper is a true copy of the Will of Samuel Moffitt Swift, the same having been examined therewith by us this twenty-fifth day of February, 1884.

BENJAMIN E. NIMMO, } Clerks to Messrs. Abbott and Allen, Solicitors,  
CHAS. P. PEACEY, } Wentworth Court, Sydney.

## A 2.

[Extract taken from the Sydney Morning Herald at the Library.]

## IN THE SUPREME COURT OF NEW SOUTH WALES, ECCLESIASTICAL JURISDICTION.

In the will of Samuel Moffitt Swift, late of Petersham, near Sydney, in the colony of New South Wales, grazier, deceased.

Notice is hereby given that, after the expiration of fourteen days from the application hereof in the New South Wales Government Gazette, application will be made to this Honorable Court, in its Ecclesiastical Jurisdiction, that probate of the last will and testament of the abovenamed deceased (who died on the 18th day of February instant) may be granted to Phineas Hann, of Wagga Wagga, in the said colony, grazier; Charles Hawthorne Croaker, of Wagga aforesaid, bank manager; and Elizabeth Swift, of Petersham aforesaid, widow, the executors and executrix named in and appointed by the said will.

Dated this 22nd day of February, A. D. 1884.

ABBOTT AND ALLEN,  
Proctors for the Applicants,  
Wentworth Court.

## A 3

## I.

FORM of affidavit to be sworn and lodged with the application for obtaining any probate or letters of administration relating to the estates of deceased persons, for the purpose of getting such probate or letters of administration stamped under Act 44 Vic. No. 3.

NEW SOUTH WALES, } In the will of Samuel Moffitt Swift, late of Petersham, in the colony aforesaid, grazier, deceased.  
TO WIT. }

On the fifth day of April, one thousand eight hundred and eighty-four, Phineas Hann, of Wagga Wagga, in the colony of New South Wales, grazier, and Charles Hawthorne Croaker, of Wagga Wagga aforesaid, bank manager, being severally duly sworn, make oath and say as follows:—

1. We are two of the parties making application for the purpose of obtaining probate of the will of the abovenamed deceased.

2. The estate and effects of the said deceased, of which administration is sought to be obtained, as shown in the annexed inventory, after deducting the debts due and owing by the deceased, are under the value of forty-six thousand nine hundred and fourteen pounds eighteen shillings and sevenpence, to the best of our knowledge and belief.

P. HANN.  
C. H. CROAKER.

Sworn by the deponents on the day first above }  
mentioned, at Wagga Wagga, before me,— }

HY. BERKELEY FITZHARDINGE,  
A Commissioner for Affidavits.

## Inventory referred to in the preceding Affidavit.

Full particulars and value of the estate and effects of the deceased.	£ s. d.	FULL particulars of the debts due and owing by the deceased.	£ s. d.
Total value of the estate and effects comprised in the private estate of the said deceased (as per statement of account marked "A," and valuations hereunto annexed) .....	26,021 10 9	253597 The Bank of New South Wales, Sydney, 9 April, 1884.	
Total value of the deceased's half-share of the estate and effects comprised in the partnership firm of Swift and Hann (as per statement of account marked "B," and valuations hereunto annexed) .....	51,392 4 2	PAY Probate Duty or Bearer four hundred and seventy pounds sterling. £470. P. HANN, C. H. CROAKER, } Executors.	
Total value of the deceased's half-share of the estate and effects comprised in the partnership firm of "John McDonald and Company" (as per statement of account marked "C," and valuations hereunto annexed) .....	53,250 0 0		£ s. d.
		Total amount of debts and liabilities due and owing in the private estate of the said deceased (as per statement of account marked "A" hereunto annexed) .....	23,024 18 7
		Total amount of the deceased's half-share of the debts and liabilities due and owing by the partnership firm of "Swift and Hann" (as per statement of account marked "B" hereunto annexed) .....	33,723 17 9
		Total value of the deceased's half-share of the debts and liabilities due and owing by the partnership firm of "John McDonald and Company" (as per statement of account marked "C" hereunto annexed).....	27,000 0 0
Total assets .....	130,663 14 11	Total debts.....	83,748 16 4
Deduct total debts .....	83,748 16 4		
Net value on which duty is charge- able.....	£46,914 18 7		

P. HANN.  
C. H. CROAKER.

A.  
S. M. SWIFT.

Assets.		Liabilities.	
£	s. d.	£	s. d.
†22,000 ewes travelling in Queensland, in charge of drovers Blundin, Flanagan, and Gaffey, sold to the Caraudotta Company, for delivery at 14s. per head, payable by bill at 6 months	15,400 0 0	Bank of New South Wales	399 4 5
Less cost of delivery, say, for 4 months	£1,400	" " Bourke	49 9 9
†Less interest on bill	693	" " Walgett	240 19 8
	2,093 0 0	" " Brewarrina	153 8 8
		" " Wagga Wagga	23 5 1
		" " Geo. Re. Ray	289 7 4
	13,307 0 0		796 10 6
11,600 wethers, travelling in Queensland in charge of Blundin and Ray, at 6s.	3,480 0 0	Drovers—B. P. Radford	186 6 1
J. W. G. Cox, Birie, balance	1,000 0 0	Thos. Miller	268 0 0
†Australian Mutual Provident Society, life assurance, and bonus £60	2,000 0 0	Geo. R. Ray	240 0 0
†65 Mount Kembla shares	650 0 0	Chas. Byrne	200 0 0
Sydney Lloyds	225 0 0	J. M. Flanagan	250 0 0
H. C. Tincombe, bill	80 0 0	T. Gaffey	200 0 0
C. H. Croaker	170 10 9	*J. Blunden	250 0 0
†One-third share in Tuma Falls Run (only leasehold and not stocked at all), £450	150 0 0	Jas. Thorburn	174 15 0
†One-fifteenth share in land at George's River House and grounds at Petersham, known as Hill Crest	3,250 0 0		1,769 1 1
Household furniture	550 0 0	Messrs. G. H. and P. Meen, for stock	15,000 0 0
Buggy harness and sundries	100 0 0	Wright, Heaton, & Co.	1,910 4 0
8 cattle, £80; 2 horses, £20	100 0 0	Federal Bank, o/d. bill	100 0 0
23 acres land, Cook's River	700 0 0	Liverpool, London, and Globe Assurance Co., mortgage on house	2,400 0 0
	26,021 10 9	Commission on sale of sheep, £15,400	385 0 0
	23,024 18 7	M. Cody	200 0 0
		Messrs. Abbott and Allen, balance of account for costs, &c.	64 18 7
By Balance	£2,996 12 2		£23,024 18 7

\* J. Blunden, account increased to £597.

† Sheep sold after death, bill not payable until sheep delivered, may not be for 6 months.

This is the Statement of Account, marked "A", referred to in the annexed affidavit of Phineas Hann } P. HANN.  
and Charles Hawthorne Croaker, sworn this sixth day of April, A.D. 1884, before me, } C. H. CROAKER.  
HY. BERKELEY FITZHARDINGE,  
A Commissioner for Affidavits.

## B.

## BALANCE-SHEET OF SWIFT &amp; HANN—LIABILITIES AND ASSETS.

Assets.		Liabilities.	
£	s. d.	£	s. d.
Baden Park Station, as per valuation statement	50,715 0 0	Bank of New South Wales	44,707 2 10
Mimosa Station, as per valuation statement	29,123 0 0	Baden Park overdraft	585 10 6
Browley property and stock, as per valuation statement	13,317 10 0	Snubba	83 7 2
Snubba Run and stock thereon, as per valuation statement	7,210 0 0	Mimosa	405 15 5
	100,365 10 0	Interest	1,800 0 0
Promissory notes owing—			47,581 15 11
F. G. Manning, overdue since the 2nd February, and very doubtful	339 15 4	17 Aug., 1883 — Blackett's dis'h'd. bill	5,502 10 0
Morse Bros., 6 months bill—good	888 16 6	2 Feb., 1884—Manning's	339 15 4
G. W. Baker, 6 months bill—good	888 16 6	Interest	300 0 0
	2,117 8 4		6,142 5 4
Sundries—			53,724 1 3
Waggon, harness, and horses, sold for	14 10 0	Station liabilities outstanding—	
Waggon, harness, and 2 horses, sold for	44 0 0	Mimosa	103 15 3
Waggon, harness, and 2 horses, sold for	30 0 0	Snubba	65 15 3
Tip-dray and harness, sold for 20 horses, at £5 per head, sold for	8 0 0	Baden Park	660 0 0
5 cattle, at £4 per head, sold for	100 0 0		629 10 6
Saddle and sundries, sold for	20 0 0	Bills payable—	
100 bags corn, sold for	75 0 0	M. Cody	265 0 0
	301 10 0	Copland & Co.	83 10 4
		McPherson & Co.	947 14 0
		R. & H. McFarland	489 9 0
		P. & J. Tyson	449 3 0
		T. Brown & Co.	2,856 2 6
		A. Moffatt	892 4 0
			5,983 2 10
		New Zealand Loan and Mercantile Agency Co.	5,303 12 9
		Pitt, Son, & Badgery	1,500 0 0
		J. Sinclair	51 5 9
		Copland & Co.	53 10 5
		W. C. Hunter	2 12 0
			1,607 8 2
	£102,784 8 4		67,447 15 6
Balance	£35,336 12 10	Balance	35,336 12 10
			£102,784 8 4

This is the Statement of Account marked "B," referred to in the annexed affidavit of Phineas Hann } P. HANN.  
and Charles Hawthorne Croaker, sworn this fifth day of , A.D. 1884, before me, } C. H. CROAKER.  
HY. BERKELEY FITZHARDINGE,  
A Commissioner for Affidavits.

30

A 4.  
PROBATE PAPERS.

BALANCE SHEET of John McDonald and Co.—McDonald & Swift's Assets and Liabilities.							
	£	s.	d.		£	s.	d.
By Mungie Bundie, Boolooroo, and Gravesend Stations, as per valuation herewith .....	106,500	0	0	To overdrawn account with the Union Bank of Australasia, Sydney .....	51,000	0	0
	£106,500	0	0	Balance .....	52,500	0	0
					£106,500	0	0

By balance ..... 52,500 0 0

This is the Statement of Account, marked "C," referred to in the annexed affidavit of Phineas Hann and Charles Hawthorne Croaker.

Sworn this 5th day of April, A.D. 1884, before me,—

HY. BERKELEY FITZHARDINGE, A Commissioner for Affidavits.

P. HANN,  
C. H. CROAKER.

A 5.

S. M. Swift's assets at date of his death, 18th February, 1884.—For probate.							
	£	s.	d.		£	s.	d.
1. Cash to credit in Bank of New South Wales (see pass book) .....	358	4	11				
2. Munzie's bill to Swift .....	560	0	0				
3. Langham's .....	1,000	0	0				
4. 1,000 Monte de Piete shares .....	1,050	0	0				
5. 1 share in Sydney Lloyds .....	250	0	0				
6. Life insurance and bonuses .....	2,330	12	0				
7. 2 shares in George's River Land Co. ....	550	10	0				
8. 80 shares in Mount Kembla Coal Co. ....	800	0	0				
9. J. W. G. Cox's overdue bill .....	1,000	0	0				
10. H. C. Tingcombe's overdue bill and interest .....	88	6	0				
11. C. H. Croaker's .....	188	0	0				
12. 7,500 Tupplall ewes, sold to James Martyn .....	4,687	10	0				
13. Loan to Evans .....	44	0	0				
14. " Wood .....	20	0	0				
15. " T. N. Elliott .....	20	0	0				
16. " John Dodd .....	70	0	0				
17. Buggy and harness to Badgery, H. S. ....	70	0	0				
18. 21 acres of land at Kingsgrove .....	1,500	0	0				
19. Money lent to McKay in Queensland .....	50	0	0				
20. " Hillcrest " and grounds .....	4,500	0	0				
21. 40 feet land at Hillcrest .....	100	0	0				
22. Household furniture .....	500	0	0				
23. Wagonette and harness, spring cart, &c. ....	100	0	0				
24. 6 Alderney cattle and 2 horses .....	140	0	0				
25. 22,000 ewes sold in Queensland .....	15,400	0	0				
26. 11,500 wethers in Queensland .....	3,700	0	0				
27. F. Stephenson's bill overdue .....	631	1	0				
28. 188 bales of wool .....	3,584	0	0				
29. 6 bales of greasy wool .....	60	0	0				
30. Tooma Falls run .....	1,200	0	0				
31. Snubba Run .....	5,000	0	0				
32. Morse and Baker's bill .....	1,777	13	4				
33. Horses—afterwards sold to Broad .....	188	15	0				
34. Horses and plant—afterwards sold by Sloan .....	299	16	8				
35. " left by Halloran .....	91	0	0				
36. " " Gaffey .....	70	0	0				
37. " " Thorburn .....	150	0	0				
38. " " " .....	70	4	0				
39. Five bills received by Swift, payable to himself, from Co'y. Dowling for cattle sold and delivered .....	12,000	0	0				
40. Mimosa station and stock .....	29,123	0	0				
41. Baden Park station and stock .....	50,715	0	0				
42. Stock on Snubba—5,700 2-tooth wethers, at 7s. ....	1,995	0	0				
43. " 1,700 2-tooth ewes, at 11s. 6d. ....	977	10	0				
44. " 5,800 " " .....	3,335	0	0				
45. " 300 rams, at 40s. ....	600	0	0				
46. " 70 horses, at £8 .....	560	0	0				
47. Working plant, hay, potatoes, and stores .....	100	0	0				
48. Wagonette and two horses left at Wagga .....	45	0	0				
49. Browley Station—11,000 acres freehold, cost 45s. ....	24,750	0	0				
50. " 5,000 lambing ewes, at 11s. ....	2,750	0	0				
51. " 7,000 wethers, at 7s. ....	2,450	0	0				
52. " 130 stud ewes, at £2 .....	260	0	0				
53. " 60 stud rams, at £4 .....	240	0	0				
54. " Furniture, £100; plant, drays, &c., £50 .....	150	0	0				
55. " Bullock team .....	90	0	0				
56. " 14 cattle, £81 10s.; 5 horses, £34 .....	115	10	0				
57. 8,184 ewes from Mercadool .....	3,069	0	0				
58. Shelley Bros. overdue pro. note .....	1,255	0	0				
59. Waggon and harness and horses .....	14	10	0				
60. " " 2 horses .....	44	0	0				
61. " " " .....	30	0	0				
62. Tip dray and harness .....	8	0	0				
63. 20 horses, at £5 .....	100	0	0				
64. 5 cattle, at £4 .....	20	0	0				
65. Saddle and harness .....	10	0	0				
66. 100 bags corn .....	75	0	0				
Mungie Bundie, Boolooroo, and Gravesend Stations—							
67. 35,000 acres, freehold, cost 45s. ....	78,750	0	0				
68. 110,000 acres, leasehold and improvements, 5s. ....	27,750	0	0				
69. 4,000 cattle on Gravesend, £4 .....	16,000	0	0				
70. 300 cattle on Mungie Brundie .....	1,200	0	0				
71. 81,000 sheep (see report in ledger), 11s. ....	44,550	0	0				
72. 200 horses, £8 .....	1,600	0	0				
73. Working plant .....	2,000	0	0				
74. Pumping " .....	2,000	0	0				
75. Gravesend leasehold and improvements .....	8,000	0	0				
76. Federal Bank .....	100	0	0				
77. S. Payne .....	220	3	2				
78. Wool to Cottee, 223 bales, £10 .....	2,230	0	0				
	£				371,479	5	1

Moneys



## Moneys owing to S. M. Swift by Phineas Hann, previous to 18 February, 1884.

	£	s.	d.	£	s.	d.
1. Mount Kembla Coal Shares .....	400	0	0			
2. Cash received from S. Payne, Manager of Browley Station .....	1,100	0	0			
3. Cash received for 2 Maps sold .....	70	0	0			
4. Cheques not accounted for .....	250	0	0			
5. Cash received and not accounted for .....	700	0	0			
6. Cash for buying country on Roper River .....	100	0	0			
7. Alderney cattle .....	400	0	0			
8. Swift's horses .....	35	0	0			
					3,055	0 0

## Additional Assets.

9. Share in Kimberley country .....	100	0	0			
10. 190 rams at Inverell .....	380	0	0			
11. Cash owing by Radford .....	11	11	0			
12. Cash paid to Badgery .....	900	6	0			
13. Horses, &c., at Avington .....	300	0	0			
					1,691	11 0
					£4,746	11 0

	£	s.	d.
Total of Sheets 1, 2, and 3 .....	371,479	5	1
" " 4 .....	4,746	11	0
	£376,225	16	1
Less Liabilities, p. 5 .....	138,475	14	11
	£237,750	1	2

## Liabilities of S. M. Swift, 18 February, 1884.

	£	s.	d.	£	s.	d.
1. To Dr. Mein for sheep .....	15,000	0	0			
2. " Oliver Smith & Co., for cattle .....	9,444	0	0			
3. " Brown, Tuppal, sheep .....	2,856	2	2			
4. " Wright, Heaton, sheep .....	1,910	0	0			
5. " Mortgage on Hill Crest .....	2,400	0	0			
6. " Drovers, &c. ....	1,000	0	0			
7. " New Zealand Co. ....	5,303	12	9			
8. " Bank of New South Wales .....	44,707	0	0			
9. " Union Bank .....	54,000	0	0			
10. A.M.L. & F. Co. ....	1,855	0	0			
					138,475	14 11

## B 1.

[To Evidence of Mrs. Elizabeth Swift.]

[COPY.]

Sydney, 8 February, 1881.

MEMO. of Agreement entered into this 9th (ninth) day of February, 1881 (eighteen hundred and eighty-one), between John McDonald and S. M. Swift, both of Mungie Bundie, Moree, Gwydir District. They both hereby agree that, having purchased J. H. Spiller's share between them for the sum of £16,500 (sixteen thousand five hundred pounds sterling), that they further agree to draw every six months, and divide in two equal shares, the sum of £1,100 (eleven hundred pounds sterling), being the about bank interest on Spiller's share, and they further agree to carry on business in the name of John McDonald & Co. as hitherto, and from year to year under the management of John McDonald as formerly; and further that on the 31st December of each year that a balance-sheet be made out to enable us to meet any further arrangement that may be mutually agreed upon.

(L.S.) J. McDONALD.  
S. M. SWIFT.

Witness—(L.S.) H. S. BADGERY.

## B 2.

[COPY.]

Dear Hann,

30/11/97.

I have your letters of 5th and 7th inst. re Swift matters. I would most willingly go to Queensland and do what I could for the estate, if I could only spare the time; but by doing so I would be neglecting my work here. We have gone through such hardships here that everything is out of order, and will take me all my time to put them right before shearing. When in Sydney Mr. Kilgour promised that he would do anything he could for the estate towards getting paddocks for the sheep, &c. I mentioned this to Mrs. Swift. With reference to your remarks that being a partner longer than you, and therefore should go out and arrange matters, I will call your attention to the fact that entirely owing to that, and to try and relieve the private estate, I took over a purchase of £6,000 worth of sheep in the face of a season where I am likely to lose £2,000 for so doing; also, that against my advice the trustees held on to the Bunerah contract when they could, according to their own showing, have got out of it without any refunds whatever being paid out of the estate. And further, that you undertook a trust willingly, and now, owing to various reasons, things have got into a mess. It is not reasonable to suppose that I can neglect the trust that I have here and go and try to rectify things which I would have to learn all about, and which you should have at the ends of your fingers.

Re Abbott and Allen. They notified me to same effect re agreement not to sell. Their delay in not giving this earlier I do not know anything of. Their wanting to see me could not have anything to do with it, as the opinion is dead against my wishes in the case. As to your idea of changing them because they act for me, Mrs. Swift, and the estate, the work they have done trespass case, which is settled by defendant paying money into court. This, I hope, finishes my business with them. I understood Mrs. Swift consulted them on estate matters only. I will hunt up the partnership memo., for such it was, drawn up by myself. I think it is either with A. and A. or bank; will find it and send you copy. My books can be examined whenever your appointed accountant is ready. I have not made any statement or balance-sheet, as I suppose no accountant would accept it without having the books to verify it. Mrs. Swift may be party to what you say, but think, had you consulted with and explained matters as you now do, she would not have given you so much trouble. And this is just what I have been writing you, to give and take, and all pull together, instead of against each other. The sooner things are wound up the sooner you will settle into your places. I should think now would be the time to sell the summer runs, Snubber and Three Falls, as the plains are afraid of the season and must either sell stock or get country.

Yours faithfully,  
J. McDONALD.

81





MINUTES OF EVIDENCE

taken before the

THE SELECT COMMITTEE

appointed to inquire into

THE PROBATE DUTY PAID IN THE SWIFT ESTATE.

Wednesday 14th Oct 1897

PRESENT :-

Mr Hughes

Mr M'Gowan

Mr MacFarlane

Mr M'lean

Mr Parkes

*Esq*

W. M. HUGHES, IN THE CHAIR

Mrs Elizabeth Swift called in sworn and examined -

1. Chairman - Are you the widow of the late Samuel Morratt

Swift ? Yes

2 What was he ? He was a squatter . He died at Hill-

*Hill Crest* crest, - His private residence - Petersham, on the 13th February

1884.



*1857  
Larkin  
a*

the will read or knowing anything of it they applied through Messrs Abbott & Allen, solicitors, for probate. Ham and Croaker put in an application dated 22nd February 1884 without my knowledge. I ~~produce~~ <sup>hand in</sup> an advertisement that appeared in the Sydney Morning Herald [Appendix A2]

9 Do Messrs Abbott & Allen notify there that they apply on behalf of the three executors? Yes

10 Do you swear you gave them no instructions to apply on your behalf? I had never seen Abbot & Allen to my knowledge and I never stood in their office. I took the advertisement which I have produced from the Sydney Morning Herald in the library a few days ago

11 Did you see that advertisement in the Sydney Morning Herald at the time it appeared? No. I have only seen it within the last month

12 Were you aware that application was being made for probate? No, and I had not heard the will read then

13 Chairman - At that time I suppose you were entirely

ignorant of business matters? I was with regard to the will because I never had any experience in a matter of that kind; but my husband <sup>had</sup> taught me his ~~own~~ business <sup>after</sup> ~~when we were~~ married. With him I went through almost everything and knew everything he was doing up to the time of his death. I had a good personal knowledge of all his affairs and assets and his transactions. He taught me to answer telegrams and assist him in <sup>his</sup> ~~the~~ business when we were living in Tumut.

14 M'Gowan - When he died did you know that you were appointed an executor? I knew because he told me before his death

15 Did you know at that time that they had to apply for probate? No; I did not know what means they took when applying for probate

16 Mr M'lean - At the time or immediately after your husband's death, did you consult a solicitor or any other person as to what steps you should take? No; I did not know that that was necessary. I only knew afterwards that they should have

*Followed  
Hann & Croaker*

*13,537*

Hill Crest<sup>5</sup>

brought the will to Hill Crest, opened it, and read it in my presence

17 Chairman - Did your solicitors not remind you of it and notify you of it? To the best of my knowledge it was a month after that when I heard the will read. I was communicated with - I could not say exactly whether by Hann & Croaker or from Mr Abbott's office - and asked to go to Mr Abbott's office. I drove there one afternoon and Mr Allen read the will for me

18 The fact remains that you did not apply for probate. I did not apply personally and I did not know they were applying in my name. I did not know what applying for probate was

19 Did not the officials of the ecclesiastical court, when application was made by Hann and Croaker, and not by you in conjunction with them, send any official communication to you? No. Not for a long time afterwards. I dare say the date could be ascertained in the stamp office. I then signed some paper in connection with the stamp office but it was long after probate was granted

*5*

2. At this time I suppose you had no reason to doubt but that the estate would be administered for your benefit and the benefit of your children in the usual way? It never entered my mind that anyone could take the estate from us because it was left by my husband to myself and children wholly, and I had a good idea of what it consisted.

1. Mr M'Gwen - How many children did your husband leave and what were their ages? Six children, four girls and two boys. The eldest then was I think about 12 or 12½ yrs; the youngest was 18 months or thereabout. There were about two years between each of them.

2. Chairman - Has the estate been administered? No.

3. As far as you know? If it was administered we would have got the proceeds.

4. Mr M'lean - Have you taken any part in the management of the estate since probate was taken out? They never allowed me to take any part until about October 1884. I think it was about the 18th October 1884 that Mann and Creaks sent me down a



~~Hawthorn  
Hoodles~~

13537

mortgage given on one of the stations by them and signed by them to the Bank of N S Wales. They asked me to call at the bank and sign it. I wrote back and said I thought that under the will we as trustees had no power to mortgage any portion of Mr Swift's property, that the instructions in the will were only to realise and invest it, as the will directed, but that I would consult a solicitor and see if I was right. In the meantime I would not sign it, but I asked to have the mortgage for a few days until I looked through it. I got the mortgage and took it to Mr Abbott. Mr Abbott wrote a letter to me saying that we had no power to give a mortgage over any of the property. <sup>I think</sup> That was the first <sup>prominent</sup> time they asked me to take any part in the estate matters

25 Mr MacFarlane - Did the Executors request you to do that ? Yes

26 Was that done by letter ? Yes : I can produce the letter I have the letter book

7 Was it signed by the two trustees ? No : it was a letter from Mr Hann

8 Have you ~~any~~ <sup>got</sup> that letter ? I believe I have

If not I have a copy of it in Mr Hann's letter book in his own

7

writing

29 Mr M'lean - Subsequent to that did you sign any papers or take part in the management of the estate in any way? Not that I am aware of. I believe I have not signed any papers. In fact I believe I can conscientiously swear that I did not.

~~again~~

30 With reference to the filing of these accounts, as to the value of his assets at the time probate was taken out, were these accounts submitted to you before they were filed in the court? No; and I was never asked a question as to Mr Swifts property or anything in connection with it. Afterwards I said that an Accountant should be appointed, that Mr Swifts properties were very large that an accountant <sup>5</sup> could collect all the assets and make up the accounts before probate was asked for, because how could two strange men living up at Wagga come down to Sydney and understand within a fortnight or a few days the extent of Mr Swifts transactions and his properties. They could not possibly do so. There is not an accountant in Sydney who could have put his assets and properties and accounts together at least under 3 months

1 When was that account ~~xxxx~~ filed? Probate was granted on the 5th April - I cannot tell when it was filed. They

~~Pheddes  
Hoadson~~

13537

229<sup>9</sup>

applied for probate on the 22nd February and it was granted on  
the 5th April

32 Mr M'Gowan - You did not take any steps, and you were  
not consulted until October? I was not consulted even then

3 I mean in the administration of the estate? No.

4 You stated that after consulting your solicitor you  
refused to give your consent to the mortgage - what happened  
then? The mortgage remained, and I believe the bank registered  
it

5 Then the mortgage was effected? I believe so  
because the bank still holds that station and that mortgage

6 When you refused to sign the mortgage, did you know  
that probate was taken out? I knew as far as reports in the  
paper were concerned that probate was taken out, but I did not  
understand what probate really was

7 What was the next step? I may be allowed to go back

9

to about May in 1884. I felt that as they were not consulting me about the estate matters that they might not quite understand all the things. They had sold 22,000 sheep in Queensland at what I considered to be under their value. They sold them for 14s a head when they should have got £1 per head at that time when stock was very high. Then I inquired from one and another what was being done? I wrote a note to the General Manager of the Bank of NSW - Mr Shepherd Smith. I thought that as my husband had such large banking transactions he would be the best one to assist me if anything was going wrong. He wrote a note to me which I have saying that he would be happy to see me at any time that I could make it convenient to call on him. I called on him some time in May 1884 and he said he would be very happy to assist me in any way he could. Afterwards when I called on him again he said that he thought I had better go home and nurse my children and let two honest men look after and administer my estate, and that I should not meddle in it at all.

38 Did you get any money? They opened an account for me at the bank and paid in £100 and £50 at a time. They gave me, extending over 2 years, about £2000. Mr Shepherd Smith would never see me again after that

10

~~Stodding~~  
~~Paterson~~

13537

11

39

Did you try to see him? Yes: the bank of course and

Hann and Creaker managed the banking matters in connection with the estate. In July '84 I went up to Warrga to see Hann and Creaker, and to see what they were doing with the estate. I remained there a few days and Mr Hann promised to give me accounts of what he had realised and what he had done up to that time. Afterwards he sent me accounts and then I went to Mr Abbott. I consulted him for a number of years in the estate matters as they were going wrong. ~~That is all the information as far as that year is concerned~~

40

Mr M'Farlane - Was Mr Shepherd Smith managing the bank

when this mortgage was lodged? Yes: he was the casual Manager

1 Was he managing the particular branch of the Bank of N S W where this mortgage was lodged as security? I suppose so

2 That was the bank he was in? Yes. He resided at the bank in Sydney

3

You understand the mortgage is the one they wanted your signature for? Yes. Then I had a communication from the bank over that mortgage which I can produce. The manager of the

bank wrote to me because I refused to sign the mortgage. The effect of the letter was that I was thwarting the winding up of my husband's estate by my obstinacy and could not the solicitors for the bank and my solicitors confer together over it. Then I think Mr Abbott replied to that. At any rate he directed me what to do in regard to that. I never signed the mortgage

44 Mr M'lean - Can you tell us when the stamp duty was paid in connection with this estate? Yes; I produce the cheque which was drawn. I cannot tell from what source it is drawn or on what account it is drawn, but the cheque I produce is the one they paid the probate duty with

5 Did you get that cheque from the bank? Yes, together with other cheques of Mr Swift's on various accounts

6 Is it signed by Hann and Creaker as executors? Yes

7 Mr Macfarlane - Have you any knowledge as to what was done with the money collected in the estate? It was paid into the bank

8 By Hann and Creaker? Yes. And a <sup>greater</sup> fair portion of that which I realised I also paid into the bank

*Patterson*  
*MacFarlane*

13

13537

49 To the same account ? That I cannot say

50 What account did you pay it into ? Into an account which was supposed to be opened for the estate moneys in the bank

1 Can you say whether it was a Trust A/c ? To the best of my knowledge I do not think it was

2 In what bank was it ? The bank of NSW, Sydney. I also produce a copy of the affidavit sworn and lodged with the application to obtain probate [affidavit A-3]

3 Chairman - Was there not accompanying this a detailed list of assets and liabilities ? Yes ; I produce it

4 MacFarlane - Were you ever consulted before that cheque was drawn out ? No.

5 It is signed by the two other executors ? Yes

6 Chairman - Are these the details of the accounts filed with them ? Yes

13

57 Are these the full details as supplied to the court ?  
That is all that has been supplied to the court as far as I  
know.

8 That purports to be the whole explanation of the  
estate as supplied to the probate court ? Yes

9 And it was upon that that probate duty was declared  
and paid ? Yes. The figures in the assets correspond with the  
figures in that affidavit

60 Probate duty was paid on how much ? £46,914 18s 7d

1 Do you propose to show that this does not contain  
the whole of the items in your husband's estate ? Yes

7 This divides the estate of Mr Swift into three por-  
tions ? Yes

3 One portion is the private estate of S M Swift,  
another is Swift and Hann and the third is John McDonald & Co ?  
Yes

4 Do you declare that this is not an accurate statement



~~Widow's~~  
Gammitt

13537

15

• of the estate ? It is not by any means

65 The private estate of Mr Swift shows a balance of £2,996 : is that accurate ? No

6 Not even the private estate ? No

7 In what direction is it not accurate : ought there to be more ? I can hardly explain that. It is like the partnership accounts. They cannot be understood unless you go through the whole of them and get proper accounts, but I can prove some of these that are not correct

8 Does this statement make the total of Mr Swift's private estate less than it ought to be ? Yes ; very much less

9 Mr M'lean - Had you any knowledge of those partnership transactions prior to your husband's death ? Yes

70 Did you know he was in partnership with Hann ? Yes ; in some transactions, but I can prove that they were all settled up in my husband's lifetime

1 Did you know of any partnership existing between

15

Mr Swift and Mr Hann at the date of Mr Swift's death? No.

72 Did you know of a partnership existing between Mr Swift and Mr McDonald at the time of Mr Swift's death? No

3 Chairman - Did you know of any arrangement or agreement tantamount to a partnership? No; as far as Mr Swift's property is concerned

4 But you would not like to say, with reference to other assets of Swift and Hann, and Swift and McDonald? There were partnerships in certain transactions, but those were finished and the money paid over to them before Mr Swift's death

5 Mr M'lean - They were joint speculations really? Yes outside the properties

6 Chairman - What kind of transactions were those, according to your personal knowledge? They were purchases of stock and Mr Swift invariably paid all the money. He financed the transactions and the driving and expenses altogether were taken out of the money first after the stock was sold, and then

~~omit to follow~~

what was left was divided into two or three shares, as it might be, and Mr Swift then sent his cheque to Hann or whoever it might be

77 Who furnished the money for these transactions ? Mr Swift entirely

8 As far as your personal knowledge is concerned were all these transactions financed by Mr Swift ? Yes

X 9 Do you hand in a statement of Mr Swift's assets and liabilities at the time of his death ? Yes [Appendix 4]

X 80 Mr M'lean - Do you hand in a statement showing the total assets in your husband's estate to be £376,225 ? Yes <sup>and</sup> in as we go along I can produce vouchers to show that there are a great many more assets but I could not put them in and swear to them when I made <sup>up</sup> that statement [Appendix 43]

1 The total assets shown in this estate amount to £376,225 and the liabilities to £138,475 ? Yes : as far as I knew the liabilities

2 <sup>S</sup> showing a surplus of £ 237,756 ? Yes

3 You have handed in an inventory of assets and liabilities in your late husband's estate upon which stamp duty

17

duty was paid showing a surplus of £46,914 ? Yes

84 The difference between that amount and the amount shown in your own statement is £196,735. Is that the amount upon which you say the Government have really been defrauded of stamp duty ? Yes, and more to be added to it

5 That is the lowest amount according to your account that we can estimate the Government have been defrauded of stamp duty upon ? Yes ; these assets actually existed at the time of my husband's death.

6 Where did you get the values that appear in this statement ? I have documentary evidence for all but the stations and One station was sold for £5000. That would be the value of it That money was paid into the bank

7 Chairman - Do I understand that the items in this list that you have ticked in red ink are the items for which you have documentary evidence with you ? Yes

8 Mr M'lean - There are a number of items such as this at the end of your account - No 76. 35,000 acres freehold, cost 45s per acre, £78,750 : Do you simply put that down as the cost price ? Exactly . I just took it at what it cost

67

was asked to supply accounts to the children and to administer

see the particular. ~~the accounts were~~ put in until they

after that

Garret a term of accounts that you had better get in order to

that was 4 years afterwards, and they then put in before Mr

the trustees never filled accounts in the usual way, until 1889,

to be considered final? May I explain that Hann and Crocker of

the court, do you think that their judgment in the matter is

/ Chairman - With reference to the accounts passed by

~~they could not have done more than £4 an acre for it~~  
could be got

the purchased land at that. Today it was ordered to be safe

it was

to the Government and £1 an acre for improvements. I took all

thought it was better to put down what it really cost. That was

death, but I do not put that value down for it in the list. I

was ordered £4 an acre for it a few months after my husband's

96 What is your own opinion as to the value of that? 21

to say so with regard to a few months afterwards

more or less at the time stamp duty was paid? I am in the position

89 Are you in a position to say whether it was worth

*William Crocker*

the estate in that way. ~~Then~~ they put in balance sheets before  
the Master in Equity as directed by the judge. At one meeting  
before the Master in Equity I got Mr James ~~Robinson~~ <sup>Robertson</sup> to go in and  
show the master that there was a difference in those balance  
<sup>about</sup> <sup>Balance Sheet</sup>  
Sheets of £13,000. One finished on the 18th February and the  
other commenced on it - that was three years before and three  
<sup>18th Feb. 1884</sup>  
years after ~~that date~~. No partnership accounts were ever made up  
until Mr Ball made them up afterwards. ~~Then~~ when Mr ~~Robinson~~ <sup>Robertson</sup>  
appeared before the Master and showed the difference in the  
Balance Sheets the Master directed Mr ~~Robinson~~ <sup>Robertson</sup> to make up <sup>True</sup> ~~the~~  
accounts of Mr Swifts estate. Then Mr Robinson said he was ~~only~~  
an auditing accountant and told me to go to Mr Ball <sup>who</sup> ~~that he~~  
<sup>search into</sup> <sup>True</sup>  
would go through the accounts and make up ~~the~~ accounts. It took  
Mr Ball 3 months to make up the accounts ~~and~~ he made up the  
partnership account, (the banking account) of Swift & Mann in <sup>about</sup> ~~that~~  
three months, and he made an affidavit to the effect that S M  
<sup>out</sup>  
Swift paid in £56,666 odd into that account of his own private  
money, and that Mann never paid in a penny, and that there was  
no partnership in it. Then Mr Ball <sup>went</sup> ~~went to~~ to the court  
<sup>and</sup>  
~~to~~ filed these ~~the~~ accounts as ordered by the Master, but the  
Master, because the word "surcharged" was not on the back of  
<sup>allow</sup>  
them, refused to ~~take~~ them, and he threw the whole lot out and  
<sup>Correct</sup>  
shut up the case. These are all the accounts that have ever

13537

*Hann*  
*92*  
 been before the court

92 Mc M'lean - Were you represented at that time by  
 counsel or Attorney ? Yes

3 Before the Master ? Yes ; but the Master would not  
 hear him and would not hear anyone for me. I went to the Equity  
 Court and the same thing occurred there. The Judge would not hear  
 me or anyone for me. He said it was taking up the time of the  
 court and that I should do something else besides what I had  
 done. Hann and Crocker came to the court then ~~for me~~ to compel  
 me to sign a release to McDonald on his supposed partnership -

4 Chairman - Was that in reference only to the  
 M'Donald-Swift a/c ? Yes : I refused to sign the release. I said  
 that the a/cs of the supposed partnership were never made and  
 that he had no <sup>ownership</sup> partnership in it. I would not sign it ~~and~~ I  
 could not conscientiously sign any release to them. <sup>for</sup> That release  
 meant that we , the trustees, were to bind ourselves to prevent  
 the children from ever taking any action against McDonald for  
 any portion of Mr Swift's estate. Therefore I did not feel  
 justified in signing such a document and <sup>defrauding</sup> ~~damaging~~ my children  
 Then the court put me in gaol ~~and~~ I went to gaol

*21*

95 What for? For not signing I suppose. They did not know how to state it when I went there

6 Mr Parkes - I suppose they called it contempt of court - I suppose so. However I went to gaol and stayed there a month. Then the same Judge, Judge Owen, made an order that I was to get out of gaol, ~~and then~~ I was to bind myself to enter an action against McDonald and support that action until it was carried through, or completed. I had to pay ~~£50~~ <sup>about £5-8</sup> costs, ~~and~~ I paid it. Messrs Russell & Russell entered an action for me and appeared for me ~~and~~ <sup>from time to time the suit</sup> that went on until it was to be heard against M'Donald. M'Donald entered a defence and in that he swore that the purchase money for ~~Mungie Bunzie~~ <sup>Mungie Bunzie</sup> Station was supplied by his brother-in-law - J H Spiller. That J.H. Spiller gave M'Donald his share of the purchase money and that he also gave Swift his share of the purchase money. Then my solicitor subpoenaed Mr Spiller. Mr Spiller's evidence was taken by the chief clerk in Equity because he wanted to go to England. We were willing to have his evidence taken and to allow him to join the boat. That was about <sup>I think</sup> the ~~beginning~~ Easter holidays. Mr Spiller swore that he never supplied any money to Mr Swift and that he never supplied any money to Mr M'Donald. Then on the Monday after that our case came on for hearing and the first thing Mr M'Donald's barrister ~~was~~ <sup>was</sup> Mr A H Simpson, now the judge asked ~~was~~ that he might



~~Hodges~~  
~~phodges~~  
23

withdraw that paragraph in the statement for the defence where  
M'Donald swore about the purchase money of ~~Mungibungie~~ <sup>Mundie Bungle</sup>, and  
the Judge said he could not allow him to withdraw it. Then he  
raised three points of law why I should not be heard in the ~~case~~ <sup>Suit</sup>  
and the judge decided that they would argue those points before  
they would hear the ~~case~~ <sup>Suit</sup>. They argued the three points of law  
for three and a half days and the judge decided that because Hann  
and Creaker <sup>had already</sup> signed the release it was quite sufficient without  
my signing it, and yet I <sup>had</sup> been sent to Paul to <sup>Compell</sup> ~~make me sign~~ <sup>it</sup>  
it. I was not heard and I have not been heard since, M'Donald has  
the release signed by those two men

97 Chairman - M'Donald was not a trustee and how did he  
come in? Hann swore that he was a half partner

8 You must have known something, if not much, of the  
transactions of your husband with Mr M'Donald. What was he? He  
was a drover, ~~with my husband~~ for my husband. He was employ-  
ed by my husband. My husband opened an account with the bank of  
NSW at Tumut and paid money into it. M'Donald went ~~out~~ and  
bought cattle, drove them and sold them, ~~and~~ <sup>As Mr Swift directed him</sup> he drew on that  
account. My husband supplied him <sup>and the a/c</sup> with the money.

99 Did he do that on more than one occasion? That  
 extended over two years

100 On the face of it would it not seem rather improbable  
 that he was a half partner? He was not ~~partner~~ <sup>an owner</sup> at all. He had  
 no money of his in with Mr Swift. There was no money of M'Donald's  
 in Mr Swift's transactions, and there was no money of Hann's  
<sup>this</sup> which I can prove. Now I would like to refer to the probate.

I will show you a few wrong things in this and I will be able to  
 show you more. For instance, with regard to the <sup>ownerships</sup> partnerships. They  
 say that it is the deceased's half share. They do not say that  
 it is theirs. He ~~was~~ the owner of the half share and the owner  
 of the whole of it. They think they will get out of it by saying  
 that it was Mr Swift's half share. It was the same thing with  
 regard to Swift and Hann. Mr Gall's accounts will show that.

With reference to the books and papers in my husband's estate,  
 Hann and Crocker took them to Wagon and they have not returned  
 them. In fact there are none of Mr Swift's books to the fore. I  
 would have no trouble if I had those books in showing the whole  
 of Mr Swift's transactions. <sup>and assets</sup> ~~XXXXXXXXXXXXXXXXXXXX~~ Y

Has Mr Hann got them? I really believe he has. And  
 I believe he is keeping them away on purpose

24

13537

*Rhodes*  
*Watkins*

102 How do you propose that the committee should assist you? The committee can make an order to produce them

3 Mr MacFarlane - Who took away the books and papers?

Hann and Creaker took nearly all the books

4 Where did they take them from? From Mr Swift's office

in Sydney

5 About what time? Just about the time probate was

granted

Mr PARKES Where was Mr Swift's office? At Pitt Son & Bagby

*George*  
in Pitt St. Hann and Creaker told me I could not touch those

books until the probate matter was gone through, that they

actually belonged to the court and that I must not touch them

until then. Hann and Creaker were down in Sydney over the probate

matters when it was granted. That was about April. Mrs Spiller

was staying with me at the time, and I went to the railway

station to see her off to *June* ~~Leith~~. Hann and Creaker were going

in the same train. I saw them take a box, that came back after-

wards to the court with some papers in, and when I went in the

next day to Mr Swift's office to get the papers they were all

*Said to them*  
gone to Wagg; yet when I ~~asked them~~ at the railway station

25

that I suppose I could go in tomorrow and take the papers, they said "Yes I could" and at the same time they had them with them in the train. I drove into Pitt Sen & Baugery's office and to my surprise there was not a paper or book in it

106 Mr MacFarlane - Did they ask you for the books prior to the time they took them away? No: they came to Hillcrest <sup>Crest</sup> and Mr Swift had a room up stairs with a desk in it. I let them go there not having any idea that they would destroy or do anything to the books and papers

7 Do you say that they took the books and papers? I let them go into his room and his office, and they commenced to tear up papers. Then I objected and would not let them touch any more papers at Hillcrest. <sup>Crest</sup> Then they had a key that they <sup>papers</sup> took before. <sup>from Hillcrest</sup> Then they went and took all the papers from the office

8 Did they ask you anything in connection with the books in the office? No. They told me at the railway station that I could go in next day to the office and get them. They never told me they were taking them with them.

9 How came it to your knowledge that they took the books

Wadkins  
Falloway

27

from the office ? When I went in the next day the books were gone. ~~Then~~ I wrote to them and I received a letter from Mr Hann and another from Mr Creaker saying that they were only old papers and were only fit to be ~~burn~~ <sup>destroyed</sup>. ~~Then~~ I wrote and told them that if they ~~burnt~~ <sup>destroyed</sup> any of them I would hold them both responsible, al-  
<sup>at that time</sup>  
though I hardly knew what I was saying

11 I would like a direct statement as to the proof that it was they and no others who could have taken the box ? I saw them with this box and now I have ~~the~~ box in my possession. I can swear to that box. I can swear I saw them lift the box into the van at the railway station

11 It does not follow that Mr Swift's books were in the box ? They gave them back as Mr Swift's <sup>papers</sup> books

12 Was it Mr Swift's box ? <sup>NO</sup> They bought it at Lasseters and charged it to the Estate

13 Mr Parkes - When they returned it had it any books in it ? No books, <sup>of Swift's</sup> only a few papers

14 Were they from Mr Swift's office ? I do not know but

27

they related to Mr Swift's business

*they might have been from Hill Crest*

15 Mr MacFarlane - Did you ever get any acknowledgment in writing or verbally that they had books belonging to Mr Swift ?

Yes

16 An acknowledgment that they took the books ? Yes, I have got the letter or I can produce their letter book with a copy in it

17 Mr M'lean - Did Mr Swift employ any secretary or clerk in his office ? We lived in the country up to 1886 and then we had an office at Pitt Son and Badgery's

18 Mr Parkes - Was not Mr Muckeridge his clerk ? Yes ; originally, but he is now one of the firm of Pitt Son & Badgery and they will not give me any information because I have one or two heavy charges to make against them

19 Mr M'lean - You say you are very conversant with Mr Swift's business matters ? Yes

20 Did he keep a complete set of ~~books~~ books relating to his business transactions ? He did not keep accountant's books because he had such a fearfully big business. He merely made

*Salisbury  
Hawkins*

entries of the different transactions and to my knowledge I can swear to three large books that he had in his possession. I have made entries in them myself

121 Are you aware whether he kept a cash book relating to his banking business, Cash receipts and Bills ? We must have because I fail to see how he could conduct a big business without a cash book

2 Did he have more than one banking account ? He had about nine. I can produce all his pass books for these accounts and he financed them all himself. I have the pass books from the beginning up to his death

3 Mr Parkes - Do you know of two cheques of Mr Hann's that went into his private account which were estate cheques ? They belonged to the account of Swift and Hann and should not have gone there

*Do you think*  
4 Do you positively <sup>Do you think</sup> that they went into Mr Hann's private a/c ? Yes

*[Signature]*

125 Was that prior to Mr Swift's death? One cheque was drawn by Hann, an open cheque, purporting to be for a driver's account. That was paid into Hann's private account within 12 or 14 days of Mr Swift's death.

126 Mr Parkes - Have you these cheques? Yes. Another cheque purporting to be drawn to pay for rans within a few days of Mr Swift's death, and that was paid into Hann's private a/c. These two cheques together were an asset in Mr Swift's estate and Hann should have accounted for them when he was applying for probate and he should have paid them back. While the action was going on in the court for the ~~books~~ release my solicitor applied for a discovery order to get hold of these books. It was served on Hann and Croaker and on M'Donald and they replied by affidavit I suppose that they had no books other than what they had put into the court. Then Mr Russell served a subpoena on the bookkeeper of Munciebundie. Mr Granger the solicitor went out and searched and took an inventory of the books in the office at the time, and I have that here. Although M'Donald swore he had no books there are a great number shown.



(2) 13537  
MINUTES OF EVIDENCE

TAKEN BY THE SELECT COMMITTEE



*Robinson*  
appointed to inquire into ~~Probate Duty on the late~~

*S. M. Swift's* Estate. *of the late of Peterborough.*

Wednesday 20 October, 1897.

Present

Mr Dick

Mr Hughes

Mr McLean

Mr Thomas.

W.M. Hughes Esq. in the chair.

WILLIAM THOMAS BALL Esquire called in sworn and examined

128 CHAIRMAN. Are you a professional accountant ? Yes.

98 Have you gone through all the papers in connection with the Swift and Hann Account ? Yes.

30 9 MrMcLean--What connection had you with this estate & And in whose interest did you become connected with it ? I think it was on behalf of the late Mr Swift's children...

1 30 Who retained you ? Mrs Swift.

2 + Who paid you ? I have not been paid anything yet.

3 - Did you undertake the work on behalf of Mrs Swift and her family ? Yes.

4 3 Did you make a thorough investigation into the accounts ? Yes. Into the whole matter of the partnership of Swift and Hann.--into all their dealings.

I have got copies of the accounts I made up, and which were lodged in the court.

135 ~~134~~ Is this the balance sheet on which they swore Probate? That is a copy. I had a copy from the court to compare with the Statement I was preparing. I <sup>have a</sup> ~~had~~ statement prepared after investigating all the Books. I have a statement of Assets and liabilities at the <sup>time</sup> of Mr Swift's death---that is for Swift and Hann.

6 ~~5~~ Mr Dick: Can you make a general statement with reference to that matter? I have hardly had time to refresh my memory---it is three or four years since I did this work.

7 ~~6~~ CHAIRMAN. Here is an item Baden Park Station £50,715? That is the valuation I put on it.

8 ~~7~~ Mr McLean: That is to say your valuation of Baden Park Station corresponds with the valuation which was made for ~~the~~ Probate? Yes.

9 ~~8~~ CHAIRMAN. It is alleged that half this estate belonged to Hann --Have you any idea how Baden Park station was purchased? I have not the information at present, but I will produce it at another meeting.

10 ~~9~~ Take the Snubba Property--How was that purchased? It was purchased for £600 by Mr Swift.

11 ~~10~~ Was that unstocked? Mr Swift had rented it before that and he had paid £200 on account of rent. I reckon the station cost him £800

12 ~~11~~ Mr McLean: When did he pay that? A cheque was given by Mr Swift on 1st August 1877, it went through his Bank at Tumut. That was for £300. The other payment was a promissory note dated 1st August 1877, for 12 months for £300.

*Robinson*  
*Hathorn*  
3.

13537

143 ~~42~~ At the date of that purchase, 1st August 1877, were there any business relations to your knowledge between Swift and Hann?  
No.

4 ~~3~~ They were not in partnership at that time? No, the partnership occurred afterwards.

5 ~~4~~ Did Hann have any business relations of any kind that you know of with Swift? Not that I know of: There is nothing in the books and documents to show that there was.

6 ~~5~~ What Books and documents had you access to that would throw any light upon the partnership if there was any? I had all the Bank books cheque books and deposit slips. I have gone through the whole of them. I have a summary of them, I can show where everything paid into the bank came from, either from Mr Swift or the sale of wool.

7 ~~6~~ MR THOMAS. Were you in any way connected with Mr Swift before his death? No, I did not know him. Mrs Swift was the first I knew and she came to me.

8 ~~7~~ MR McLEAN. Were those books which you had in your possession or had access to made up to the time of Mr Swift's death?  
Yes, I think they were. I have not seen them for a long time. It must have been made up from the information we got from them—the bank books especially. They were all right. There were a few small books there that you could not make head or tail of ---they were sheets of foolscap pinned together.

9 ~~8~~ Was there anything in connection with the accounts of Snubba. Fun which you gathered from the books that would lead you to believe that Mr Swift was in partnership with anyone else in

3

connection with that property ? No, nothing that I can remember.

150 ~~149~~ Was there any account of any kind from Mr Hann in the books of that Snubba Run ? I cannot answer that question just now from memory. I do not think so: But I cannot speak from memory.

155 Was there ever a distribution of profits in connection with that particular property ? No. There was no distribution of profits in connection with any of the properties .

2 CHAIRMAN. In your professional experience have you ever come across a case where one man put in all the capital and divided the profits with anybody else ? I have known a case but only in a small way where a man would provide the capital and another man would provide the brains to carry on the business .

3 2 Have you any reason to believe that it was so in this case ?  
No.

4 MR McLEAN. In the course of your investigation did you come across any document or any information that would lead you to believe that Mr Hann had any interest in these properties ? No.

5 4 CHAIRMAN. To the best of your knowledge and belief did you have access to all the important papers ? With regard to Swift and Hann I had as far as the banking account would show you, and any books Mr Swift had.

6 5 Is it the usual custom for a firm to pass all the moneys through a bank ? Yes.

7 6 MR THOMAS. In your investigation were you assisted at all by Mr Hann ? I never saw Mr Hann.

8 7 In this inquiry had you any standing which would enable you to demand any papers ? Yes, we got all the cheques and deposit slips from the bank.

*Adkins follows*

5

13537

159/58 But supposing Mr Hann had any papers in his possession  
-- could he refuse to show them to you if he chose? Certainly.

60 Q Did you ever ask him for any ~~papers~~ papers? There was an  
order from the court for the production of all papers in the case  
"Swift and Hann"

1 60 Who obtained that order? A Mr Parsons for the children.

✓ 1 Did you apply for papers yourself? I used to instruct the  
Solicitor as to what papers I wanted, and he would apply to the  
Master for an order for their production.

3 2 Was he able to get every paper you asked for? I do not  
think so.

4 3 Can you tell us about any of those papers? We wrote on the  
25 May 1893 for the following books and papers :- All settlements  
sent by Drivers, all orders drawn by <sup>drivers</sup> ~~drivers~~, a copy of  
Hann's pass Book, his accounts and his dealings with the Commercial  
Banking Coy of Sydney at Warra from January 1878 to January  
1893. Those we could not get.

5 4 Did you write to Hann for them? Mr Parsons wrote I suppose.  
I gave Mr Parsons a Memo. but he was unable to get those papers  
and books. I sent in the order for the production of books and  
papers

6 5 You actually got an order of the court for the production  
of these papers and still you could not get them? Yes.

7 6 Was there any reason given by those people? The order was  
served on them, and ~~the~~ course would be to produce them at  
the Master's office. We sent up there and found they were not  
deposited. ?

8 7 Did you take any further action? No.

5

169 CHAIRMAN. AS the court ordered Hann to produce those papers and he did not do so I suppose the presumption is that they were not likely to be particularly favorable to Hann's contention ? It would bear that construction.

70 9 MR MC LEAN. Did your people take any action when those papers were not produced. ? No, I attended the court for some time to see if they had been deposited there.

1 70 Was the attention of the court called to the fact that its order was not complied with ? I do not think so, but I cannot say positively. It would be for the Solicitor to do that.

2 7 What was your reason for asking for all Hann's banking transactions from January 1878 to January 1893 to be produced ?  
 4 The desire was to go through them and see what moneys had passed through his account and where they came from.

3 2 Why did you take the 1st January 1878 ? That was the date the partnership was supposed to start from .

4 3 What partnership ? The supposed partnership of Swift and Hann.

5 4 Did Hann produce any document at all showing that there was a partnership ? No, not that I know of. I never saw such a document and I never heard of one.

6 5 There are 4 station~~e~~ properties mentioned in this balance sheet of Swift and Hann, having a total value of £100,365-10-0. Were they under mortgage to the Bank of N:S:W. or to any other bank ? I cannot answer that question right off. There was an overdraft at the Bank which presumably would be for that. It amounted to £47,000.

7 6 You are not aware whether these properties were mortgaged ? I could not say which of them, if any, were mortgaged.

6

*178* ~~Followed~~ ~~As follows~~ 7. 135-37  
Have you inspected any mortgage securities held by the Bank of N.S.W. ? No.

9 8 Have you endeavoured to inspect any of them ? I asked for certain information at the bank but I always got the cold shoulder--they would not recognise us .

50 9 MR THOMAS. Not after the orders of the court ? They produced whatever the court ordered. We did not ask for mortgages. From what I gathered some of the mortgages were given after Mr Swift's death

1 80 MR McLEAN. I suppose there were considerable freehold properties in connection with those stations as well as the ordinary leasehold areas ? Yes, but I could not give any definite information about that except what was paid.

2 T Did you ever see any deeds in connection with those properties ? No. Evidently the account would be in the name of Swift and Hann. This account at the Bank of N.S.W. was in the name of Swift and Hann, that is from 1878 up to the time of Mr Swift's death. I have got all the amounts here which were paid into the bank showing from what source the amounts came. They were paid into the credit of Swift and Hann with the bank at Wagga Wagga.

3 8 Does the debit balance of the Bank of N.S.W. correspond with the amounts shown in the liabilities of the firm ?  
The debit balance was £47,838 -13-7.

4 3 On what date ? Up to the date of Mr Swift's death.

5 4 That balance stood to the debit of the firm of Swift and Hann ? Yes.

6 5 CHAIRMAN. Do you know what Hann was doing on any of those properties ? I cannot say.

7

187 McLEAN. In your opinion would this account, standing in the name of Swift and Hann at the Bank of New South Wales and showing a debit balance of £47,638-13-7 make Mr Hann jointly liable with Mr Swift for that indebtedness to the bank ? That would all depend whether he signed the security or not.

Mr Swift would arrange the account and say he was going to trade as Swift and Hann.

Mr Swift could choose to trade in the name of Swift and Hann without Hann being necessarily a partner.

8 But is it not an established principle in connection with the law of partnership that a man who allows himself to be published as a partner in a concern becomes liable for the debts of the firm ? There is no doubt about that. I might make a statement of this kind. It appeared to me in going through the books that Swift and Hann had been in the habit of dealing in cattle and sheep. That is how I think the partnership originated.

They used to buy mobs of cattle and flocks of sheep, sell them off and divide the profits.

*The charges for my in these profits to Hann will I see Swift's charges on his private account.*

9 8 Have you seen any accounts of their cattle dealing ~~transaction~~ transactions ? I can produce them.

90-9 MR DICK. Have you any evidence concerning the account of Swift and Hann in the Bank of N.S.W. ? Yes.

1 90 Can you give us the particulars from 1878 up to 1884 ?

Yes. I have a copy of the payments made from May 1878 up to 31 March 1880. The amounts paid into the Bank of New South Wales at Tumut where the account was kept at first were as follows :-



*Adolomon  
Hilson*

*13537*

Moneys advanced by S.M.Swift £18,204-1-7.

Proceeds of wool, sheep &c. £37,983-18-1.

Proceeds of sale of corn and sundry other things £7,465-18-3.

Total £63,653-17-11. From 5th April 1880 to the 31 December

1880 moneys received from Mr Swift £731-10-0,

from sheep and wool £26,095-13-8, from corn and sundries

£3,791-18-4, --total £30,619-2-1. From 1st Jan 1881

to 31 December 1881, from S. M.Swift £8,491-16-7. from sheep

and wool £53,672-4-8, corn and sundries £7,241-12-3,

*69405 136*

From 1st January 1882 to 31 December 1882 from S.M.Swift

£5,319-15-9, from sheep and wool--£104,565-9-5. Corn and

sundries £7,102-9-7--total, £116,987-15-1. From 1st January

*7102 97*

to 31 December 1883 from S.M.Swift £9,618-0-5, from sheep and

wool £63,992-10-9, corn and sundries £10,101-9-9--total

£83,692-0-11. From 1st January to 11 February 1884, S.M.

Swift £273-13-11, sheep and wool £229-14-8, corn and sundries

£1,754-7-5---total £2,257,16-0. There were further amounts paid

in to the account of Swift and Hann with the bank in Sydney.

The figures I have given were paid in at Wagga Wagga and Tumut.

where they had the accounts. The following moneys were paid

into the bank at Sydney from September 9 1882 to January 4

1884 S.M.Swift £8,055-14-10, sheep and wool £10,069-1-10,

corn and sundries £1,822,-5-2.

*19947.1.10*

*197*

CHAIRMAN. In this account I see that the capital put

in by Hann is nil.? Yes.

19 3 ~~4~~ MP McLEAN. The amounts you have put <sup>down</sup> ~~down~~ as coming from Mr Swift were advances on capital account? Yes. Swift's own cheques paid in to Swift and Hann.

4 ~~5~~ Have you traced his own cheques from his own Banking account corresponding with those amounts? Yes, I have done that.

5 ~~6~~ CHAIRMAN. There are some big transactions here, how were they completed---with bills or what? Here is one item December 5 1879---£3,499, made up of 71 items "Sale of sheep and wool"  
 ?--- That was James and Spratt's bill for sheep sold. It was a bill.

6 ~~7~~ Here is another ~~item~~ item August 5 1879 £3,813-10-0 <sup>2</sup>  
 That was for sheep sold 6917 ewes at 10s, 142 rams at 50s.

7 ~~8~~ MR DICK. There is an item of £3,441-5-6, August 18, 1882,  
 ---what is that? That was S.M. Swift's cheque.

8 ~~9~~ Was that paid into the account of Swift and Hann? Yes.

9 ~~10~~ CHAIRMAN. Did nboth Swift and Hann operate on this account?  
 I think both of them did.

200 ~~11~~ What were the signatures on the cheques? I produce a cheque  
 ---it is signed "Swift & Hann"

1 ~~200~~ MR McLEAN. Whose signature is on that cheque? Looking at the different documents I think it is Hann's signature.

2 ~~+~~ From your knowledge of the documents signed by Mr Swift is it his handwriting? No, he writes a different handwriting altogether from the signature on this cheque.

3 ~~2~~ CHAIRMAN. In any of the accounts with reference to this Swift and Hann Statement have you any evidence as to a division of profits? I can show that with reference to cattle and sheep.

204 What kind of division was there? I think it was an equal distribution between them of the profit---I have all those figures.

5 MR THOMAS. Have you any evidence of profit from the stations being divided? No, simply in the dealings with cattle and sheep.

206 Chairman. Will you be able to give evidence at the next meeting with regard to Baden Park and Mimosa properties? —  
Yes, I will get the particulars.

11

1353<sup>m</sup>

(3.)



*Hulson*

MINUTES OF EVIDENCE  
TAKEN BEFORE  
THE SELECT COMMITTEE  
ON THE  
PROBATE DUTY ON S.M. SWIFT'S ESTATE.

Tuesday, 25 October, 1897.

P r e s e n t : --

- Mr Dick
- Mr Mc Lean,
- Mr Mc Gowen,
- Mr Thomas.
- J.S.T. Mc Gowen, Esq., in the Chair.

James William Johnson, Esq, called in, sworn and examined.

1907 Chairman: Are you member of a firm of solicitors in Sydney? Yes, senior member of the firm of Johnson, Minter, Simpson & Co.

87 Is that the firm which took out probate of the will of S.M. Swift? I really could not tell you.

J# 8 Can you identify this memo.? Not in the least. All I can say about it is that I believe Mr *J.B.* Fosbery was a clerk in our office in 1889, but he left us some years ago, and is now practising in Melbourne.

9 Then, as a matter of fact, it is not your firm that took out probate of that will? I do not know anything about it. All this document says is that probate was lodged and was delivered to Mr Fosbery in January 1889. It also says that probate was lodged by my firm; that is a previous

8/ firm of Want, Johnson & Co. I was in England in 1889. I know nothing about this matter.

216 Although at that time Mr Fosbery was a clerk in your office?  
I think so.

11 Would it be possible for your firm to do the business while you were absent in England? Quite so.

17 Cannot you find anything in the records of your office?  
No. When I got this notice, I spoke to two or three clerks as to what this was about. I said I knew nothing about it. I am called upon to produce the probate of the will. From the inquiry I have made, we have not got it. We have not got it now, if we ever had it..

13 Mr Mc Lean: <sup>Have you any</sup> ~~any~~ knowledge of the affairs of this estate? None whatever.

14 Have you ever been professionally connected with the executors of this estate? No, I daresay my firm have. There ~~are~~ four members of the firm, and we all have different work to attend to.

15 Were you a member of the firm in 1889? Yes..

16 Under whose special department would this business come?  
I cannot tell, we have a very large staff, something like 30, besides the partners..

Wilson  
Muller

217 Is it possible that this might have been done in your office without your knowing it? Yes, quite possible

18 Can you inform us what partner <sup>or officer</sup> of your firm would be likely to give us any information about it? No.

19 If your firm took out probate, in whose department would it be? I can name 8 or 10 clerks in the hands of each of whom it might have been. <sup>Probably</sup> it would have been in the hands of this Mr Fosbery. That is most probable.

20 I presume some member of the firm would have some ~~information~~ information about the probate? I do not think it is very likely. In a matter of this kind Mr Fosbery would be the solicitor. It would be given to him to attend to, & he would attend to it.

1 Was he an employee or member of the firm? He was an employee

2 In that case the firm would be responsible for any of the acts of Mr Fosbery? Certainly.

3 This probate, I presume, belongs to the trustees, & as the matter has been transacted by your firm, would it not naturally follow that some members of the firm would know something about it? I do not think that would follow.

4 Is it the custom in your firm to allow clerks to transact business in this manner, without any of the firm knowing anything about it? Yes, when it is in the hands of competent

clerks, especially when they are solicitors. We have 6 or 7 solicitors in our firm. We do not employ any one unless we know he is thoroughly competent, and we take all responsibility.

225' Mr Mc Lean: Do you swear that this probate is not in the custody of your firm at present? To the best of my belief.

6 Do you swear you never saw the document? Yes, and I swear also that I know nothing about the matter.

7 Chairman: If the transaction was carried out in the manner you have indicated even by a qualified solicitor in your office, would not your firm receive some monetary consideration for the services of that solicitor? There would be a ~~note~~ <sup>book containing entries</sup> of any cash we received, but that would not show what was done with the documents. It would show all the disbursements & receipts.

8 Have you looked in your books for January 1889? No.

9 Mr Mc Lean: Did Mr Fosbery keep a diary of his transactions on behalf of the firm? He would, appertaining to his own work.

30 That I presume is in the possession of the office still? I am not so sure of that. We do not keep those diaries for ever. They are destroyed in about 6 years.

Muller  
Robson

5

231 Would it be possible for you, by looking up the books, to be sure whether this transaction was carried out in your office in 1889? Yes, I have every reason to believe that the memorandum, which you have put into my hands, is correct. I do not suppose anybody would write a falsehood there.

JH/ ✓ This is an extract from the Registrar-General's office, and that is why we are somewhat surprised that you, as head of the firm, have no knowledge of the transaction? It is quite possible that this is correct, namely, that the probate was delivered to Mr ~~F~~.G. Fosbery on the date mentioned, that is on or about January 1889; but I know nothing about that, as I was in England. Even if I were not in England I would not know anything about it. If you will tell me what you want I will be happy to supply it.

233 We want you to identify this memo? I will take a note of it. I am not aware that we acted for S.M. Swift. I will look up the matter, and send you an official communication.

5





Thomas William Garrett, Esq., called in, sworn and examined.

Chairman:

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What position do you hold? Registrar of Probates and other offices.

5 Do you know anything about the Swift estate? I have the papers in that estate.

6 Have you the papers with regard to the applications by the executors of the estate of Samuel Moffatt Swift? I have the application for probate.

7 Do you produce it? Yes.

8 Would a document of the kind I show you, signed at Wagga, come to your head office? Yes, this is copied from our office. As far as this document is concerned, it is only filed for the purpose of the assessment of duties, and not for the purpose of probate.

9 Will you state what the estate consisted of, & what duty was paid? I cannot tell you that. The Commissioner for Stamps is the only person who can deal with that. No duties are paid to our office.

10 Can you briefly tell us the particulars of the estate? I have made a statement from the Stamp Commissioner's affidavit showing the different portions of the estate, and the amount

Robertson  
Smith

7

on which duty was paid.

241 When was the application made for probate? On the 9th April 1884 it was granted. Mr Swift died on the 18th February 1884. It was granted to Phineas ~~Smith~~<sup>Hann</sup>, Charles Hawthorne Croaker, and Elizabeth Swift.

2 In April 1884 was probate granted to those three executors? Yes.

3 Did they have to ~~XXXXXX~~ sign any document in your office? They swore an affidavit to well and truly administer the estate, and the ordinary affidavits to support it.

4 In this case did the three executors do that? Yes.

9  
20 5 Mr Mc Lean: Were those affidavits sworn on the same date by each of the executors? These are merely the ordinary affidavits setting forth the death, the execution of the will, & that they will well and truly administer the estate. Only one copy of the stamped affidavit was filed. That was forwarded to the stamps commissioner. Two years afterwards a rule was passed that the affidavit should be filed in duplicate.

6 Chairman: Were those three affidavits signed by the executors under the will? Yes.

7 On the strength of that, as far as your office was concerned

7

was probate granted? Yes, there is an affidavit as to the due execution of the will.

248 In a case of that kind does your office look to them to file accounts? Yes, they file accounts at the expiration of 12 months. Accounts were filed in this case in 1889.

9 Then it is not imperative that they should file accounts? Before 1890, when the Probates Act was passed, it was not imperative.

20 Has there been any other account furnished except this one? Not in our office.

1 Is it not required? I fancy that the accounts were subsequently filed in the Equity Court.

7 Who furnished the accounts? It is sworn by Hann and Croaker.

3 Does the Act compel you to take the three executors or a majority? Neither. The affidavit of one executor binds them all, except on the ground of fraud.

4 Supposing one executor furnished an account at the end of 12 months, and you did not hear anything from the other two, would that be satisfactory? Yes, unless exception was taken by the other two, or by any person ~~manifestly~~ <sup>beneficially</sup> interested

beneficially

8

Smith  
Paterson

in the estate. These accounts were taken by me, and I think Mrs Swift attended on the passing of the accounts.

255 Was that in 1889? Yes.

6 Was Mrs Swift there? Yes.

7 Mr Mc Lean: Did Mrs Swift enter any objection? Mrs Swift  
Want Johnson & Co  
did not. There was a letter from ~~Johnson, Minter & Simpson~~  
on behalf of the Australian Mortgage Loan and Finance Company,  
and Mr Minter attended.

8 Mr Dick: Did Mrs Swift make any appeal in person? I am  
only speaking from memory. I think she was before me on several  
occasions, & I fancy she objected to the accounts; but there  
were no formal objections filed.

9 Chairman: You say an objection was made by Want, Johnston  
and Co. Look at this memo, and see if it has anything to do  
with that? No, this memo. is in connection with an application  
under the Real Property Act. That is signed by the Deputy  
Registrar General.

60 Mr Mc Lean: Have you any knowledge as to the position of  
this estate at the present time? Not the faintest.

Is it still in the Probate Court? NO, as soon as probate is  
granted, we are finished with it. Then the accounts are filed.

9

267 Are these accounts of 1889 final accounts ? No, Before the passing of the Probates Act 1890, there was no way of compelling executors to file accounts, & the Probate Court had no jurisdiction over trustees, & it has not now, except the jurisdiction voluntarily given by trustees.

a 2 And at the same time the executors may not be discharging their trust ? No, they do not accept <sup>a</sup> trust. Trustees accept the trust. There is a thin line between the two, which to the lay mind is very imaginary. These accounts have never been passed by the court; they were passed by me.

3 Do you put in these papers ? Yes, if they are required. I have made a rough extract from the stamped affidavit.

4 Will you hand in that extract ? It is endorsed on the papers. The estate was divided into three different portions. The private estate was valued at £26,021 10s 9d; private debts, £23,024 15s 7d; leaving a net credit of £2,996 15s 2d to the private estate. Partnership, Swift and Hann : total assets £51,392 4s 2d; debts, £33,723 17s 9d; leaving a net credit balance of £17,668 6s 5d. Partnership Macdonald and Swift: assets £53,250; debts, £27,000; balance £26,250; leaving an aggregate balance in the whole estate of £46,914 18s 7d on which duty was paid.

Stamp

5 Are these the exact figures from the <sup>stamp</sup> ~~stamp~~ affidavit ?  
Yes .

10

267 Chairman: Have the three executors furnished you with any statement beyond what you have mentioned since 1889 as to what was done with the balance of £46,914 18s 7d? No.

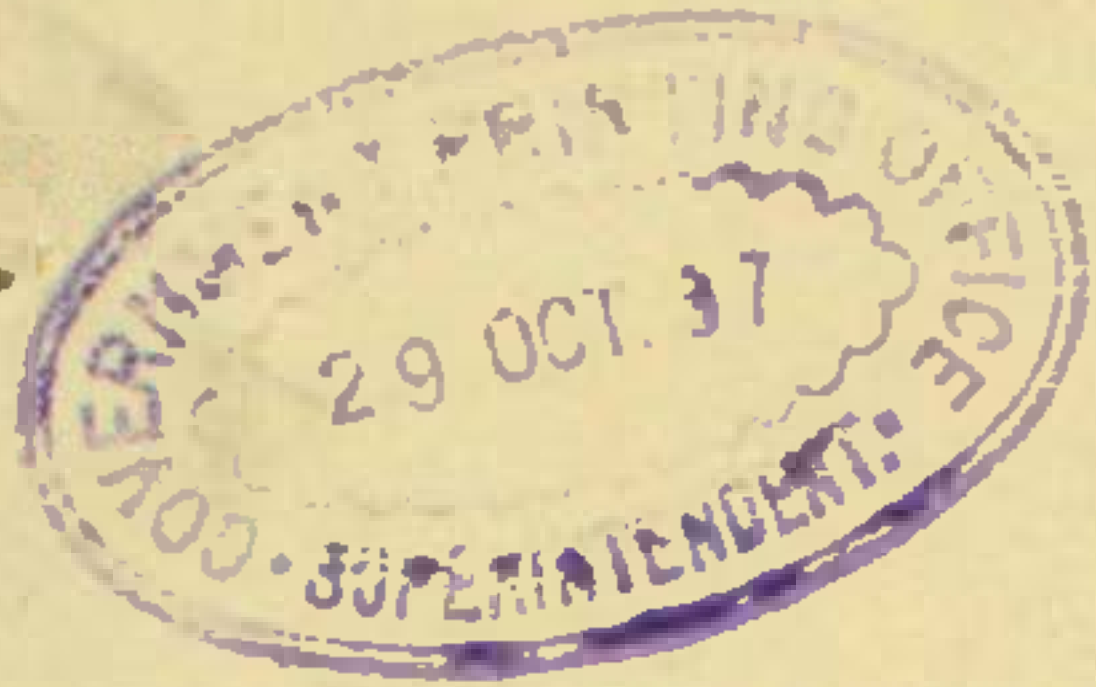
8 As far as you know did your office or the stamp office demand such a statement from them? No.

9 Did you say that those accounts have not been through the court? These accounts have not been passed by the court. Vouchers were produced to me by the executors for the different payments, but the accounts were never passed by the court.

70 Does that mean that they could not operate on them until they were passed by the court? No, it only means that the formal allowance by the court of the accounts passed by me has not been given.

1 But the executors could operate on the estate? Yes, the moment probate was granted.

27 2 Mr. Dick: In that statement of accounts, does it set forth the operations of the executors up to the date of the statement of the accounts? It sets forth the operations of the whole estate, I presume.



(5)  
Paterson  
Folger

William Alexander Balcombe, Esq., called in, sworn and examined.

273 Chairman: What position do you hold? Chief clerk in equity.

4 Do you know anything with regard to the estate of S.M. Swift?  
No.

5 Have you been informed as to what you were required to give evidence about? No, I had a note to produce the papers in the case. There are several matters in the equity court with regard to Mrs Swift, Swift and Hann, and Swift and Macdonald. There are an immense number of books and papers; in fact about one hundredweight, and to bring them down is rather a large undertaking. If there is any way of singling out the papers or books required, I will produce them at once, or if all of them are required, I can send for them. I laid the matter before the judge, and he instructed ~~xxx~~ me to produce the documents, but they are to be returned to the office every time the committee rises.

*I must be supplied with the means of getting them here*

6 Can you tell us what suits are pending in the Equity Court? I think they are all finished. The books were lodged in the office under the direction of the Master in Equity during the time the accounts were being taken. The suit has been disposed of. I was going to suggest that

*on the parties  
submitted*

Mrs Swift could obtain an order for the books to be given up. Then they could \* go back to the proper owners, who could do what they liked with them. While they are in the custody of the court, we have to take care of them.

277 If the Chairman gives an order as to what books are required, I suppose that is all that will be necessary? Yes.

278 Mr Mc Lean: Can you give us particulars as to the equity suits and the decisions? Yes, I will bring down the pleadings & the decrees.





William Thomas Ball, Esq., re-called and further examined.

279 Chairman: Have you any further evidence to tender? The only evidence I can give definitely is with regard to the partnership accounts of Swift and Hann. I have the accounts that I made up myself. I hand in a copy of the affidavit which I filed when I filed the accounts.

80 Have you been all through the books? I have been all through the books and documents that I could get - the bank books and cheque books.

1 Did you come across any record of the partnership other than the one between Hann and Swift? No.

2 Did you come across anything about a partnership with Macdonald? I did not go into that. I only dealt with the Swift and Hann matter.

3 Mr Thomas: Last week you were asked some questions which you said you would reply to on this occasion? Yes, one was with reference to Swift's capital account. There does not appear to be any capital account in any of the books I had. The only things I can trace are the cheques drawn, & which went through the bank. They show that there was no capital paid in by Hann.

4 Mr Mc Lean: Do you remember that at the last meeting

Followed  
Godfrey 15

you were not able to give any particulars about some of the properties? The only particulars I can give are about Snubba and Mimosa. I have nothing with regard to Baden Park. Baden Park must have been owned by Swift when the partnership of Swift and Hann commenced. On the last occasion I produced two cheques of Mr Swift in payment for Snubba station. One cheque was for £300, dated 1st August ~~1887~~<sup>1877</sup>, and a promissory note for £300, dated 1st August and due 12 months afterwards. Both of these are Swift's. There is a cheque for the over-due rent of Snubba, £200, payable to Robert Downey. In reference to Snubba station, in going through the correspondence, I have made certain extracts. On 21st January 1884, Hann writes to S.M. Swift "I have no money or desire to buy Snubba. I do not want the use of Tooma Falls. You refused to let or stock Snubba, and only wanted to sell". It appears from that there must have been some intention to sell Snubba. I will give you all the reference I have to Mimosa. It appears that on December 5, 1877, Swift sent Hann a cheque for £1500. This <sup>with the letter following</sup> seems to have been an offer as a deposit on the property. On the 30th January 1878, Swift sent a cheque to Wagga for £2500 to pay for Mimosa. Then on the 23rd January 1878, there appeared in the Sydney Morning Herald a telegram from Wagga as follows: "The Mimosa run, embracing an area of 53,000 acres, & which is considered just now one of the best watered runs in the district, was sold to-day by the mortgagees for 19s a head, with 8800 sheep". On January 31, 1878, the following paragraph appeared in the Sydney Morning Herald: "Elliott, Fosbery & Co sold Mimosa West station to Mr S.M. Swift with

15

8900 sheep at 19s. The sale was forced by the mortgagees, & most people say the run has been absolutely thrown away at the price."

285 Chairman: In that transaction the name of Hann does not appear? No, the report in the Herald says it was sold to Swift.

6 Mr Thomas: And Swift signs the cheque? Yes. About the time this transaction took place, Hann was in partnership with Wilkinson. The firm was Wilkinson, Hann, Minchin & Co. They were stock and station agents. I produce the delivery note, & the cheques for the purchase money of Mimosa station. I produce the extracts I have referred to from the Sydney Morning Herald. There are further extracts from the papers with regard to Mimosa. "February 7, 1878. <sup>Wilkinson,</sup> ~~Wilkins,~~ Hann, Minchin & Co sold 2000 maiden ewes, and 5000 *twisted* ——— to S.M. Swift". That shows Hann was still in partnership with Wilkinson, and the sheep were sold to Swift. I think that is all the information I can give about those two stations.

7 Mr Mc Lean: Have you any information about Baden Park station? No, I found no record in the books at all.

8 Have you seen all the books and accounts relating to Swift and Hann? All that were produced to the Equity Court.

*Hodgins*  
*Wilson*

289 You can find no record with regard to Baden Park station?  
No.

96 Have you a copy of the balance sheet of Swift and Hann put in with the affidavits lodged with the application for obtaining probate? I have the copy made up by the executors at the time probate was granted.

1 Do you see an item in the assets "Baden Park station as per valuation, £50,715". Have you any evidence to show that that station was worth more than is set forth in that affidavit?  
No.

2 Then for all you know that may <sup>have been</sup> the true value of the station? Yes, as far as I know.

3 Then there is the item "Mimosa station, as per valuation submitted, £29123". Have you any evidence to show that that valuation is wrong? No.

4 Have you any evidence as to the value of the ~~for~~ Browley and Snubba properties ? No.

5 Then as far as you are concerned, you cannot question the values set down in this balance sheet ? Not with regard to those stations. I have a record of the promissory notes.

6 Were those valuations in the balance sheets of Swift and Hann, presented at the time the application for probate was made, taken from the books of Swift and Hann ? I cannot say

whether they were taken from them, or whether a separate valuation was made for probate..

297 Have you ever seen a valuation ? No.

8 I asked you a question last time about the overdraft on the liability side of that account, Bank of New South Wales, £47581 15s 11d. Do you know exactly what was the nature of the security given, or have you found out anything regarding that since ? No, I mentioned last time that the bank could produce the mortgages, and that that would settle the matter.

9 Chairman: Do I understand that you have gone through all the books and papers that were filed in the court ? Yes.

300 In going through those, did you see anything about a partnership existing between Mr Swift and Mr Hann? No, except in name. I have made out a statement here showing the moneys paid into the account of Swift and Hann.

1 As far as you could see by going through the books there is no account of Mr Hann paying anything in to the credit of the firm ? No, not one penny.

2 Mr Mc Lean: Did he ever lend any money to the firm? Yes, Mr Hann lent a sum of £6000 to the firm of Swift and Hann.

18

Hobson  
Matter

It was drawn out about two years afterwards.

30} Did he receive interest on that money ? On the 14th October 1881, Hann lent £6000 to the firm. On the 15th February 1883, Hann drew out the £6000. On April 19, 1882, Hann received on account of interest £180; and on the 16th February 1883, £114 7s 4d on account of interest.

4 Chairman: Does it not appear from the evidence you have given that in looking through the books, at ~~some period~~ certain periods Mr Swift used to pay Hann a certain sum of money ? Yes.

5 How do you account for that, if you have no record of a partnership? These amounts are obtained by going through Swift's banking account. I produce cheques drawn on Swift's private account. These are all cheques payable to Hann. There are also promissory notes. These date from December 1877 to February 1883, and they amount to £4979 17s 9d.

6 Mr Mc Leah: Do you say that these cheques represent payments made to Hann as his share of the profits on certain transactions ? Yes, outside of the stations. Here is a settlement of one lot, the balance paid was £78 17s 3d, which is included in the cheques I have mentioned.

7 Chairman: As far as you have traced them, are all those cheques made payable from the private accounts of S.M. Swift? Yes.

308 In your opinion there must have been some speculations in buying and selling stock between Mr Swift and Mr Hann, which they shared jointly? Yes.

9 Mr Mc Lean: Was there anything like a cash book kept in connection with Swift and Hann? No, I never saw one.

10 Then the whole of your accounts were compiled from the bank pass book? Yes, I got them from the bank pass book, the butts and cheque book, and the deposit slips.

11 Were ~~there~~ any ~~deposits~~ payments made out of that account, so far as your knowledge goes, that showed there had been any distribution of profits at any time? Not with regard to the stations.

12 Were there any cattle dealing transactions represented by payments made from the ~~Swift and Hann~~ Swift and Hann account? No, not that I remember.

313 Were there any advances made either to Swift or Hann from the Swift and Hann account? No, ~~Hann~~ <sup>Swift</sup> had his own private account at the time this account was running.

Swift.

20

4 26,021 10.9

6 23,024 15.7

~~29~~  
2,996 15.2

~~27,192~~  
57,352 4  
93,720 17.9  
17,668 6

53,250  
27,000  
26,250

20.77  
75300  
40000



13534  
*[Handwritten signature]*

(17.)



M i n u t e s   o f   E v i d e n c e .

Taken before

The Select Committee appointed  
to inquire into

~~The~~ ESTATE OF THE LATE S. M. SWIFT OF PETERSHAM.

Thursday 28th, October 1897.

Present:

- |            |            |
|------------|------------|
| Mr. Hughes | Mr. McLean |
| Mr. Thomas | Mr. Wood.  |

W. M. Hughes Esq. in the Chair.

WILLIAM ALEXANDER BALCOMBE, ESQ., Chief Clerk in Equity

recalled and examined.

314.

Chairman - Have you all the papers and documents in the

Equity suits which have been heard in connection with this case?

Yes.

13 Are you in a position to say how many Equity Suits were

instituted? There was the Suit of Swift and Hann. There was after-

wards the suit of Swift and Mc.Donald which was dismissed I think for

want of prosecution or some technicality. Another suit was started

of Swift and Mc.Donald which went <sup>5</sup> *and afterwards* for a hearing <sup>to</sup> the Full Court *on appeal*

I have brought the documents in connection with the two suits which

went to a hearing.

1

*Lawrence*  
*McLean*

13537

316 Mr. McLean - What was the suit Swift and Hann? It was

a suit brought by Margaret Moffatt Swift ~~and~~ <sup>Agnes Winnie</sup> ~~Anne Warren~~ Swift, Mary  
<sup>Elena</sup> ~~Eleanor~~ Swift, <sup>Elizabeth Jane Swift,</sup> Samuel Moffatt Swift, and Richard Dean Swift, infants,  
 by John Brown their next friend against Phineas Hann, <sup>Haw</sup> Charles ~~Haw~~ Northorne  
 Croaker and Elizabeth Swift defendants. In that suit they prayed  
 that an account may be taken of the ~~said~~ <sup>proceeds of the</sup> trust property and effects  
 which has <sup>or</sup> but for their wilful <sup>de</sup> fault and neglect might have been  
 received by the defendants Phineas Hann and Charles <sup>Haw</sup> Northorn ~~Croaker~~ <sup>Croaker</sup>  
 or either of them. That if necessary an account may be taken of all  
 partnership dealings and transactions between Samuel Moffatt Swift  
 the said testator and the defendant Phineas Hann and that the said  
 defendant Phineas Hann may be decreed to pay to the credit of the  
 estate of the said testator what shall on taking such accounts be  
 found to be due by him. That the defendants may be removed from  
 being trustees under the said Will and that the trusts thereof  
 may be carried into execution and the real and personal estate of the  
 said testator administered under the direction of this Honorable Court  
 that the defendants Phineas Hann and Charles <sup>Haw</sup> Northorn Croaker pay the  
 costs of this suit and that the plaintiff may have such further  
 relief etc.

17 What was the date of that suit? It was filed on the 28th August 1889.

18 How was the suit disposed of and what was the decree? What I have read was the prayer of the statement, <sup>of claim</sup> The defendants Hann

*2*

and Croaker put in a defence to it. It came on for a hearing on the 26th March 1890. <sup>the following is the decree:</sup> This Court doth order and decree that the following

inquiries and accounts be made that is to say. (1) an account of the personal estate not specifically bequeathed of Samuel Moffatt Swift the testator in the pleadings named come to the hands of the defendants Phineas Hann and Charles Hawthorn Croaker or either of them or to the hands of any other person or persons by the order or for the use of

the said defendants. (2) An account of the testator's debts. 3. An

account of the ~~xxx~~ testator's funeral expenses <sup>(4.)</sup> ~~for an~~ account of the testator's legacies and annuities (if any) given by the testator's Will.

5. An inquiry <sup>what parts (if any) of</sup> ~~of the defendant's taking of~~ the testator's said

personal estate <sup>are</sup> ~~and~~ outstanding or undisposed of and it is ordered

that the testator's personal estate not specifically bequeathed be

applied in payment of his debts and personal expenses in <sup>a</sup> ~~the~~ due

course of administration, and then in payment of the legacies and

annuities (if any) given by his Will. And it is <sup>ordered</sup> ~~provided~~ that the

following further inquiries and accounts may be made <sup>and taken</sup> ~~or taken~~ that is

to say - 6. An inquiry what ~~the~~ <sup>real</sup> real estate the testator was seized

of or entitled to at the time of his death. 7. An account of the

rents and profits of the testator's real estate received by the

defendants Phineas Hann and Charles Hawthorn Croaker or either of them

or <sup>or</sup> any other person or persons by the order or for the use of the said

defendants. 8. An inquiry of what encumbrances if any affect

*and what*  
the testator's real estate or any ~~of the~~ parts thereof. 9. An account of all dealings and transactions between the said Samuel Moffatt Swift the testator and the defendant Phineas Hann as co-partners and it is further ~~provided~~ <sup>ordered</sup> that on the taking of the ~~authorized~~ <sup>as aforesaid</sup> accounts the accounts mentioned in the defendant's statement of defence as filed in the Ecclesiastical Court and the accounts as investigated by Mr. R. J. Mackenzie and by Messrs. Peel Borrodaile & Co. as in the said statement of defence mentioned be received as prima facie correct except as to items not vouched by the said Mr. R. J. Mackenzie and Messrs. Peel Borrodaile & Co. <sup>and</sup> in the Ecclesiastical Court and that the plaintiff be at liberty to surcharge and falsify any of the items and charges so vouched in any and all of the accounts as they shall be advised. On that decree the Master proceeded on the accounts and certified the result to the Court.

*from*  
This is his Certificate - That the defendants Phineas Hann and Charles Hawthorne Croaker two of the executors of Samuel Moffatt Swift <sup>the</sup> Testator have received personal estate not specifically <sup>called</sup> bequeathed or there has come to their hands personal estate of the testator to the amount of £34,175-4-2d. that they have paid or are entitled to be allowed on account thereof sums to the amount of £41,139-10-9, leaving a balance due to them of £6,964-6-0 on that account, that is the personal estate, ~~and~~ <sup>and</sup> the debts of the testator (with the exception of the two items referred to in the preceding paragraph) have been allowed as brought in by the said defendants Hann and Croaker

4

The amount to £24,991-9-0. The whole of the debts have been paid with the exception of the item amount owing by testator to Messrs. Pitt Son & Badgery Stock Agents Sydney on an account stated £350.

The funeral expenses amount to £123-15-9 which is allowed. The legacies and annuities given by the testator's Will amount to £750 and with interest thereon remain due to the persons therein named.

The outstanding personal estate of the testator consists of £4436-16-1 now lying to the credit of John McDonald & Co. at the Head Office of the Union Bank of Australia Limited Sydney. Now this amount represents the testator's interest in the station properties known as Mungie Bundie, Gravesend, Boolocroo, resulting from the realisation of the said properties and consists of the particulars set forth in the

Balance Sheet prepared by Peel Borrodaile & Co. and shown in the first schedule thereto. He certifies that on the appointment to proceed with the accounts before him on 10th August 1892 all the parties were represented and consented to the said sum being paid into the Court to the credit of this cause and he approved of the authority of the three executors of the said deceased being given to John McDonald to pay the sum into Court to the credit of the cause. ~~xxx~~

Then he certifies as to the real estate of the testator, that is contained in a schedule. Hillcrest, the private residence of testator, Petersham near Sydney. This at the date of the testator's death was under mortgage to the London Liverpool and Globe Insurance Company to secure £2400 and interest at 6%. It was sold by order of

5

of the mortgagees and realised £3000. Thus producing a surplus which was however absorbed by the Australian Mortgage Land and Finance Company under an Attachment. The property was leased for six months by the defendant Elizabeth Swift who received the rent and applied it to the maintenance of the testator's family. The amount of the rent was not known to the defendants Hann and Croaker. Then there were 23 acres of land, part of the King's Grove Estate situated at Cook's River near Sydney and held by the testator at the date of his death and since sold by the defendants to John McDonald for £900. Mungie Bundie, Boolooroo and Gravesend.—Testator was possessed of an equal half interest with John McDonald in the above named Station properties situated in the Gwydar district near Moree, consisting of Freehold and leased land. These properties <sup>to</sup> have been mortgaged since testator's death by the surviving partner John McDonald. These properties had been under mortgage to the Bankers of the firm John McDonald & Co. for a number of years and part of them, Mungie Bundie and Boolocroo were sold by order of the mortgagees on or about 8th August 1888 and realised the sum of £76,036-15-1, the remaining property, Gravesend, was sold on or about 22nd May 1889 and realised £11,020-9-5. Both these purchase amounts were made <sup>payable</sup> ~~payable~~ by bills extending over periods of four years and three years respectively. Those bills were retired under rebate as per sale contract before maturity and on the statement of accounts between the testator and his partner John McDonald as prepared by Peel Borrodaille & Co. the Accountants of the firm

It is shown that the balance of £4436-16-1 remains in the hands of  
 the said John McDonald to the credit of the estate of the testator.  
*Mimosa West*  
 Baden Park, ~~Mimosa~~, Browley, and Snubba - Testator was possessed of  
 an equal half share and interest with the defendant Phineas Hann in  
 the above pastoral properties which comprised Freehold and leasehold  
 lands. These properties had been mortgaged by the testator and the  
 defendant Hann. Testator was also possessed of one-third share or  
 interest with Frank Badgery and W. F. Piper in the Tooma Falls<sup>Run</sup>.  
 It was eventually sold by the Sheriff under a writ of Fi. Fa. for a  
 nominal sum. Since the death of the testator the properties known  
 as Browley and Snubba have been sold by the defendants. Browley was  
 sold on the ~~1st~~ <sup>12<sup>th</sup></sup> May 1884 and Snubba on the ~~1st~~ <sup>12<sup>th</sup></sup> January 1885, shortly  
 after the death of the testator, The Bank of New South Wales as  
 mortgagees went into possession of the property<sup>s</sup> known as Baden Park  
 and Mimosa West and are still in possession. The rents and profits  
 were allowed as in the accounts. He certifies that the accounts of  
 the partnership have been correctly kept as between Swift and Phineas  
 Hann They were properly ~~filed before the Master~~ <sup>vouched before the Master</sup> and he allowed them.  
 He certifies that these documents have been investigated by Mr. R. J.  
 Mackenzie, professional accountant from the beginning of the partnership  
 to the testator's death and by Messrs. Peel Borradaile & Co.,  
 professional accountants, from the date of the testator's death on the  
 18th February 1884 up to the 18th February 1887. Both accountants  
 Mackenzie and Peel appeared before the Master and deposed on oath.

as to the mode of their investigation and its correctness and they agreed in certifiying that the partnership accounts for that period were correct. He certifies that the accounts of his dealings with the assets of the partnership have been carried by the defendant Phineas Hann from the 18th February 1887 to September 1888 when the properties were taken possession of by the Bank of New South Wales under their mortgage. The plaintiffs have not succeeded in establishing any surcharge or falsification<sup>s</sup> in respect of the accounts for any of the periods mentioned. Afterwards there were applications to the Court to vary this certificate, eventually on the 20th August 1897 the Court made a decree (decree read).

319

Are Hann and Croaker still the executors of this estate?

Yes they have never been removed.



(8)

13537

M I N U T E S O F E V I D E N C E



taken before

THE SELECT COMMITTEE

Appointed to inquire into

~~THE PROBATE DUTY PAID IN THE SWIFT ESTATE.~~

*Estate of the late John Swift of Rushmore*

Tuesday, 30th November 1897.

Present :-

Mr. Hughes

Mr. Thomas

Mr. McGowan

Mr. Dick

Mr. McLean,

*W.*  
W. HUGHERS, Esq., in the Chair

John McDonald, sworn and examined.

32/ ✓ Chairman - You have been called to give evidence in connection with an allegation by Mrs. Swift as to an evasion of the Probate Duty  
Do you know anything of it? No. I know nothing at all of the Probate Duty.

7 Did you know Mr. Swift personally? Yes, very well.

} Where you engaged in any business transactions with him? Yes.

4 Of what nature were they, were you a partner of his? Yes.

325 Was there ever a Deed of Partnership drawn up between you?  
Yes.

6 Is it, or a copy of it in existence? I have no doubt there is; Mrs. Swift would have them.

7 Have you any objection to tell the Committee what chiefly were the transactions between yourself and Mr. Swift? Were they stock dealings? Principally stock dealings - stock and station matters.

8 For what length of time were you a partner of or engaged in transactions with Mr. Swift? I should think for about 20 years.

9 Then you would have rather an intimate knowledge of Mr. Swift's business transactions in general? Yes.

30 Were you during the whole of the time you have mentioned a partner of Mr. Swift? I think a Deed of Partnership was drawn out at a date subsequent to that at which we first started to deal.

1 Were you ever during any part of this time an employee of Mr. Swift? No, never.

7 You were all the time either a partner or were in business relations with him as an agent? Yes.

3 It is alleged by Mrs. Swift that a large portion of the

estate of which her husband was seized when he died and which should have come to her and her children has not been administered and that she has received nothing. Do you know anything at all of the matter? I know nothing about it.

*Bellevue*  
*Arthur*

334 Are you acquainted with her co-trustees, Mr. Hann and Mr. Croaker? Yes

5 But you know nothing of the matter of your own personal knowledge? I know nothing of their business relations; I only know that they are trustees.

6 You are aware of course that Mrs. Swift has been engaged in litigation in the matter? Yes, I am aware of that.

7 Have you been before the Court in that connection? Yes, several times.

8 What was her object or purpose in calling you before the Court? What did she hope to do? She challenged the Accounts.

9 The accounts of the partnership between Swift and McDonald? Yes.

40 She asked you, I believe, to produce the books? Yes; they were produced.

1 You produced them? Yes.

342 I see that according to her statements a number of books were produced in Court, <sup>W</sup> were they the whole of the books in your possession in connection with the estate? Yes.

3 You have never had in your possession any other books relating to your partnership except those covered by your affidavit? I have only the books connected with the partnership between Mr. Swift and myself.

4 You have no other books? None relating to the Accounts except those which I handed over.

5 I see from the Equity Court proceedings that you handed in some books and papers held by Peel, Borradaile & Co. in connection with Mungie Bundie, <sup>W</sup> do you remember that? I remember that that firm of Accountants were appointed by Mrs. Swift as they had had some business relations with her late husband; they audited the Accounts for and on behalf of Mrs. Swift and <sup>her</sup> ~~their~~ co-trustees. The books necessary for that purpose were handed to them by me.

6 I see that the receipt of the Equity Clerk for these books is dated the 5th September 1890. <sup>W</sup> We may presume therefore that they were handed in? Yes.

7 There was one ledger containing entries from 1884 - 85 until 1890 in connection with the estate, and one cheque book containing also a journal of entries from the years, 1884, -85 to 1890. There was also one station ledger, one transaction book, and four pass books — <sup>three of</sup> on the Union Bank of Sydney and <sup>one of</sup> the Bank of N.S.W., Moree? Yes.

8 I see that your Affidavit after alluding to the books I have

4

Just enumerated in the Schedule marked "A", says :- "I further say  
 "that according to the best of my knowledge, remembrance, and  
 "information and beliefs I have not in my possession, custody or  
 "~~charge~~<sup>power</sup> or in the possession, custody or power of my solicitors or  
 "agents, or in the possession custody or power of any other person  
 "or persons on my behalf any deed, account book of accounts, voucher  
 "receipt, letter, memorandum, paper or writing or any copy of or  
 "extract from any such document or any other document whatsoever  
 "relating to the matters in question". So that according to your  
 Affidavit these were the only books or papers you had in your possession  
 or knew anything at all about? Yes; they were all I knew of.

349 It appears that on the 3rd April 1896 Mr. Grainger, a  
 solicitor at Moree ~~when~~<sup>what</sup> to Mungie Bundie to subpoena a Mr. Jones  
 and a Mr. Harkness in connection with this matter; do you know  
 those persons? Yes.

50 What is Mr. Harkness? He was an employee of mine.

) It appears that while subpoenaing Mr. Harkness, Mr. Grainger  
 took a list of the following books in connection with this matter -  
 a wool book from 1875 to 18823 which was not included in your  
 Affidavit and which it is alleged has some connection with the  
 Swift - McDonald Accounts; do you know anything at all about that  
 book? No.

✓ In addition to that it is alleged that he found 5 day books  
 dating from the 18th September 1888 to 31st March 1894, and that part  
 of some of these books had something to do with the Swift - McDonald  
 Accents; do you know anything of them? No, and if I may be permitted  
 to say so it seems rather an absurd thing that a man going out to  
 serve a Summons should take particulars of these books.

353 It is alleged also that there was one store-book dating from 26th August 1876 to August 1878; a day book dating from the 1st January 1884 to the 18th February 1887; a Shearing Ledger dating from 1888 to 1893; a General Ledger dating from 1879 to 1880; "P. S. Falkiner," dating from 1889 to 1890, a ~~pas~~<sup>ration</sup> book dating from 1880 to 1888, a ledger for 1876, '77 & '78; part, 1888, '89 & '90, Day book (Gravesend) dating from 1883 to 1889; Letts' Diary 1874, a Bills Receivable Book, Day Book, March 1st, 1876 to December 1878, Land Book, showing lands purchased by Mungie Bundie at Government Auction Sales from 1876 to 1882, ditto Land improved, and a Journal Dating from 1879 to 1883. There were also it is alleged numerous Stock Returns, ~~Sheep Returns~~ and papers connected with the Station. It is further alleged that these books or some of them are wanted in connection with this matter and that according to ~~in~~ your affidavit you have not them in your possession. I should like to know from you - if you want any particulars as to the books you can have them - whether any of these books or all of them having any relation to the Swift - McDonald Accounts, may have been in your possession at that time? There were no books whatever relating to those accounts beyond those which I handed over. I handed over all the books bearing upon those accounts to the Accountants

4 Were you connected with Mr. Swift in 1875? Yes.

5 At that particular time did you carry on business wholly or partly as a partner of Mr. Swift, or partly on your own account? There were three partners at one time.

6 Who was the other partner? Mr. Spiller.

7 The whole of the transactions were carried on for the joint benefit of the three partners? Yes.

358 Wxxx Were you then carrying on business on your own account?  
No.

*Yanville  
Hobbs*

9 Supposing there is a Wool Book dating 1875 having to do with transactions of Mungie Bundie in and during that year to what transactions can that book allude other than those with which you Mr. Swift and Mr. Spiller were concerned? I have no idea without seeing the book.

60 You said just now the book had no connection with any matters between yourself and Mr. Swift. You were quite positive about that. Mr. Grainger's letter under date 3rd April 1896 is addressed to Messrs. Russell & Russell, Solicitors, 359 George St., Sydney. He gives a list of books which I have already read to you, and in the list is that Wool Book dated 1875, have you any recollection of a Ledger covering the years, 1876, 1877 & 1878, other than the book you put in in reply to the subpoena of the Equity Court and covered by your affidavit? No; I do not remember any.

1 The affidavit mentions a Ledger covering a period of 1864, '5 to 1890 but there is no further mention of any Ledger? There may be some explanation of this kind, although I do not know whether it would apply. When we bought Spiller out we had the Accounts Audited up to that date.

Y Mr. McLean - About what year was that? I do not know. It was a long while ago.

3 Was it previous to 1884? Yes.

4 Chairman - It was somewhere between 1875 and 1884? Yes

*7*

So that with the auditing of the accounts after Mr. Swift's death one would necessarily begin from the point up to which we had settled. It is possible that there may have been old books not bearing at all upon the accounts as between Mr. Swift and myself. There will be accounts for instance applying to the period of the partnership between Mr. Swift, Mr. Spiller and myself. All the books bearing upon the accounts between Mr. Swift and myself were sent to the auditor.

36  
 Cannot you fix a date with approximate accuracy when you and Swift went into partnership? There was the partnership between Mr. Swift, Mr. Spiller and myself.

6 What was the date of your partnership with Mr. Swift only? There was none until Mr. Spiller joined us.

7 During the whole time youk Mr. Swift and Mr. Spiller were in partnership you kept a joint account? Yes.

8 With regard to this General Ledger dating from 1879 to 1880, does it cover any portion of the time in which Mr. Spiller Mr. Swift and yourself were in partnership? I really could not say unless I saw the dates.

9 Will you discover the date from which you and Mr. Swift alone were in partnership? It would be from the date when Mr. Spiller went out.

70 You could furnish us with the date when Mr. Spiller went out? I think I could.



371 At this moment you cannot say whether the General Ledger covering the period from 1879 to 1880 embraced operations during a period when you and Mr. Swift only were in partnership? I could not say. I can only repeat what I said before, that all the books relating to the partnership between Mr. Swift and myself were handed in to the Auditor, and the accounts were made up from them.

*Yakob Jim*

2 The books enumerated cover a period from 1875 to 1893 - a period of 18 years; that is a good long time, but you are not prepared to say to-day during what portion of that period you were in partnership with Mr. Swift alone? We were certainly in partnership during portion of that period. Any book covering transactions in connection with Mungie Bundie Station can refer only to transactions between yourself Mr. Swift and Mr. Spiller or between yourself and Mr. Swift during that period? That is ~~probably~~ probably the case, but I could not say definitely without seeing the books.

4 Did you say that Mr. Hann had in his possession any of the books for which you were asked? I do not think he had, but I could not say definitely, at all events all the books bearing upon the accounts were handed over to the Accountants. Mr. Hann and Mrs. Swift were constantly with the Accountants. Both Mr. Hann and Mrs. Swift had <sup>c</sup>access to the books but the Accountants could tell you more of that matter than I could.

5 I notice that under date of March 18th, 1887 in a note from yourself ~~to appeal~~ to Messrs. Peel, <sup>r</sup>Borradaile & Co. you say that you ~~forfeited~~ <sup>worded</sup> all the books or vouchers that they are likely to require? Are we to infer from that that you did not send all? I have just explained to you that Mr. Spiller was bought out; consequently any transactions in the books previous to his being bought out would not be likely to be required for the purpose of auditing the accounts. It was only after Mr. Spiller being bought out - between that date and the

date of Mr. Swift's death - that any of the accounts would be of use. We necessarily had to go into the accounts when we bought Mr. Spiller out to arrive at the value of the estate.

376 You do not think it possible that of the transactions in which Mr. Spiller was engaged can bear upon the matter? I feel sure they cannot.

377 You had a settling-up when you bought Mr. Spiller out? Yes.

Elizabeth Swift, sworn and examined 3-DEC-97  
378  
Chairman - We have here an affidavit by Mr. McDonald

from which it appears that he handed in to your Accountants a number of books and papers in connection with the estate? Yes, that was on a discovery order obtained by my solicitor before my case was heard in the Court.

9 We have also a letter written by Mr. Grazier a Solicitor of Moree to Messrs. Russell & Russell, Solicitors of Sydney in which he says that having to go to Mungie Bundie Station to subpoena<sup>a</sup> a man named Harkness he made a list of books of which he furnished a list. We have asked Mr. McDonald about those books and although he was unable to give us accurate information, the matters having transpired so long ago he seemed to think that they were in connection with the partnership of Mr. Swift with Mr. Spiller and himself. Did you know anything of that partnership? Yes, at the end of 1873 my husband sent for Mr. McDonald who was then droving for him.

80 You mean to say positively that in 1873 Mr. McDonald was droving for Mr. Swift? I do. In that year and in 1872. I can produce the accounts at that time. He are a few of the leaves of the accounts kept by Mr. McDonald when he was droving.

1 Mr. McGowen - Do you swear that Mr. McDonald was in your husband's employ as a drover in 1872, 1873 & 1874? No, at the end of 1873 he went out and bought Mungie Bundie.

7 May he not have been droving and yet have been a partner of your husband? No, he was not a partner at that time. Mr. Swift opened an account at the Branch of the Bank of N.S.W. at Tamut for Mr. McDonald's purposes as a drover, as he did also in the case of

other drovers. He paid money out of his private account into that account. I had the passbook, showing the accounts, and I could produce to-morrow also the affidavit of the Bank Manager.

303 Who is Mr. Spiller? Mr. McDonald's brother-in-law. In the early days Mr. Spiller was ~~the~~<sup>a</sup> general hand on Tubbo Station.

4 Was he working for your husband? No. Tubbo Station belonged to Mr. John Peters, a wealthy man ~~at home~~ in England. Mr. McDonald's siter was an Housemaid there and she married Mr. Spiller. The Manager got killed and after some time Mr. Spiller was made Manager, then Mrs. Spiller sent for her brother and he came out. He was for some years on Tubbo ration carrying and doing all kinds of rough work.

5 How did Mr. Spiller come to leave the partnership? Mr. McDonald ran away from his sister and went on the roads droving; then he turned up at Ellerslie Station near Adelong, close to where Mr. Swift was living. The Station belonged to Messrs. Peterson & Sargood of Melbourne. They sent home for their nephew to manage it and when he came out Mr. McDonald was sent away. He then came on to Mr. Swift's Station as a drover. He went out and inspected cattle and sheep and bought them. Mr. Swift paid the money into the account and McDonald drew upon it, and paid the accounts.

6 Mr. McGowen - Had Mr. Swift any other drovers in his employ ~~which~~ whom he treated in the same way? *Yes*

7 Can you name any? Yes, a number, there were Thomas Miller, B. P. Radford, J. M. Flagan, and S. M. Byrns. I could give you a whole list.

388 Did Mr. Swift pay into an account at the bank money upon which these men could operate in the same way as he did in the case of Mr. McDonald? Yes.

Chairman - Can you prove it? Yes, from the passbooks.

90 Could you produce them to-morrow? Yes, I have every one of them. ~~4~~

1 You are sure Mr. Swift paid money into the account of each of these men in exactly the same way as he paid money into McDonald's account? Yes. They were in charge of the stock and they had generally two or three men under them. When they sold the stock they sometimes received money which was always paid into Mr. Swift's private account and never into their own accounts.

7 The transactions as far as you are aware between Mr. Swift and Mr. McDonald were identical with the transactions with the other men you have named? Yes.

3 Mr. Thomas - You have never seen any deed of partnership drawn up between them? I have seen what purported to be a copy of a deed of partnership, but I think that when you see it you will not be able to say what it is. Mr. McDonald refuses and has always refused to produce the original.

4 He said in his evidence this afternoon that you had it? Yes, I may mention that during the 14 years my husband was in business commencing in 1870 - '71 he paid into his own private account and his other accounts no less a sum than £1,374,548-2-8. Those figures are

compiled from the books. I mentioned that to show that he did not want any money from Mr. McDonald - to show you that he really was possessed of money.

395' Chairma - What we want to arrive at is the nature of the books to which Mr. ~~grainer~~<sup>grainer</sup> refers in his letters. For instance there is the Wool-book covering transactions from 1875 to 1883. Was your husband a partner with Mr. McDonald for any portion of the period between 1875 and 1883? He was. Perhaps it was thought at another time <sup>that he was</sup> a partner, because, it being difficult to communicate <sup>between</sup> Tumut and Mungie Bundie under two or three months in those days, when there was no railway and nothing but the boat and the coach which often broke down, Mr. Swift often gave him a Power of Attorney. Mr. Swift directed him what to do.

6 Can you prove that Mr. Swift gave him a Power of Attorney? Yes; if you will give me time, but I do not think I could do so by to-morrow.

7 You ~~mentioned~~ hand in a memorandum of agreement of a partnership between Mr. McDonald and Mr. Swift under date of February 8th 1881? Yes; it is in Mr. Hann's handwriting. (Appendix B)

8 In whose handwriting was the original? According to what Mr. McDonald says in one of his letters it was in his own handwriting.

399 You hand in a copy of a letter which Mr. McDonald wrote to Mr. Hann, in which he states that the original memorandum was drawn

Appendix B<sup>15</sup> 21

up by himself? Yes. He says "I will hunt up the partnership memo,  
"for such it was drawn up by myself, I think it ~~was~~ either with  
" A & A or bank; will find it and send you copy". E

*Johns  
400  
Pellaway*

John McDonald, recalled and furt



Chairman - The Committee would like you to bring to me tomorrow the date of the partnership between yourself Mr. Spiller, Mr. Swift? I could get the date when Mr. Spiller went out, but as to any other date I am doubtful.

1 You said early in your evidence that there was a deed of partnership between yourself and Mr. Swift? Yes.

*16  
17*

2 Will you be able to obtain a copy of it? Mrs. Swift has them, she will give you all the papers and dates.

3 Is the original document lodged with the bank? I do not know where it is.

4 I suppose it was drawn up by solicitors? Yes.

5 Mr. McGowen - You have no copy? No.

6 You haven't the original? No, when the Equity Suit was on I gave up the whole of the books and papers I had bearing upon the partnership.

7 Mr. Thomas - You say a firm of solicitors drew up the deed? Yes, Messrs. Piggott & Trickett.



408 Mr. McGowen - You had at one time a copy of the deed?  
Yes, some years ago.

9 Did you not send a copy to Mr. Hann? I think it very likely. I do not know where it is now. I handed in the whole of the papers in the course of the Equity Court proceedings.

10 Was it the original draft that you sent to Mr. Hann? I could not say whether or not it was the original copy. I do not know that I did send it to him, but it is very likely that I did. I have no recollection of having sent it. The date of the deed would be when Spiller was bought out.

11 Have you any idea of the terms of the agreement between yourself and Mr. Swift in reference to Mr. Spiller being bought out? I know that we bought him out between us.

12 Have you any idea what you agreed to pay him? I think it was £16,000.

13 Mrs. Swift has handed us a number of cheques. Here for instance is a cheque upon the bank of New South Wales drawn Feb. 10th 1881 in favor of John McDonald and Co. for £1950 signed by Mr. Swift? Have you any recollection of the receipt of that large sum of money? It would be impossible for a man to carry all these things in his memory; I dare say I could give you a possible explanation of a number of these things. Mr. Swift was a very large dealer and he used often to be in monetary trouble and on those occasions I used to assist him. Probably he would get a P.N. from me and he might redeem it before the due date. Probably many of these things would be explained by transactions of that sort.

14 Were you in the habit of doing that sort of thing for Mr. Swift; did you occasionally take his liabilities in that way? Yes.

*Followed -*  
*15*

15 He was a large speculator was he not? Yes.

16 None of these cheques had anything to do with the purchase of stock or of Mungie Bundie Station? No, the dates would show that.

17 Was the deed of partnership between yourself and Mr. Swift drawn in 1881? No, I think it must have been drawn in 1870.

18 Are you sure of that? As sure ~~xx~~ as a man can be of anything which has happened so long back.

19 Have you anything else which will help to fix the date in your mind? I believe the place was bought in 1874; consequently the deed must have been drawn some time thereabouts.

20 I suppose you would not like to swear that it was not in 1881 that the deed of partnership was drawn? I would not.

1 Suppose the deed was drawn ~~ix~~ on the 8th Feb. 1881, two days from the date of the cheque I have shown you, would not the inference be that the £1950 had some connection with it? It might have, taking that view of it.

2

But to the best of your knowledge and belief the date of

*18*

the agreement was removed by some years from the date of the cheque?

Yes.

423 Mr. McGowen - **B**efore entering into your partnership with Mr. Swift, you were in his employ as a drover were you not? No; never.

4 Were you not droving for him in 1872 and 1873? No, for myself and him occasionally.

5 Were there any other men, <sup>H</sup> for instance Miller, Radford, drovers Flanagan and Byrns, working as ~~XXXXXXXX~~ with Mr. Swift? That was years afterwards.

6 You say that in 1872 and 1873 you were not in Mr. Swift's employ as drover? I was never in my life in his employ.

7 Were you working in conjunction with him? Yes.

8 In what way? I used to buy fat stock and take them to Melbourne and at other times store cattle and take them to other places.

9. What interest had Mr. Swift in those transactions? He had one-half.

30

Was there a partnership? Yes; but there was no deed of

partnership before Mr. Spiller joined us.

421 Mr. Spiller was not in partnership then in the droving business? No.

✓ But you say that in 1873 you were buying cattle for yourself and Mr. Swift? Yes.

3 Did you also find men to buy the cattle? Yes.

4 And the transactions with Mr. Spiller came on much later? Yes.

5 Did you give any evidence in this case to the effect that Mr. Spiller supplied you with money with which to purchase Mungie Bundie Station? I do not think so, although I believe Mr. Spiller found part of the money. I could not however say for certain. I know that there was some difference in the money transaction which was adjusted later on.

6 Did you enter any defence when Mrs. Swift was attempting to fight you as to the existence of any partnership in Mungie Bundie Station that your share of the purchase money of Mungie Bundie was supplied to you by your brother-in-law Mr. Spiller? No; some bungling was made by my solicitor in that matter, we rectified that afterwards.

7 Did Mr. Spiller as a matter of fact supply you with the money? No.

438 The previous transactions between yourself and Mr. Swift in the purchase of cattle and the delivering of them to market for sale were transactions in a bona fide partnership? Yes.

(18) (11)

13537

Minutes of Evidence

taken by

The Select Committee appointed to enquire into

The Estate of the Late S. M. Swift

Wednesday December 1st

Present;



*Burke*  
*Pitchford*

Mr. Hughes

Mr. McFarlane

Mr. V. Parkes

Mr. Thomas

W. W. Walker, Esq in the chair

John McDonald ~~was~~ recalled and examined.

439

Chairman. Have you tried to obtain ~~any~~ <sup>the</sup> information which I

asked you to get? Yes, I find that the information is most likely to be found in the Equity Court. I thought I could get it through the Bankers. The nearest I could get was that it was 1880 or 1881 when Mr Spiller was thought out.

40

Can you fix a date for the earliest partnership transaction between yourself, Swift and any other person? I should say it was about 1870.

Are you fixing the date by any transactions? No. from recollection.

Have you given any thought to ~~this~~ <sup>those</sup> other ~~matter~~ <sup>books</sup>; is there any other explanation which you can offer, except that which you gave yesterday, as to what Mr Grainger speaks about? No other explanation.

3

You believe they were books connected with the joint partnership of McDonald Swift and Spiller? I think that is probably what they would be.

4

was that account wound up in 1880 or 1881? when Spiller was

*22*

(!) brought out.

445' So that whatever they contained they cannot bear upon the Swift-McDonald accounts? No..

6 Have you any recollection as to who audited the accounts when you bought out Spiller? Spiller, Swift and I had a meeting. We mutually arrived at the assets and liabilities.

7 Are you quite sure there was never any relationship between you and Mr Swift as employer and employee? quite sure.

8 Are you disposed to tell the committee who found the capital of the stock transactions between you and Swift, before Spiller joined you? Swift and I had each our joint capital, -in fact any capital there was in it originally, I had it. Swift was a civil servant and had little or no capital.

9 At the time you and Swift had the original transactions, was Swift not a man of means? He was quite the reverse.

50 Was he a very smart business man? Yes, he was a good business man.

10 When you Spiller and Swift were together, did Spiller bring any capital into the business? Yes, he brought his one third.

11 You put in an amount of capital, and drew out a separate proportionate return? Yes.

453 Do you still own Wundy bundie Station? Yes.

*Richard*

4 Did you come to an arrangement with the Trustees with reference to that property? No, the Bank took possession and sold it.

5 Did you buy it? No I bought it subsequently from the party who bought it at the sale.

6 Was the property sold for an amount equivalent to what it was valued for probate purposes? I do not know what it was valued at.

7 For what amount did the Bank sell the property? £75,000 as near as I can remember.

8 Was it security for an overdraft or mortgage? It was necessarily an overdraft or they could not take possession.

9 What was the amount of the overdraft? That I cannot remember, but that will be seen in the passbook in the Equity Court.

60 Do you say that you never, during any portion of your time, you were an employee of Swifts, and that all the transactions in which you and Swift, and you and Spiller and Swift, were engaged, were transactions in the nature of an ordinary partnership? Yes.

1 That altho' a deed of partnership was not drawn up between you and Swift in your early transactions, yet they were of that nature? Yes.

2 The nature of the partnership was that the capital was supplied



either by both parties equally, or originally by yourself alone?

Yes.

463 And that at the first stage Swift had no capital at all? Yes.

4 What was he? He was a Crown Land's Bailiff.

5 In reference to an item in 1872 and 1873 it is alleged that you were droving for Mr Swift, and in support of that it has been sworn that there was an account opened by Mr Swift with the bank of N S W at Tumut; do you know anything at all about that? I could not tell you; I know I was not droving for him; who makes that allegation?

6 Mr S. Swift? What support has she got for the allegation.

7 The only support we have seen is an extract from a ledger or daybook in which there was an account opened in the bank of N S W at Tumut by Mr Swift, which was operated upon by you? Very likely, if I remember rightly we each had an account at Tumut.

8 Mr McFarlane. Had Mrs Swift any intimate knowledge of Mr Swift's business? Up to the time of his death, to the best of my knowledge she did not know anything about his business. To the best of my belief when I was with him she knew nothing at all about his business.

9 would she have any knowledge of the partnership or banking A/C? No, only what she may have picked up since she got crazy

*Janette Angame*  
5

about this matter, she is a woman of indomitable courage when she sets an idea into her head she goes right at it.

470 would she have a knowledge of the value of station property prior to Mr Swift's death? She could not have any knowledge of it. She never lived on a station.

1 was she in the habit of visiting the station properties? no.

2 she made certain statements that there was no partnership further than joint business transaction concerning certain speculations, and that there was no fixed partnership? Up to the time Spiller joined us.

3 was Spiller a partner? He was ~~not~~ a partner as Swift & I. When he joined us we had a proper deed of partnership drawn up because he would not joint us in the loose way of business we had. We trusted each other with anything. When Spiller joined us we went on a business footing.

4 was that deed of partnership been produced? It is in the Equity Court.

5 was the Mungybundie property sold by auction? yes.

6 did it realise the amount for which the firm were liable to the Bank? Yes, there was a credit balance.

7 what became of that balance? It was divided in proportion to the right of the Estate to it. The balance was handed over to the Trustees of Swift's estate.

18  
19

478 Mr. Parkes . Have you any idea whether the property of Swift's estate, when it was wound up, realised the amount on which probate was paid? To the best of my recollection probate was paid on a greater value than the estate was worth.

9 That is, it was paid in anticipation of the estate being of a certain value, which it did not actually realise? Yes. Moreover the Trustees had probably an object in making it as valuable as possible

80 Might it not be that for financial purposes, they made it of greater value? Yes, that was the impression given to me at the time.

1 Was Mrs. Swift paid £2,000? I do not know.

2 Did you know anything of the Trustees business? No.

3 At the time you were under the impression that they paid more as probate duty than the estate would realise, and that they did that for financial purposes? Yes, that was my opinion.

4 Chairman. This is a copy of your account with the Bank of New South Wales; how do you account for the fact that cash is paid in uniformly by Swift and not by yourself into this a/c, there are various accounts all paid in by Swift; what is your explanation of that? We each had an account, and I would want to see a copy of the

13537

*other* account. *Hargrave*  
*Mar 1922*

485 Here is your private account covering £926/8/6, £600 in this

private a/c of yours corresponds with this deposit slip of Mr. Swift's for the purchase of 'unmy' bundle? That is the kind of thing I should like to look into. I cannot remember what occurred 20 years ago.

6 Here is your partnership a/c presumably, in which all the cash is paid in by Swift? This is one and the same a/c; there is no private a/c in either of these. They are both private as far as any business with the Bank is concerned, yet they are both partnership a/cs.

7 How do you account for it that in your private a/c the cash is paid in uniformly by Swift, where is the contra a/c? Show me Swift's a/c with the same Bank, and you will probably find me paying into his credit.

8 Is that your explanation? That is the way we used to work in those days.

9 Mr McFarlane, do you remember operating on this a/c at the Tumut Branch of the Bank of N S W; I see it is in your name John McDonald? Yes.

40 Is making these deposits were they made by you in Swift's name? No. It was put in / my own name and he kept his own a/c in his

25

name.

491 Am I to understand there were two banking a/c's in this bank at Tumut? Yes, one of his and one of mine.

2 Did you operate on Mr Swift's banking a/c? No on my own.

3 Would Mr Swift operate on his own a/c? Yes.

4 You did not operate on each other's accounts? No, every now and again we used to have a straightening up. I used to pay to him or he used to pay to me, as we finished each transaction or speculation.

5 In the event of a sale of property or stock, would the money be first paid into one a/c in the Bank? Very likely, it might be paid into my a/c, and I would give him a cheque, or he would give me a cheque.

6 Would you adjust it before paying it in? No. We did not keep any books; we used to trust each other. I used to give him money if he wanted it, or he might give it to me. I bought a station from a man named Pyrie. At that time Swift was a stock and station agent. He of course sold the place for Pyrie and I bought it. That accounts for Pyrie's name appearing in these banking a/cs. I gave Pyrie so much in cash and the rest in bills. The only appearing in the a/c calls that back to my recollection.

7 Mr. Parkes Did you travel about very much? Yes, a good deal

Mark  
Pardall

13537

498 Did Mr Swift travel about? Yes.

9 Was there any arrangement between you as to one doing the clerical work, and the other ~~do~~ <sup>doing</sup> the actual travelling? No.

500 There would not be one partner who would pay in constantly? No.

1 Chairman. There are some leaves from a book; are they in your handwriting? Yes.

2 Was that a petty cash book or what was it? I could not tell you.

3 Anyhow, it is a book you kept, and it is dated 1873? Yes.

4 Were you in partnership with Swift at that time? I can hardly say whether I was or not. It seems to be very mixed up memoranda. There are men mentioned here who I had in my employ, and it refers to transactions at this place of Pyrie's.

5 You must have been in partnership with Swift at that time? Not in this station. We had nothing to do with this place. It was a place at Little River near Yass, Cooradigby.

6 Some of these dates coincide with the bankings during the time you were operating on the a/c at Tumut? These are so mixed up that I cannot explain them, and I am sure nobody else can.

7 There is a cash entry for a dog - possibly I bought a cattle-dog -

30

-that is 20 odd years ago.

508 According to these entries somebody was growing? It was a cattle station, and we had dogs to get the cattle.

9 Did you ever travel with mobs of your own cattle? Yes.

10 During 1873 there was an a/c opened; were the operations on that a/c entirely out of the hands of Mr Swift? Yes, he had nothing to do with that station except that he sold it. He used to sell stock off it for me. It was after sold that place to which those figures relate that I joined Swift.

11 Mr Parkes. There is an item of £3000 odd in that account; can you throw some light on that? You mean the item £3,417.

12 It was that a deposit by Swift and yourself conjointly? Yes, that was when we bought the place that I am now on; that was the deposit money.

13 Paid by whom? Paid by both of us. The whole of the money that Swift and I had to the best of my recollection, was lying to Swift's credit. I went up North to see if I could <sup>see any</sup> place suitable, and I saw this place then and arranged on a proper business footing that Swift, Spiller and myself should buy it. This, as far as I can see was a transfer to the head office in Sydney of the bank of N S W of our cash to pay this deposit on the property.

14 That would be paid out of Swift's a/c, being the conjoint

money lying to Swift's credit? Yes, at Tumut.

5-15' For convenience? Yes.

16. Would that a/c for all the deposits be in Swift's name? Yes.

Spiller & paid in his proportion independently.

17. Mr McFarlane. How long was the partnership in existence between your self, Spiller and Swift? It started about 1874, and ran on until about 1880 or 1881, when Spiller was bought out. He was dissatisfied with Swift's speculative propensities, he got frightened and finally he offered to sell his share for I think £16500, Swift and I bought him out.

18. During the time of the partnership, how often would you have a settlement of accounts, either before or after Spiller left? Pretty well every year before Spiller went out.

19. In adjusting the different shares, was everything amicably arranged, or was there any dispute? We never had a dispute.

20. Was Mr Swift always perfectly satisfied with the adjustments made in connection with the partnership? Yes, it was only Spiller that was dissatisfied; Swift and I never had a word; we trusted each other with anything and everything.

Did he take sufficient trouble to see that the a/cs were correct? I think he did so, because I remember the books being sent down here. I insisted on their coming down to some accountant he had



in Sydney so that there should be no doubt about it.

527 What was the result of that? He returned the books. He was perfectly satisfied; I forget who was the accountant, but it was one of his own.

3 Was it agreed upon by both of you to submit the books to an accountant? He did not want to bother about it, but I insisted upon it.

4 Was it merely an audit? Yes.

5 Were you both satisfied? Yes.

6 Did the partnership extend to all the stations? Yes, to all the operations we had, but he was in lots of places that I had nothing to do with. When I was moderately successful where I was he got in with other partners; he got in with a man named Wahn, and they got stations down near Wilcannia and Yagga. I had nothing to do with those transactions; in fact I got into all sorts of speculations.

7 Was he successful generally in his speculations? Yes, he was very successful up to a point.

8 What point was that? Until within a few years of his death.

9 Did you meet with losses after that? No end of losses. The drought set in; he had a lot of stock floating all over the colony; he dragged me into one speculation much against my will, and relieved

the trustees I took his interest and my own also. There was a third party in it. I lost \$4,000 by my good nature.

530 It has been previously stated that the ~~acs~~ were operated upon after Mr Swift's death for partnership a/c? Yes; the properties were carried on a year or two after his death by the trustees and myself.

( The trustees represented the estate of one of the partners and yourself? Yes

2 would the ~~ymoneys~~ that would be received in connection with the sale of stations and stock be treated precisely in the same way as if Mr Swift was alive? Yes.

3 Was his estate credited with the amount due to it? Yes.

534 Are there books to show exactly the nature of those transactions and the results? Yes, every transaction.

(12.1) (4)

13537



*Elizabeth*  
*Swift*

*Elizabeth*

Mrs. Swift recalled and examined.

5'35'

Mr. Parkes: How do you know that the amount paid into the

banking a/c at Tumut was Mr. Swift's money? Because my solicitor

for the purpose of <sup>the</sup> a suit that was going on searched out every

payment by Mr. Swift from the beginning of his a/c up to his death.

6 Who was that solicitor? Mr. Russell; he got the bank to come

in, and make these affidavits with regard to that. The very inter-

est on a/c of McDonald is charged to my husband's private a/c.

7 Where did the money come from that was paid into that a/c? Out

of Mr. Swift's private a/c.

8 Have you got that private a/c? Yes.

9 Do you know whether Mr. McDonald paid any money into Mr

Swift's private a/c, and trusted him to hold the lot? I know of

my own knowledge that Mr. McDonald never had any money, and never

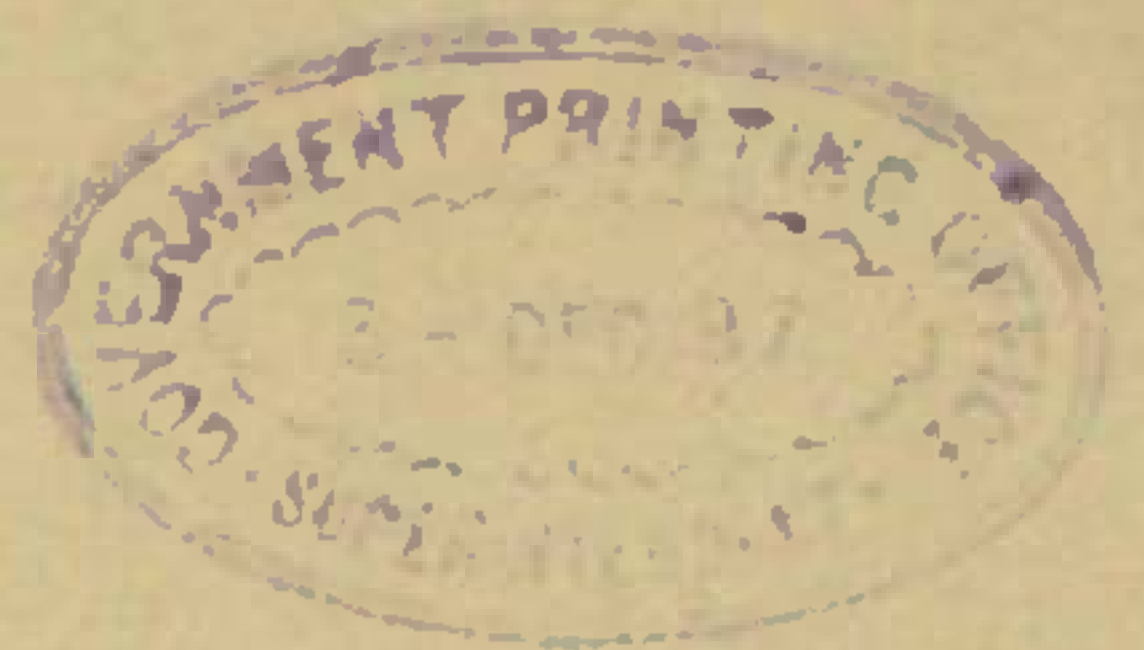
paid any money into my husband's a/c, or to him personally.

5'40

What proof can you give beyond your statement? The Bank pass-

books right through.

35



John McDonald, Esq, recalled and examined.

3241

Chairman. Here is a list of items of Mr Swift's a/c in Mr.

Swift's handwriting; here is an item John McDonald drove £30/5/9,

can you explain that? He may have paid a drover of mine, I cannot

say.

✓ Do you still adhere to your statement that you were not driving for him, and that the money was not paid to you as an employee?

Yes..

3

We examined you with regard to the a/c at Tumut, in which moneys were paid in by Swift; you said that Swift's a/c would very likely prove that you had paid money into his a/c; here is Swift's a/c, what is the explanation? The only explanation is that which I have given, that he was a stock and station agent, and in selling the stock he used to frequently sell them on bills, and here is a proof of that in the entries for discount.

4

*Hrw*

do you account for the fact that in all banking transactions with yourself and Swift, Swift is the man whose name appears as paying in the cash? Not in all cases; if he sold the stock he would naturally get the cash.

5

You say that in the original transactions you advanced money to Swift to start it? I say that any money we had, I had it.

36

*Gates*  
*346* *Phillips*

13537

346 Did you pay it into any a/c? No we bought stock with it.

7 Did it pass through the hands of any Banker? Yes, the Tuncu Bank was where we operated.

8 In whose name was that a/c opened? I had an account there, and he would have one if he had any money.

9 Who opened the a/c for him? did you pay in the money? I suppose he had an a/c of his own in a small way before we got into a large way.

10 What do you call a small way? I presume he had nothing; I lent him money once before I joined him; I never go into a man's private business to ask him what he has.

11 Have you any recollection as to how many sheep were on Wungy-bundie when Mr Swift died? No, but the accounts will show that.

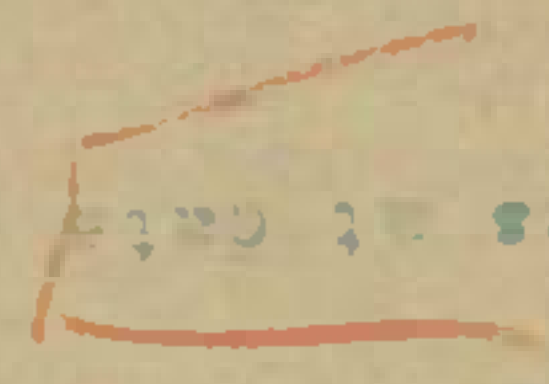
12 Here is a copy of a report made by yourself to the Trustees in May 1887, in which you state there were on the station 85241 sheep at the date of Mr Swift's death? Yes

13 Here is a return made by you under the stock protection Act in which you state that on Wungybundie and Gravesend there were 42000 sheep; how do you account for these figures not tallying? One of these returns was for 1887, and I think the other was for 1884.

14 How do you account for the increase from 42000 to 85,241?

37

38



There were 85241 sheep on the properties at date of death of year. After adding 7480 ewes purchased, and deducting 2100

turns show that 24657 lambs were carried during that

period in the year 1883 I sheared 60204 sheep, and in re-

sheep cattle and horses with which I have furnished you copies

I will commence my report by referring to the returns of

see there-

what you mean now, but you should read the whole of the report. I

there were 85000 sheep; when of these statements is correct? I see

there were 60000 sheep. You say that at the time of Smith's death

Smith's death, at which time according to this statement of yours

death; this document has to do with what happened at the time of

There were 85000 sheep on the station <sup>at the</sup> time of Mr Smith

that, you cannot tell whether it refers to another date or not.

cannot be a further explanation of these figures. There is no date so

how do you account for <sup>the</sup> difference between 85,000 and 60,000? There

are 60000 sheep on the stations Mr. Gwynne's, Graves and Bad Booleoos!

It is referred to Naha and Croaker, you can state that there

There was

There is a copy of a memo of yours, is it in your own handwriting?

and the other return would go to another office.

The property consisted of two stations, one return would go to one

13537

*Handwritten notes:*  
Felt  
Haggard

late S M Swift. Starting from that point it will be seen from my detail statement that amongst the sheep purchased in 1884 911 rams are shown. Those rams I may explain were originally bought by the late S M Swift as a private speculation on his own account. They were taken over from <sup>Hamm + Co's</sup> as his trustees by our firm, 202 were afterwards sold to Messrs W Armstrong & Co of Hilroy at a profit on the original price paid. The sales after 1884 shearing aggregated 8771 sheep, and do not call for any comment; you will however, notice that I show 1629 sheep to have been lost over an exchange with Messrs. Swift and Ham. I sheared the 10309 sheep and kept the wool and their lambs as a set off against the deficiency in numbers received from Mercadool.

It is a long a/c but it shows here that the losses were very heavy.

~~about~~

55-8 I s that the explanation? Yes, there must have been loss according to my report.

9 Do you adhere to your statement that you advanced Mr Swift the original capital or found the original capital to start these transactions? I did not say I found the original capital to start these transactions; I said whatever capital was there he had I found

39

it but neither of us had very much. We were not millionaires in those days.

560 Are you quite sure he did not find the capital? Quite.

1 You are quite sure you did not drive for him? Quite, I did not drive for him.

✓ Your explanation in reference to this a/c is that it was a joint a/c operated upon jointly, although his name is at the bottom of the deposit receipts, we are not to assume that he paid in the money any more than you did? No it was joint moneys.

3 Mr McFarlane. Were you at any time engaged on a salary from the time you first joined Mr Swift? No, never at any period.

4 That is a salary for services in connection with working the stations? I charged a salary as against Swift and Spiller, and if I went away I put a man in my place.

5 Was that when the three of you were in partnership? Yes. I credited myself when the three of us were in partnership with a salary for looking after their business.

6 Mr Thomas. Did you simply pay yourself so much for managing for the three partners? Yes?

7 That was on behalf of yourself and the other two? Yes, it was so arranged.

568 Mr Parkes. If you were absent would your substitute be paid? Yes.

40



MINUTES OF EVIDENCE

Taken Before

The Select Committee

Appointed to enquire into the Probate Duty paid on the late S.M. Swifts estate.

Friday 16th December 1898

Present; Mr Dick Mr McFarlane

Mr Thomas Mr McLean

W.M. HUGHES Esquire in the Chair.

(250)

George Sandell sworn & examined.

Chr: What are you? A Chartered accountant of England & Wales.

I understand you know something of this case; will you explain how you propose to proceed? I propose to exhibit t accts in t same form as they were formerly submitted to yr C'tee. I refer to t accts filed by t ~~exors~~ <sup>executors</sup> under t A B C Statement. I h filed an acct on much t same lines

Mr McFarlane; What is yr competency to investigate these accts, h y u bn any length o time engaged in t capacity o Chartered accountant in England? I h had upwards o 25 yrs practical experience in my professn.

H you had any experience in N, S, W, ? Yes.

H you undertaken to examine t accts in t estate o S.M. Swift? Yes.

6 Did you go into these accts fr an accountants standpoint? Yes most minutely.

In what state did you find t accts generally? I h had a large mass o evidence, books papers & documents presented to me fr wh I h constructed an acct wh I say shd h bn t acct & shd h taken t place o t <sup>prepared</sup> ~~prepared~~ by t Trustees.

H you seen t accts prepared by t Trustees? Yes they are inaccurate, misleadg in numerous instances, t assets were undervalued & there has bn grt concealmnt o assets therefrom.

How does tt statemnt compare w t result o yr investi-  
gati<sup>n</sup>, t is in t 1st place w regard to t amnt declared by t  
Trustees to t Probate Court? T total surplus as per filed  
accts by t trustees was £48,000 odd, I make a surplus o  
£236,268.5.8 roug ly speakg £190,000 in excess o what they  
filed.

Did you go carefully into these accts? Most minutely

Are you prepared to swear tt their statemnt is in-  
correct? T executors' filed accts are absolutely incorrect.

On what did you base yr investigati<sup>n</sup>; what are t  
facts tt induce you to swear so positively tt t accts are in-  
correct? After my examinati<sup>n</sup> o t books & documents I found tt  
t executors supressed a large <sup>number</sup> o assets belongg to t estate,  
& t greater portn o t assets wh they did bring into t estate  
were undervalued, I also found tt some o t assets o t estate  
as entered in t statemnt made f probate as liabilities shd  
h bn entered as assets; tt has had a double effect.

55974  
M. J. [unclear]  
[unclear]

Seog tt it is some time since these valuatns were made how did you arrive at t fact tt they were under valuatns?<sup>2</sup>

I h examined t executors letter books, t executors acct filed in t Equity suit & I h estimated all t figures upon their further accts, therefore no valuatn tt I used in my accts is o my own manufacture; it is entirely t valuatn o t executors themselves.

Had you any data to show their valuatn? I h here t attested copy o t proceedges in t Equity suit No 56; they give t entire value o t property. T only valuations tt I h taken wh are apart fr t Equity suit are t valuatns o t properties disposed o by t trustees after they came into possessn.

15' H you t result o t sales o those properties? 2

properties had by properly sold, Browley & Snubba. These are statn properties. On reference to t acct filed f probate Browley & stock ~~xxx~~ were therein placed at £13,317.10. Et is in t acct filed by t executor on t 5th April 1884

4

16 You made a statement just now to the effect that you based your estimate on this fact that the executors sent in an undervaluation for their own showg. How much in excess does your report show over & above the valuation that has been sent in to the Probate Court?

I think if you would permit me I would like to give the actual figures on each property, Browley is entered in this statement of the executors at £13,817.10, that was entered on the 5th April 1884.

As a matter of fact I have absolute proof that that property was sold on the 2nd April 3 days prior to filing this account of £15,000.

17 Was that before the valuation was made? 3 days before that valuation was made.

18 Was that included in the valuation of the estate of S.M. Swift? It was included in the valuations.

19 Can you give any evidence to show that the executors knew of the sale & also knew of the valuation made 3 days afterwards? I take it for granted of course that their valuation which they submitted on 5th April is a dummy valuation in this way. Mr Hann an executor

33976  
Hann  
Mann

obtained the assistance of Mr James Smith Lavender who was a former partner of Mr Hann's, <sup>and</sup> Mr Henry Webb who was the <sup>station</sup> ~~store~~ manager at Formosa, to sign a valuation that Mr Hann had written out. It is in Mr Hann's writing; he signed it on the 5th April. I will show you on reference to Mr Hann's letters that he had sold the property prior to that.

20 <sup>one</sup> Was he ~~the~~ executor? Yes; this is a press letter of Mr Hann's to Mr Henry Webb who valued the station, the date of it is the 2nd April Wagga Wagga 1884. At page 413 this occurs; This is Mr Hann's own letter book containing the whole of his press letters "I am glad to say that this morning I have closed the sale of Browley & this will ease me another £15,000."

What do you take that expression to mean "ease me of £15,000"? That £15,000 more is brought into the estate to enable them to pay some of their liabilities.

Whose liabilities? The testator's liabilities; the private liability of the estate. I would refer to another of his letters, this is a press letter copy book of the telegrams sent by Mr Hann during the business, page 191. This is Mr Hann's signature to the telegram

6

it is addressed "Melbourne, J. & A. Albert Mack  
consulted. Can arrange accept £7000 cash, £1000 12 months,  
balance 2 yrs." It is signed by Mr P. Hann <sup>one</sup> of the executors.

On the next page there is a letter to Messrs C.L. Griffiths &  
Co Albury. They were the agents who sold this property "Macks  
conditional accepted, arranging detail & agreement thro  
Macks at Melbourne 2nd April 1884 signed P. Hann". There is a  
word blotted out.

3 Can you produce anything further to show that the property  
was absolutely sold for £15,000? I can. Mr Hann wrote a letter  
from Wagga Wagga dated 4th April 1884 to R.M. Pitt Esq Sydney  
"I have sold Browley & stock to Joseph & Albert Mack so that when  
delivered  
settled it will ease me £15,000 more."

4 Was it before or after probate? The day before probate  
was sworn. I have an original letter from Mr R.M. Pitt to Mr P.  
Hann dated 5th April 1884 "I have yours of the 4th, glad you have sold  
Browley, £15,000 is a fair price." I have examined the accounts prepared  
by the executors, Mr P. Hann & Mr C.H. Croaker, <sup>filed</sup> ~~filed~~ in the Equity  
suit 50 - 60 & I find the property was sold & the following amounts  
were received; £7,187.17.2 cash; a bill at 12 months for £1,000

a bill at 2 yrs f £4,012.8; bills f interest amntg to  
£334.11.4 & t sheep wh were sold to t Messrs Macks £2,552.8  
makg a total o £15,178.15.10.

Does tt agree w t sale note, referred to previously?

Yes.

26 Chr; As t result o yr investigatn do you desire to  
make a statemnt? Yes I h prepared t following sets o accts

*Handwritten:*  
Handwritten  
Mowford  
Mowford

*Handwritten:* f



(Set out as in copy)

Statement of Assets and Liabilities - (Probate "A" account)

Assets

To 22038 acres in Queensland per Exhibit A 1			
11600 Wethers do	19469	12 0	
" J. W. Cox	896	3 6	
" Australian M.P.S.	2330	14 0	
" Mount Kembla Coal shares	1050	0 0	
" Sydney Lloyd's	250	0 0	
" G. Lingcombe	88	6 0	
" G. H. Croaker	186	7 3	
" 2/3 <sup>rd</sup> Turra Falls Run	400	0 0	
" 2/15 <sup>th</sup> Georges River Land	500	0 0	
" Hill crest, Veteroham	4000	0 0	
" Household furniture	550	0 0	
" Buggy, harness + sundries	100	0 0	
" 8 cattle £80, Horses £20	100	0 0	
" Cooks River Land	700	0 0	30621 2 9

(The above assets were entered in the afs filed for Probate by P. Hann and C.H. Croaker at £26021.10.9)

The following assets were concealed from the afs

filed on application for Probate, viz: -

To Sundry Credit balances per Exhibit A 6	753	6 1	
" Cattle and Sheep	6176	16 11	
" Arington Contract	1772	1 2	
" Cox Dowling & Co P/notes	9808	2 6	
" Arington Profits	1482	6 4	
" Bills Receivable	3403	18 9	
" M. Bradley + others	2135	4 0	
" Wool ventures &c	900	0 0	
" Shares	1252	10 5	
" M. body	256	7 6	27940 13 8

21 1/2

58561 16 5

7

9

self (dark) Handwritten

at date of Testators death 18 February 1884 per G. Pauldell

Liabilities

By Bank New South Wales per Exhibit A 13 & 6			
" do Bourke branch do do			
" do Walgett do do do	137	6 10	
" do Brentavine do do do			
" do Wagga do do do			
" do G. H. Ray do do			137 6 10
" Drovers do A 14			0 0 0
" G + P. Mein do A 15			15000 0 0
" London, Liverpool + Globe do do			2400 0 0
" Wright Beaton & Co do do			1910 4 0
" Commission on Sheep do do			0 0 0
" M. body do do			0 0 0
" Abbott + Allen do do			64 18 7
" Oliver Smith & Co do A 8			9441 0 0
" Thos. Brown & Co do A 7			2866 5 0
" A. M. L. + Co Ld do A 16			879 18 3
" Surplus Assets over liabilities - Carried to as per			
General Balance Sheet "A"			25872 3 9

58561 16 5

21

7

58561 16 5

*76* - 10 -  
 Statement of Assets and Liabilities (Probate "B" account)

To Baden Park Station	per exhibit B1	68123	9	0	
" Mimosa West Station	do B2	30123	0	0	
" Browley Run	do B3	16718	7	10	
" Sumbha Run	do B4	12869	15	6	
" Bills Receivable	do B5	3344	4	0	
" Sundries	do B6	302	10	0	131,481 6 4

The following items were concealed from the account filed on application for Probate

To Stock of wool & wool in transit	B7	5393	5	0	
" Surplus from wool	B8	358	14	1	
" Land not included in valuation	B9	7671	19	0	
" Sundry debtors	B10	1418	13	10	
" Shares	B11	516	13	4	
" Horses & Cattle	B12	1340	0	0	
" Refunds & Rent adjustments	B13	234	10	4	
" P. Harris' debt	B14	2970	2	8	19,903 18 3

2 1/2 7 7

151,385 4 7

10

at date of Testator's death 18 February 1893 per G. Sandell

Liabilities

By Overdraft B.N.S.W. per exhibit B15	44197	2	10	
" do Baden Park do B15	"	"	"	
" do Sumbha do B15	84	18	5	
" do Mimosa West do B15	"	"	"	
" Interest do B15	1373	14	9	45,655 16 0
" Blackett's dish'd bill do B16	5502	10	0	
" Mannings do do B16	339	15	4	
" Interest do B16	"	"	"	5842 5 4
" Station liabilities "				
" do Mimosa do B17	"	"	"	
" do Sumbha do B17	"	"	"	
" do Baden Park do B17	"	"	"	
" Bills Payable "				
" Cody M do B18	149	8	7	
" Copeland Co do B18	83	10	4	
" McPherson Co do B18	947	14	0	
" W. & H. McFarland do B18	484	9	0	
" P. & J. Lyson do B18	449	3	0	
" J. Brown Co do A 7	"	"	"	
" Moffatt Co do B18	892	4	0	3006 8 11
" New Zealand L & M a Co Ltd do B19	"	"	"	3172 0 9
" Pitt Son & Badger do B20	"	"	"	0 0 0
" J. Sinclair do B20	51	5	9	
" Copeland Co do B20	53	10	5	
" W.C. Hunter do B20	2	12	0	107 8 2
Surplus Assets over Liabilities				
Carried to General Balance Sheet "A" 93,601 5 5				

21

7

151,385 4 7

Statement of Assets and Liabilities (Probate "C" account)

Assets

To Mungie Sundie, Boolvora	Exhibit C1	78750 0 0		
" Household run + plant	Exhibit C2	17000 0 0		
" Check on Stations	do C3	42620 0 0		
" Horses on Stations	do C4	1500 0 0		
" Cattle on Stations	do C5	21586 0 0	161456 0 0	

The above assets were entered in the a/c filed for Probate by P Hann + C.H. Croaker at £106500.

The following assets were concealed from the account filed on application for Probate

To Wool in transit	Exhibit C6	1814 18 7		
" Sundry debtors	do C7	1859 2 8		
" Gywyder River Pumping Co	do C8	912 10 0		
" Refunds from Treasury	do C9	347 10 0		
" Rent adjustments	do C10	241 8 3		
" S.W. Swifts Sheep	do C11	6298 14 0		
" J Mc Donald's over drawn salary	do C12	310 7 8	11794 11 2	

214

7

7

173250 11 2

11

at date of Testator's death 18 February per G. Sandell

Liabilities

By Overdraft due to the main Bank of Australia as per Pass book	54235 1 10		
" Interest thereon to 18 February 1884	2220 12 10	56455 14 8	
" Surplus Assets over Liabilities carried to General Balance Sheet "A"			116794 16 6

21

7

7

173250 11 2

General Balance Sheet "A"  
7/5/76

Dr re estate of late S. M. Swift

To Surplus Assets from Statement "A" } 25,872 3 9

To Surplus Assets from Statement "B" } 93,601 5 5

To Surplus Assets from Statement "C" } 116,794 16 6

Total surplus 236,268 5 8

Per

17 Mr McBarlane; How did you arrive at these valuations  
which are put forward as assets? Everyone of the figures which I have  
used have been based upon the figures submitted to the Court by Mr  
Hann & his co-executor, not one of these valuations which I used  
of my own imagination; they are the result of my examination of the <sup>letter</sup> ~~ledger~~  
<sup>and</sup> books & accounts which have been filed in the various courts by Mr Hann.  
I can point out the reason of everything for I have a schedule  
appertaining to every item in the account.

18 With regard to the concealed assets have you any data to  
show that the executors had any knowledge of these assets. Did  
your examination of the accounts together with the comparison of the liabilities  
& correspondence bear out the statement that they had any know-  
ledge of these concealed assets when the valuations were made? I  
can only give as an absolute assurance that they had the knowledge  
of <sup>one</sup> item & a very large one, that being Messrs Cox Dowling &  
Co's bills. That is an item of £9,808.2.6. I have absolute proof  
that the executors knew of it when they filed the statement.

19 Mr McLean; Were they payable or overdue? They are  
bills receivable; they are assets.

30 Were they current at t time t statemnt was filed? Yes.

| Mr McFarlane; W regard to consignments o wool stated to be in transit, wd it be possible f t executors to know tt fact? Yes I h absolute knowledge tt they were perfectly cognisat<sup>t</sup> o t fact tt t wool was in existence & I h letters fr Mr Hann provg tt.

32 H you made an affidavit w regard to yr investigatn & has tt bn submitted to t Premier or t Crown Solicitor? Yes it is as follows:

14

83976  
Journal  
M. H. H.

On the <sup>Twenty-fifth</sup> day of October in the year  
one thousand eight hundred and ninety eight  
George Sandell of ~~St. Charles~~ <sup>Coast</sup> Sydney in the Colony  
of New South Wales Chartered Accountant, being  
duly sworn maketh oath and saith as follows

To facilitate reference I have divided this  
my affidavit into six Divisions A. B. C. D.  
E. and F. viz:

- A. Dealing with the Undervaluation of the Estate Assets.
- B. Dealing with the Concealed Estate Assets.
- C. Dealing with Partnership Claims.
- D. Dealing with Land Acts, Evasions & Dumpings.
- E. Dealing with the Administration of the Estate  
by the Executors Thomas Hann & C. H. Croaker
- F. Reply to Mr. P. Harris Treasurer's Statement of 27 Sep 1898.

2-4

Division "A." Undervaluation of the Estate Assets.

I have carefully inspected and examined  
the original valuations filed by the said Executors Mr.  
P. Hann & Mr. C. H. Croaker with the application for  
Probate, and that I find as follows.

2-4

Baden Park and Moria Plains - were supposed to  
have been valued by James Smith Lavender & H. Webb  
Mimosa West, Browley and Snubba by

Harvey Selman and Thomas Godrieth and  
Kungie, Bauloroo, & Graveland. by Mr. R.  
M. Pitt and Mr. H. L. Badgers.

The said Valuator's <sup>connection</sup> ~~relationship~~ with Mr. P. Hann  
a former partner of the said Mr. P. Hann's - vide  
Gazette notice 6 Sept. 1878. Mr. P. Hann retired  
"from the firm of Messrs. Wilkinson, Hann, Minchin &  
"Waters by Berkeley Fitzhardinge" Solicitor. Wagga  
"Wagga"; that the said Henry Webb was an  
employee in the services of the Testator. that the  
valuator Harvey Selman, was also a former  
partner of the said Mr. P. Hann - vide Gazette

"Notice 10 March 1880". Mr. P. Hann retired from the  
"firm of Messrs. Selman, Hann & Co. witness  
"By Berkeley Fitzhardinge, Solicitor Wazza Wazza:  
that the valuator Thomas Hudlett was also an employe  
in the services of Testator. The said valuator  
Messrs. R. M. Pitt and H. S. Badger - had for many  
years prior to Testator's death, extensive business  
~~relationships~~ <sup>dealings</sup> and at the time of his death, ~~deceased~~ <sup>Testator</sup>  
occupied Chambers in the same House of business.

I am ~~of~~ <sup>of</sup> opinion that these valuations were arranged  
~~by the executors~~ <sup>by the executors</sup> Mr. P. Hann  
and Mr. C. H. Crocker with the object of undervaluing the estate.

Baden Park and Moira Plains - Valuation made after Testator's death  
by Mr. P. Hann + MCH Crocker  
Extract from Station press letter copy book N<sup>o</sup>. 11 page 365  
written by the said Mr. P. Hann to the said valuator:-

"James Smith Lavender. 24 March 1884" My dear Lavender  
"I must get the Assets certified to and valued by two competent  
"disinterested persons, now I wish to know if you from your  
"general knowledge of the Baden Park Country and Stock  
"are willing to give a valuation for me, if I supply full  
"details and particulars for you to do it on, Can you find  
"another person about there who would do the same, perhaps  
"some person may be travelling through. Boulton  
"as sole valuator would not do it without inspection  
"of the Station freeholds &c. You might see Webb  
"he would be the very man."

Extract from press letter copy book N<sup>o</sup>. 11, page 377. written by  
Mr. P. Hann to valuator J. S. Lavender. 26 March 1884.:-

"My dear Lavender, I have your message re Baden Park  
"valuation and have replied offering to send all particulars by wire  
"if you can arrange with Webb to act as valuator with you  
"and I will send all particulars and my view by wire"

Extracts from press letter Telegraph book N<sup>o</sup>. 5. page 175.  
written and sent by Mr. P. Hann to Valuator Henry Webb  
a Station employe. 26 March 1884 "see Lavender  
"about particulars for valuation he will explain",  
same book, page 176, same date, telegram ~~written~~ <sup>sent</sup> by the



53976  
M. P. Hann  
Owen

said Mr. P. Hann to the said valuator J. S. Lavender Webb explains leaving tomorrow if will act value with you will supply all information by wire to complete today" [extract from same book, page 177. same to come, come date

" Baden Park known as Moama Blocks S and T Moria Plains A worked together as one Station comprising an area 208,000 acres rental £75 per annum fenced and improved divided in eleven sheep paddocks and three small paddocks one well twenty four large and small tanks House woolshed Huts and buildings working plant including horses worth £1800 stock thirty one thousand as follows 3141 ewes aged 7032 four tooth ewes 9124 two and four toothed ewes 4038 two tooth wethers 6948 weaners 200 ration sheep value fifty thousand pounds with everything given in one hundred bales of wool thousand pounds 120 words."

Copy of J. S. Lavender & Henry Webb's valuation filed by said executors. Mr. P. Hann and Mr. C. H. Crocker

" Estimated value of Moria Plains and Baden Park Station the property of Swift and Hann.

" Sheep	15,000	0	0
" Country	17,000	0	0
" House working Plant & Woolshed	5,130	0	0
" General improvements Tanks &c	13,085	0	0
			<u>£50,715 0 0</u>
" Tanks 105,900 yds at 1/2	£	5,295	
" Fencing 121 miles at £45	£	5,445	
" do 67 " " £35	£	2,345	
	£	13,085	

signed James Smith Lavender  
Henry E. Webb

Witness  
C. H. Roope

Solicitor. Kay

(No particulars or details of land or sheep.)  
to follow on see back - 3

17

4 Copy of original in hand writing of W. P. Harris

4 " Baden Park sheep show 23382

4 expected stragglers 400

4 lambs 13000

4 36782

4 Cattle + a number of horses not wanted for working

4 the place that Webb thinks ought not to be given in

4 price  $\frac{1}{10}$  65000

4 terms half cash - balance 1 + 2 years bearing 7%

4 for use in

The following extract ~~written~~ from Mr. P. Hann's letter to the Testator dated May 2. 1883, see press letter Copy book N<sup>o</sup> 31. page 153, ~~the value of the property as stated by the Valuator by the Valuator in his report~~

" Baden Park 128,000 acres  
" with 21,000 sheep at 40/ } 42,000 0 0  
" Maria Plains  
" with 12,000 sheep at 35/ } 21,000 0 0  
" £ 63,000 0 0 "

Points to the fact that the arranged valuation - was an under valuation  
Extract from Mr. P. Hann's letter - press letter book N<sup>o</sup> 11. page 398  
29 March 1884. to Valuator J. S. Lavender

" Dear Lavender, I have yours of yesterday with  
" the Baden Park valuation and thank you for being  
" so prompt I think the first memo of Webb rather  
" a high valuation and should be glad to see such  
" come out of the place I find you did not estimate  
" the value of about 100 Bales of wool that Webb  
" though was on the place and as your views  
" exceeded mine by about £ 700 I am going to leave  
" the wool out of the schedule altogether

Extract from original letter written by Mr. R. M. Pitt  
9 April 1884 to Mr. Hann "I have a buyer for  
" Baden Park if you are willing to sell - I mentioned  
" £ 50,000 as the probable price"

Extract from press letter book N<sup>o</sup> 5. page 200 Telegraph from  
Mr. P. Hann to Mr. R. M. Pitt 10 April 1884. "Want  
" sixty thousand Baden Park left map in room if  
" cannot find it advise will bring mine down"

Extract from press letter book N<sup>o</sup> 11. page 455 10 April 1884  
Mr. P. Hann to Mr. R. M. Pitt "My dear Pitt. Yours of the  
" 9<sup>th</sup> to hand I wired you today £ 60,000 for Baden Park  
" Lavender & Webb for valuing the place went into  
" figures and bought it a little over £ 60,000 in its  
" present state with a change and favorable season  
" it should bring £ 75,000 to £ 80,000 with 60,000 sheep on it."

33276  
 Bessie  
 1884

Extract from press letter copy book No 12, page 63  
 written by Mr. P. Hann to Messrs. F. Bacon & Co.  
 Gunnedah 20 June 1884 "Dear Sirs, Your letters  
 " of the 12 and 16 to hand. Baden Park. I am not inclined  
 " to sell this property yet as I am in season & everything  
 " else against doing so profitably just now. Although  
 " only 31000 sheep now on it and never having had  
 " stock losses there worth mentioning still the property  
 " has cost me over £60000 and no buyer would  
 " care to give £70000 for it."

Extract from press letter <sup>copy</sup> book No 12, page 204 written  
 by Mr. P. Hann to Mr. W. Bates of Melbourne 15 June 1885.  
 "Dear Sir Baden Park is for sale I want £70000  
 " for it"

4  
 5  
 Can Mr. P. Hann <sup>state</sup> that this property was overvalued  
 for business or financial reasons. I venture to say  
 that the valuation was improperly arranged  
 and that it was undervalued fully 25 per cent.

3  
 Mimosa West Valuation. for Probate *viz*; see press letter  
 copy book No 31 page 13

This valuation was written out by Mr. P. Hann and signed  
 by the Valuers - Harvey Welman & Thomas Rodwell. *viz*;

+  
 to be placed  
 below

- " Mimosa - Rental £ 50 p<sup>er</sup> an
- " Original area 49500 acres now reduced by
- " Conditional purchases but we hold by Crown and
- " other leased lands about 43500 acres
- " 960 acres freehold hand est 1043 0 0
- " 320 " Conditional purchase 80 0 0
- " Fenced and subdivided into 13 large and small
- " paddocks 21 tanks - woolshed - Hut, House
- " outbuildings, stables, hay shed &c
- " Furniture & Stores £200, 14 Horses £114
- " 10 Head Cattle £25 - 28000 sheep of about
- " the following specifications 19200 Ewes  
 8400 Wethers  
 455 Rams
- " Value of the run with improvements 28000
- " sheep, Furniture Horses and Cattle *viz* 25000 0 0

197 29123 0 0

+ note above to come in here

The probable Value of the property

Extract from W. P. Harris's letter to the testator - May 2 1883  
see pen letter Copy book No 31 page 157

" Minna 49500 acres 14 Paddock with 23000 sheep  
" at 25/- £ 287500.0.0

to this amount add difference in the number of  
sheep between dates - <sup>(2 May 1883 + 18 Feb 1884 being)</sup> an increase of 5000 @ 10/- 2500 0 0

~~and~~ land outside - in station interest - see W.

Harris's letter - pen copy book No 31 page 437

Oct 3. 1883 not included in amount £ 28750.0

" ~~C Virginia 1400 to Freehold 960 acres~~

- " Land Freehold 960 acres
- " CP's S+H to Freehold 640 acres
- " CP's outside 3848 " in S+H interest
- " TP's applied for 1280 "
- " " " pre lease 1520 "

also <sup>add</sup> for land taken up between October 3. 1883 and  
~~(+ Freehold death)~~ 18 Feb 1884 - <sup>date of testator's death</sup> making together

the following -

960 acres of Freehold	45/-	2160
640 " CP to Freehold	32/-	1024
<sup>acres</sup> Austins 400 CP of deposit + of improvements = 10/-		
do Behans 640 " " " "		
do Codys 320 " " " "		
do Davies 400 " " " "		
do Faynes 320 " " " "		
do Gores 640 " " " "		
do Hallorans 640 " " " "		
do Jouralls 640 " " " "		
4000 " " " "		2000 0 0
do Gores 96 MCP paid		0
do Hamms 120 " " "		120
do Mitchells 80 " " "		80
1280 IP's improvements	20/-	1580
1520 " pre lease	2/-	152
		<hr/> 6912

less Value of lands included in Probate of 1123

5789  
~~5990~~  
20 £ 37089.0.0

March 25 1885

93/10 Alternated lands on Minnesota West			
see letter book 12/503 in P. Hann's writing			
Swift Hann	Freehold Blocks N <sup>o</sup> 10. 9. + 11	960 acres	
	Pre-lease + A.C.P. in virtue of N <sup>o</sup> 9	960 do	
	Pre-lease " " "	960 do	
	I.P.'s N <sup>o</sup> 34. 5. 19 + 22 not called up or paid for yet	430 do	
W. J. Gore	C.P. N <sup>o</sup> 30	640 acres	
	Prelease N <sup>o</sup> 82/47	1020 acres	2560 do
M. Cady	C.P. N <sup>o</sup> 39	320 acres	
	ACP applied for (194 allowed)	320 acres	
	Pre lease N <sup>o</sup> 83/72	960 acres	1600 do
J. G. Small	C.P. N <sup>o</sup> 16	640	
	part of Prelease 83/131 about	200	840 do
W. Payne	C.P. 14 and part N <sup>o</sup> 16 about	500	
	Prelease 79/22	960	1460 do
W. Mitchell	C.P. N <sup>o</sup> 17		80 do
	Prelease applied for but not granted		
H. Lee	C.P. about	80	
	Pre lease 84/24	1200	1280 do
W. Fisher	C.P. N <sup>o</sup> 14	640	
J. Keenan	" 6 + 12	640	1280 do
J. Elliott	" 4 + 16		360 do
A. R. Orr	" 7		320 do
H. Austin	" 9		400 do
J. Hanson	" 21		120 do
W. J. Gore	" 13		96 do
W. Purser	" 23		640 do
H. Sellman	" 4		40 do

14386 acres

Improvements.  
 Cost of fencing per W. P. Hann \$3178.15.0  
 do tanks " do \$950  
 \$4128.15.0

C. Hale and Hale Int. are not allowed for as they are not surveyed 21 1280 acres

Compare this with the filed valuation - Case W. P. Hann says he did not correct the land from Probate

and in further confirmation that land was conveyed  
 Equally and refer to

~~Accepted by the Court of the State of Victoria  
 not included in the list of land to be sold~~

Mr. Hannis' letter to Messrs. Wilkinson, Graves  
 & Lavender May 1. 1884 - press letter book No. 13,  
 page 9. per following extract

960 acres freehold land  
 640 " Conditionally purchased and  
 7516 " secured in different parts by Selections  
 improvement purchases and measured portions.

Can Mr. P. Hannis state that this property  
 was overvalued for financial and business  
 reasons.

4 " Browley Valuation for Probate <sup>filed</sup> 5 April 1884  
 see press letter Book No. 5. 1. page 4, as follows:-

Browley 12 miles from Marandoo

6824	acres	Conditionally purchased land	
40	"	Freehold	
<u>6864</u>	"	@ 30/-	10296 0 0
10500	Sheep	viz 3700 aged ewes	
		6600 5yr old overland wethers pure	
		200 mixed Young ewes & rams	
		at per head for the whole 5/6	2887 10 0
		2 horses @ 16. 6 head Cattle @ 18	34 0 0
		Furniture & Sundries	100 0 0
			<u>11337 10 0</u>

The land is all fenced divided into  
 several paddocks. 3 wells on it 6 Tanks  
 house. woolshed. Hubs & Dropping yard.  
 Wagga Wagga. 26 March 1884.

(Note 3600 + 1500 acres of pre-leases are  
 not included in this valuation)

The above property was sold prior  
 to the filing of the Probate a/c, to Messrs. a & J Mack  
 and the following are the particulars of  
 each sale - viz:-

see original letter of P. Ham to H. Webb April 2 . 1884 - ~~in~~ (filed)

nothing  
affair

"I am glad to say that this morning I have closed for the selling  
of Browley & this will leave me another \$15000"

(3)





These extracts to  
go in page 8 as  
marked  
S

Extract from letter written by W. P. Hann to Messrs  
C. & Griffiths of Albany, vide press letter <sup>copy</sup> book No. 11  
page 235 Feb 28 1884 "Dear Sirs - Browley. I had a  
" buyer wanting to inspect the lot for £14000 but I  
" declined at at our price it is at present the cheapest  
" place in Australia" same to same March 15  
1884 same book, page 307. "At 35/ per acre it is  
" the cheapest place offering in the Colony"

Extract from letter written by said W. P. Hann  
to W. S. Payne April 3. 1884 same book page 418  
" The Messrs Mack have bought Browley and  
" will I think take delivery in 14 or 15 days"

Extract from letter written by said W. P. Hann  
to Messrs Mack - April 3. 1884 vide same book,  
" page 419, "Dear Sirs In accordance with your  
" wish in yesterday's second telegram I have to-day  
" had prepared by Messrs Fitzhanding & Coleman  
" the agreement for the purchase and sale of Browley  
" property and stock to you"

Extract from letter written by said W. P. Hann  
to Wm Swift April 5. 1884, vide press letter copy  
" book No. 7. page 378. "I have this week sold Browley  
" and the stock to Messrs J & A Mack of Victoria  
" which will reduce the account £15000 more."

Mr. P. Hann writing to W. Flanagan on March 24 and April 12. 1884 says "I have 24,000 sheep on Kubba -"

7410 from Minosa  
 5560 " Tyson McPherson  
 4400 " and McFarland

90 Rams			
6800 Hanns			
<u>24260</u>	5512	Sold to Pope (Bates III)	1792 6 0
	8614	" Winter (do 108)	4522 7 0
	1000	" Halloran (Eisby)	425 0 0
	163	" do (do)	31 0 0
	6800	Hanns	- - -
	90	Rams unsold	188 0 0
	<u>2081</u>	Sheep unsold	780 7 6
	<u>24260</u>		<u>7739 0 6</u>

Realised

£ 12869 15 6

Can Mr. P. Hann state that this property was overvalued for financial and business purposes.

6 necessary, If further confirmation of my statement, that the <sup>existing</sup> estate properties were undervalued is necessary, I refer to Mr. P. Hann's letter of May 2. 1883, written to J. S. Lator, wide press letter copy book

No 31. page 157. ~~is~~ - in which he gives the value of the properties as follows

" Baden Park with 21000 sheep	42000 0 0	
" Moira Plains 12000 "	21000 0 0	63000 0 0
" Minosa west 23000 "		28750 0 0
" Browley 37700 "		13714 0 0
" Smebba none		<u>2500 0 0</u>
"	59770 sheep	107964 0 0

add there to <sup>increased</sup> ~~the~~ number of sheep

at 18 Feb 1884. 101074

less included in above 59770

41304 at 7/6 15489 0 0

additional land - Minosa west 2000 0 0

Under value of Smebba 2500 0 0 19989 0 0

127953 0 0

Extract at back to come in here.

24

\* to go in  
page 9 after  
Realised

W. F. Falkiner per Poll Jan Badger's  
Sale note gives the following as the  
settlement.

Cash	2368.5.0
T. N 12mo	1250.0.0
P N 24mo	1250.0.0
Interest Bills	262.10.0
Advertising	6.15
Commission	125.0.0
	<hr/>
	£ 5262.10.0
	<hr/> <hr/>

33976  
Magnum  
2

These various properties were represented by  
Mr. P. Hann + Mr. C.H. Croaker, as per their application  
for Probate, on the 5 of April 1884 to be  
of the value of £ 100365. 10. 0 — or nearly  
<sup>2.8</sup>~~2.8~~ per cent under his own Statement of May 2  
1883.

7  
Mungie Bunde, Booloroo & Grassew valuation.  
Extract from letter of said Mr. P. Hann to Mr. John  
McDonald Station Manager - March 19. 1884, vide  
press letter copy book No. 7, page 373. "Dear McDonald  
" Today I have yours of the 14 from Boonooke I think  
" it would have been much better to have talked over  
" matters and we could then have made out the  
" statement of the Station Account necessary before  
" we can ask for Probate."

Extract from original letter of Mr. John McDonald  
" Oxford Hotel Sydney March 20 1884 to said  
" Mr. P. Hann. "Dear Hann Herewith I send you  
" approximate statement of our places which  
" you can make out to your own liking these  
" are quite near enough"

" Total leasehold 190000 acres fenced + improved  
" Original freeholds on whole 35000 acres  
" Sheep 60000 —  
" Cattle 4000  
" Horses 200  
" Plant &c worth say £ 2000 —

Extract from letter of said Mr. P. Hann to Mr.  
H.S. Badgery March 24. 1884, vide press letter  
Copy book No. 11 page 364 "My dear Badgery,  
" You and Pitt kindly offered to give me the  
" Mungie Bunde Valuation and if you are still  
" prepared to do this I should be glad enclosed  
" I send all the particulars that McDonald  
" sent me to work upon + I trust they will  
" be sufficient for you"

25

Extract from original letter of W<sup>th</sup> M. Pitt, Esq<sup>r</sup> to said W<sup>th</sup> Hamer 28 March 1884. "My

" dear Hamer,

" Valuation of the Station is as follows.

" Land	45,000 0 0
" Sheep	24,000 0 0
" Cattle	8,000 0 0
" Horses	1,000 0 0
" Runns	10,000 0 0
" Plant	3,000 0 0
"	<u>90,000 0 0</u>

" Do you consider this too low, if so ~~with~~  
" vice in the morning I don't think it  
" would realize any more just now, even  
" if as much, but with time of course it  
" would be worth considerably more"

Extract from letter of said W<sup>th</sup> Hamer to W<sup>th</sup> M. Pitt March 29. 1884 vide press letter copy book N<sup>o</sup> 11 page 393. "I have yours  
" of yesterday & I think you are altogether too-  
" low in your valuations as a whole  
" separately they are right enough, but at  
" least £10,000 more has to go on for  
" value improvements on the freeholds and  
" leasehold lands and £3,000 to £5,000  
" more on the sheep I think you over-  
" looked the improvements, the bare cost  
" of 35,000 acres of land at 25% would nearly  
" be £45,000 we had better put a reasonable  
" value on so as not to have any questioning  
" over the matter and I don't think that  
" undervaluing will do the estate and partners  
" good generally."

Extract from letter of said W<sup>th</sup> Hamer to  
W<sup>th</sup> H. S. Badgery 29 March 1884 vide press  
" letter copy book N<sup>o</sup> 11 page 395 " My dear Badgery

3351  
I have your wire about wanting the  
separate quantities of freeholds & selected  
lands in Mungie Rindie, Grassland and  
Boolboroo and have wired McDonald  
to send them direct to you I do not see  
any reason for specifying the acreage of  
each block & on each run as it entails  
so much trouble and gives no better  
result. You can only give a general  
value of the land, and not separately  
value each block. The whole of the  
35000 acres is freehold. If they had any  
selections there in other names they  
could not place a value on them and  
must treat them only as private leased  
lands. I am also writing to Pitt as the  
valuations are too low you only allow  
cost price for the land and nothing for  
the value of improvements over the  
whole freehold and leasehold lands."

Extract from original letter of W. H. Badger  
to the said W. P. Ham & March 1884

"I have made the valuations and handed  
them to Abbott & Allen -

after arrangements the following appears  
agreed upon, and as such was filed  
by the Executors W. P. Ham & W. C. Crocker

31 March 1884

"We the undersigned hereby certify that  
we have personal knowledge of the runs  
hereunder mentioned in which the late  
Samuel Moffatt Swift was interested at  
the date of his death and that the fair  
and reasonable values of the same and  
the stock thereon are as hereafter set  
forth Mungie Rindie Grassland & Boolboroo

"	Stations County of Cowralie Gwyder	
"	District New South Wales	
"	Total original leaseholds about 190,000 acres	
"	all fenced and improved	
"	Freeholds land about 35,000 acres @ 30/	52500 -
"	leaseholds and improvements thereon	15,000 -
"	Plant + belongings	2500 -
"	60,000 sheep more or less	@ 9/ 27000 -
"	4000 Cattle do	8000 -
"	200 Horses do	1500 -
"		<hr/>
"		106500 -

The valuator never inspected the Stations and no details of the various portions of lands were given.

On the 4 May 1887 Messrs Pele Borradaile & Co of Sydney prepared a Statement of accounts made up to the 18 day of February 1884 - this said Statement was signed by the said firm and Mr. John McDonald with following certificate " The above balances have been taken from the ledger accounts prepared by us from the books and vouchers of Messrs John McDonald & Co " The value of the Freehold lands being therein stated to be 45/ per acre.

Extract from letter of Testator to Mr. Maude 26 August 1882. vide press letter copy book page Testator's valuation of these properties with 75000 sheep and 4000 Cattle thereon was £ 150,000.

There can be no doubt that the number of sheep on the Stations was improperly stated - and in place of 60000 sheep there should have been 85211 - the Cattle being also under stated as to numbers and values -



8394  
 8394  
 8394

Extract from report written by Pele Borradaile  
 & signed by said John McDonald  
 4 May 1887. see press letter copy - "There were  
 85211 sheep on the properties at date of  
 death of late S M Swift" and this is  
 confirmed as per Original Stock Assessments  
 made on the Station returns

42000 sheep in Mungie Bendie and  
37000 do Koolvoo  
79000 closely agreeing with the  
 number given in the Report of  
 May 4 1887. proving John McDonald  
 withheld 25211 from the number  
 stated to these valuers. there were  
 also other properties withheld from  
 the valuation and will be found in  
 Division B Nos 41 to 54 which  
 should have formed part of Estote's  
 Estate and upon which duty should  
 have been paid - bringing the  
 total net value <sup>of this portion of the estate</sup> to £ 173250. 11. 2  
 instead of £ 106500 as in the filed  
 account for Probate - under Schedule B  
 Can W. P. Harris say that these properties  
 were ~~over~~ <sup>over</sup> valued for financial  
 and business reasons.

Salvo (Division B - Concealed Estate Assets &c

- 1 Credit bank balance at Head office 399 4 5
- Bank New South Wales - entered on the  
 filed accounts as a liability - diverting  
 Probate duty double the amount viz  
 £ 795. 8. 10 see Equity Unit 5060 page 3
- 2 Credit bank balance, Mackall branch 232 0 0
- Bank New South Wales - Credit of J. Miller  
 vide Mr. P. Harris's letter 5 Aug 1884 page 352

29

3 Credit bank balance - at Wilcoona credit 100 19 7  
 Edward Luttrell. Commercial Banking  
 Company of Sydney

4 7900 Lwes purchased by testator 11 Oct 1883 4699 0 3  
 of W. W. Bates acting agent for Wendas  
 Messrs. J. Brown & Co. for which testator gave  
 his P N due 14 July 1884. 7580 of these  
 Lwes were sold by W. Bates and  
 delivered to Messrs James & Martin for  
 £4614. 17. 6 less Commission - W. Bates  
 hedge is in my possession to produce  
 Statement  
~~contract~~

5 Statement of the late W. Smiths horses &c left at  
 Mungie Bendie by Halloran, see from letter copy  
 book B 694. as follows

1 Bay horse	12	
1 Chestnut & roan	10	
1 Chestnut	8	
1 Bay draught mare	25	
1 " " horse	20	
Cart & Hammers	10	
2 Saddles	4	
2 Tent 35/- 2 axes 10/- oven 5/-	2 10	
Linen dris	10	
		£ 92 0 0

6 The following are admitted as having been  
 received by Executors W. P. Hann & W. C. Cooke  
 and entered in the "Receipts" portion of the account  
 filed in the Equity suit 5060 see pages 62  
 and 63 - not one of these assets were included  
 in the accounts filed for Probate

W. Sloane	22 Oct 1884	87 12 7
do	"	55 5 9
do	5 Aug 1885	299 16 8
Broadie	30 April "	188 15 0
		<hr/> 631 10 0

80

*339-1  
M. J. O'Connell*

Waltham	28 July 1885	631 10
heeds	7 July 1885	704 0
do	"	118 14 8
do	"	75 0 0
2 Cows + 2 Calves	23 July 1884	67 3 6
1 Horse	10 Oct. 1884	15 10 3
1 do	4 Nov 1884	3 4 0
Fraunfelder	28 Mar 1884	1 18 .
Brown Bow		82 13 9
Eddy + horses		35 0 0
Horses		18 0 0
Drivers plant		83 17 6
do		6 12 0
Horses Whittburnham		14 17 0
McDonald		8 18 6
Menzies + Martin		44 16 0
Mortgage Horses + plant		65 13 8
do do		50 6 10
Buggy + 2 Horses "Hamm + Craker"		77 0 0
Refund		44 16 0
Stock sold to Hamm + Craker		8 8 0
Stock Hamm		6 3 0

1530. 6.8

7 Budgetary Bd. Money advanced by  
 Estates on the following dates viz  
 Sep 28. 1883 200  
 " 29 " 100  
 Oct 1 " 100  
 Nov 5 " 100  
 " 27 " 404  
 Dec 11 " 600

1772 1 2

and preparation of profit of Avington  
 Contract of July 1883

8 Cox Dawling + Co. Bills  
 Concealed by Trustees W. &  
 Hamm + W. C. Craker see  
 Division F No 2.

9808 2 6

- |    |   |           |
|----|---|-----------|
| 9  | Avington Wood Contract<br>Consequent profit as per<br>W. Sandells account   | 1482 6 4  |
| 10 | Waynes "P. Note" entered on the filed<br>as for Probate as a liability viz<br>"Federal Bank o/d Bill" should have<br>been entered as an Asset. directing<br>Probate duty for double the amount  | 100 0 0   |
| 11 | F. Stephenson<br>Entd in suit N <sup>o</sup> 5060. page 14 as<br>recd. sp <sup>l</sup> to Am L & C L <sup>l</sup>   | 678 2 3   |
| 12 | C. W. Muncie Entd in suit 5060<br>recd 14 Aug 1884  | 558 14 5  |
| 13 | A. Langheim Entd in suit 5060<br>recd 2 June 1884   | 1000 9 10 |
| 14 | G. J. Evans Entd in suit 5060<br>recd 27 March 1885   | 46 12 3   |
| 15 | S. W. Wood  | 20 0 0    |
| 16 | M. Bradley Cash advanced by<br>Debitors from January 9 1884<br>to Feb 9. 1884 for the purchase<br>of Fat Cattle - no returns  | 2119 0 0  |
| 17 | Wool venture with Pele Borradaile &<br>vide from letter copy book B page 500<br>Extract same book page 703  | 350 0 0   |
| "  | Executors of the late 27 Feb 1884   |           |
| "  | Messrs Pele Borradaile & Co   |           |
| "  | Bank Chambers   |           |
| "  | Dear Sir, We beg to own receipt of your<br>favor dated 22 inst with copies of letters from<br>the late W. S. M. Swift, from which we gather that<br>there are certain Wool ventures in existence<br>in which you are concerned with W. Swift<br>and which we recognise and confirm<br>We are dear Sir |           |

33976  
 P. O. M.  
 11  
 11  
 11  
 11  
 11

yours faithfully  
 signed P. Hann  
 Chas Cracker

Executors of the late J. H. Swift

Extract from original letter of W. R. M. Pitt  
 to W. P. Hann 19 Sept 1884 "Pete was  
 telling me that old Swifts share in some  
 wool specs was about £350 for which  
 he was sending you a cheque

18 Wool in transit with Harrison Jones & Weston 383 7 4  
 Sydney see Suit No 5060 - rec'd by Exors  
 Aug 12. 1884

19 1000 Mount de Pieter shares No. 40771 to 41770 inclusive transferred by the Executors  
 on April 22. 1884 to W. Swift - see  
 Memo from Company 13 June 1898

20 1/24 share Kimberly Pastoral Association 146 5 5  
 Cash paid by Debitur 30 May 1882 100  
 do do 14 Feb 1883 46 5 5

21 250 Kiandra Gold Mining Co. shares 56 5 0  
 vide Messrs. Thompsons offer 22 May 1884

22 282 Bales of wool on Baden Park Wimmera 5393 5  
 Brawley and Lumbha Stations at Debitur, deal  
 taken by W. G. Sandell at the average of the  
 wool sold, part of this wool was sold  
 & paid to the Exors on 15 Aug 1884 for  
 128 Bales - a large number of ~~specimens~~  
~~of~~ W. P. Hanns letters are in my possession  
 which clearly prove W. Hann was fully  
 aware of the existence of this -

23 wool surplus <sup>from wool</sup> (stripped prior to death 358 14 1  
 of Debitur & not stated in filed appn  
 application for Probate -

Recd. per Bank from Smith & Co  
 at Bathurst & Dharwar  
 less Reclamations

23

24 } New Zealand Loan & Mercantile Agency Co Ltd 2131 12 0  
 Amount entered in filed account for Probate  
 by Executors. as ————— 5303 12 9  
 should have been 4805 9 3  
 liability now stated 498 3 6  
 Surplus from wool shipped prior  
 to Deceator's death - amount credited  
 to Sept. 1884 less charges 1633 8 6

That W. P. Hann was aware of this  
 wool & the actual balance on the 18 Feb  
 1884 the following extract from his letter  
 will prove - vide press letter copy book  
 N<sup>o</sup>. 11 page - 390 " 29 March 1884 (before  
 the a/c. were filed for application for Probate)  
 " with regard to the 108 Bales of Scoured  
 " shipped at Adelaide I do not wish  
 " an over advance and think a fair  
 " price will be £18. per bale - if you  
 " think this right please credit the account  
 " with it at that rate

25 Messrs J & A Mack for proportion of rent  
 of Browley - vide press letter copy book  
 N<sup>o</sup>. 12. page 29. in W. Hann's writing 49 19 0

26 W. T. Purves J. O. U. - see original 220 4 2

27 W. John May, debt, for proportion of  
 dividing fence - rec<sup>d</sup>. by Executors  
 17 Dec<sup>r</sup>. 1887 - after very long correspondence  
 see originals by Webb - and Hann 300 0 0

28 J. McDonald, debt, for proportion  
 of drawing rec<sup>d</sup> by Executors 28 Feb 1884  
 see book N<sup>o</sup>. 5060 page 8. 50

29 Messrs Wynne Hudson & Co (debt) 158 15 3  
 (1/2) half share in 18 1/4 miles & chains of fence  
 on Moira plains & Deryanymasia boundary  
 at £46.10 per mile 426 12 9

Credit Cheque 28 Nov. 1883 £150 - 267 17 6  
 and wire a/c £117.17.0  
 19

36

83976  
 Receipts  
 1884

Rec<sup>d</sup> by Executors & paid to the credit of the  
 Bank New South Wales Wagga Wagga  
 18 August 1884 see Bank receipt

and W. Webb's <sup>original</sup> letter to W. P. Hann 28 April 1884

30 Thomas Halloran, for 1 wagon, harness and Sundries 94 14 6

vide W. P. Hann's Statement press letter  
 Copy book No. 12 page 298 Nov 4 1884

31 Messrs James & Martin sold Brown mare and waterkey vide letter book 440/3 20 10 6

32 Messrs Grey mare vide press letter copy book page 444 13 10 0

33 W. G. Desailly - debt - for 10 miles of fencing £20 vide original receipt of W. Webb 23 Feb 1885 - This was due at Testator's death 300

34 Catherine Gold Mining Co shares vide original statement & valuation made by W. P. Hann - as at Feb 18. 1884 216 13 4

35 94 Horses per Manager Webb's original returns of Stock on Station - taken at average selling price on Station 940 0 0

36 80 Head of Cattle per Manager Webb's original statement of returns of Stock on Station 18 Feb 1884 - at average selling price on Station £5 400 0 0

37 Rent adjustment. Station rents for Baden Park, Inveria Plains, Inveria West and Scrubbe Stations having been paid for the year on 3 Jan 1884 in proportion to 18 Feb 1884 46 6 0

38 Refunds received by Executors April 5, June 17 & July 12. 1884 for Kaelit subsidy for the year 1883. vide original notice 88 14 4

39 W. P. Hann debt due at Testator's death for Cook & Co rec<sup>d</sup> by W. P. Hann & not accounted for 2970 2 8

95

40 } Munira West lands - 5789 0 0  
 Not included in valuation see Division  
 A No 2 (at end)

41 } Mungie Bendie + Boolaroo Sheep 12605 10 0  
 Not included in valuation see Division  
 A No 7 (at end)

42 } Mungie Bendie, Boolaroo + Government 13586  
 Cattle understated + under valued -  
 see original stock assessments for 1884

Mungie Bendie	450	Head	
Government	8217	"	
Boolaroo	1330	"	
	<u>4997</u>		
less Horses	<u>500</u>		
	<u>4497</u>		
average selling price on Station 4/10/-	21586	0 0	
less entered on Valuation	<u>8000</u>	0 0	
	<u>13586</u>	0 0	

43 } Mungie Bendie Wool in transit  
 at Testator's death 1814 18 7

Extract from letter of Testator to W. Shank of  
 New castle 27 Decr. 1883. vide press letter copy  
 book marked B page 609

" Descrie, enclosed memo refers to balance of  
 " Mungie Bendie clip of 1883 please send me  
 " Bills for it as soon as shipped & oblige.  
 Clip for 1884 commenced October 1884 see  
 Station ledger folio

on 23 Sep 1884 The Union Bank credit  
 the account of John Mc Donald of with  
 this amount - see copy of Union Bank  
 of Australia pass book -

44 } L. Seaton & Co (debt to Mungie Bendie) 1200 12 0  
 due at time of Testator's death -

3000 Ewes sold and delivered by driver Halloran  
 7 Jan 1884 - W. John McDonald received



- 33
- 45 a borrower P. N. acc Station ledger folio 577  
 W. G. Cook (debt to Mungie Bundie 413 10  
 due at time of Testator's death  
 2100 Ewes sold and delivered by deacon  
 Sinclair Feb 8. 1884 - Cook received  
 27 Feb 1884 + 18 April 1884 - see pass book  
 and Station ledger folio 571
- 46 W P McCormack, debt, entered in Suit 129 0 0  
 5060 page 14 - due at time of Testator's  
 death
- 47 W. R. Child, debt, entered in Suit 5060 88 0 0  
 page 14 due at time of Testator's death
- 48 W. J. Jewed, debt, entered in Suit 5060 12 16 6  
 and Bank pass book as recd. 21/2/84
- 49 Cash in hand entered in Suit 5060 15 4 2  
 page 14 -
- 50 Gywyder River Pumping Co. 9 2 10  
 entered in acc filed in Suit 5060  
 page 14 as an Asset at time of  
 Testator's death
- 51 Refunds from Treasury - for 1883. recd 347 10 .  
 8 March 1884 23  
 C. W. yn dham Selection 164 10 -  
 W. Gurnett do 160 - -  
 see <sup>original</sup> H H Brown Co account
- 52 Rent adjustment The rent for 241 8 3  
 Boolavras, Mungie Bundie and  
 Gravesend being payable for the  
 year in advance viz £ 288 a  
 proportion of these only should be  
 debited to the Station account to  
 18 Feb 1884 and the other forms  
 an Asset -

53 Testator's sheep on Mungie Bendie and 6298 140  
Boolaroo - viz

8184 Mercaool ewes 8/6 3478 40

purchased by Testator from McLauchlin

see Station ledger folio 576

5641 ewes 10/

see Station ledger folio 595 2820 10

54 John Mc Donald, debt, 310 7 8

overdrawn salary etc at

Testator's death

see Station ledger folio 19 + 466

I state that there are a considerable number of other assets that I have not been able to fully prove to my own satisfaction - and therefore have omitted them from my affidavit

Division "C" Partnership Claims

Mr. Phineas Harris'

This executor and trustee under the will of Testator - claims one half <sup>of</sup> the assets as disclosed in the accounts filed an application for Probate under Balance Sheet "B" after most carefully examining the Estate Books, papers and documents I have been unable to trace a single penny of the Capital as ever having been introduced by him for the purchase of any part of the Station properties - there is evidence that he was a co-partner in sheep transactions and divisions from time to time of such profits - and also with other persons - ~~and~~ Testator on numerous occasions offered <sup>Mr Harris</sup> ~~him~~ to share transactions in which Testator engaged - "In or out as you like"

see Bank slip signed by C.A. Crocker 14 Oct. 1881 £6000 paid in by P. Hann

Interest paid to P. Hann	19 April 1882.	£180	(6 m <sup>o</sup> at 6%)
do	19 Oct. "	£180	do
do	16 Feb 1883	£114.7.4	

being 26 days 6% 25. 12. 10 $\frac{1}{2}$   
90 - 8% 88. 14 8 $\frac{1}{2}$

" £6000 repaid 15 Feb 1883 "

part below  
to come in here

76  
That Mr. Ham has been in several Partnerships  
and some of such were dissolved as per  
Gazette Notice - it cannot be assumed  
he was unacquainted with the necessity  
of such deeds - but without a Balance  
Sheet of Jurry Knid, prepared before  
Testator's death, and without any  
proof that Mr. Ham introduced  
a penny of Capital - I am of the  
opinion that his claim is a fraudulent  
one, ~~Proves~~

Mr. Ham purchased from Mr. Bates  
Melbourne, from Sept. 19. 1883 to Jan 4. 1884,  
during Testator's lifetime - for his own  
speculations 30,646 sheep - and I find  
in numerous letters of Mr. Ham's to  
~~various~~ different people "that we  
are now speculating separately"

2  
Mr. John McDonald

Claims one half share of the assets  
as disclosed in the account filed on  
application for Probate under Balance  
Sheet "C" I have examined certified copies  
of Testator's Banking accounts from 29 June  
1867 till the date of his death viz 18 Feb 1884  
and have carefully examined certified  
copies of Mr. John McDonald's Banking  
accounts from Sep 30 1873 till 2 Dec  
1880 which conclusively prove to my  
mind that Mr. John McDonald was  
never up to that period a man of means;  
the Banking accounts were nearly always  
in debit & he was during that period  
charged every half year by the Bank  
interest on his small overdrafts.

with

59

at the period when Mungie Bunde was  
purchased W. J. McDonald gave to W.  
J. A. Spiller in Feb 13 1874 a P. N. at 3 months  
for £105 which at its maturity  
his Banking account was unable  
to meet and that W. Spiller recd  
payment from Destator on May 18  
1874 W. J. A. Spiller then endorsed  
W. J. McDonald's P. N. to Destator  
"without recourse" for a Brother  
- in-law and future partner to  
do so places no financial confidence  
in W. J. McDonald - P. N. in my possession  
W. John McDonald was the Station  
Manager at a salary of £200 per  
ann and after Destator's death  
seems to have increased it without  
any authority - <sup>to £500 per ann</sup> see Station Ledger  
folios 20 and 466. No partnership  
no Gazette notice - and without  
sanction of the Quincy Court he seems  
to <sup>have</sup> carried on the Station to the  
present date - as in W. Haines case  
I have been unable to trace any  
Capital as having been introduced  
by W. J. McDonald and am of the  
opinion that this claim is also a  
fraudulent one -

2.  
Both these Claimants fully understood  
the problem & in conclusion I produce  
an Extract from a letter written by W. P.  
Haine to W. J. McDonald - see press letter copy book  
N<sup>o</sup> 7 page - 389 - <sup>inserted May 13. 1874</sup> "The Bank and different lawyers have

"laid it down very clearly that nothing can be bought for either Station except such as is  
necessary for the working of it towards the desired intention of Sale & liquidation on behalf  
of the Estate - Your Bank Solicitors explain the same - Death dissolves all partnerships and  
the surviving partners are the persons to wind up and they are responsible to the Executors  
for redhibition"

76  
Division D "Land Act" - "Evasion and  
Dummiying"  
My affidavits of 26 April 1898  
submitted to the Minister of Lands  
is now under the consideration  
of that Minister - describe a systematic  
evasion of the Land Act - and I  
have a considerable quantity of evidence  
in support of my allegations, as to  
the whole - Mungie Bendie  
and Murrumbidgee

Division "E" administration  
of the Estate by the Executors  
Mr. P. Hamer & Charles H Crocker -  
~~Since~~ after an experience of  
upwards twenty five years  
I can say that never have I  
seen such a mass of corrupt  
and fraudulent transactions -  
but as the scope of my investigations  
was to prove the value of the Estate  
assets and liabilities as on 18 Feb  
1884 I had not thought it necessary  
to fully investigate this branch  
of the Estate - but that portion  
that I have from recently been  
called on to examine - is most  
discreditable to all concerned and  
most disastrous to those interested

2  
137  
12/54  
Shree Transactors

Division 'F' Reply to Mr. Phineas Hann's sworn  
Statement of 27<sup>th</sup> September 1898.

1. That the said Mr. P. Hann affects to think his general denial coupled with a modicum of abuse an answer to the serious specific allegations contained in my affidavit of the 2<sup>nd</sup> of June last, Mr. P. Hann states in paragraph 1. "That for financial and business reasons the whole of the Station properties were over-valued when Probate Duty was paid". That this statement is untrue - Mr. P. Hann proves by his admission in paragraph 3. of his said statement, as he therein states, "There may have been individual items somewhat under-valued", my answer is that I challenge Mr. P. Hann to point out a single instance of any valuation being over-valued, the only properties that have been sold viz:- Brawley and Snubba, were valued for Probate at £20527. 10. 0 and Realized £29588. 3. 4 proving <sup>that</sup> these properties were under-valued by nearly "fifty per cent." for particulars see Division "A" Nos 4 and 5.

2. That the said Mr. P. Hann by paragraph 2 states that "The Cox Dowling & Co papers did not belong to Mr. Swift and that his estate had no interest in them." I say this statement is also untrue. The Testator by Agreement dated 9<sup>th</sup> July 1880, purchased from Messrs Pitt Son & Badger, acting as Agents for the Vendors, Messrs Oliver Smith & Co, the Stirlington Herd of about 10,900 head at 40/- per head - and paid as deposit the sum of £250 to Messrs Pitt Son & Badger, subsequently one third of the said Agreement was endorsed by Testator and accepted by Messrs Badger Brothers.

Extract from press letter copy book "B", page 217, of Testator's own letter to Mr. G. S. Byrne. "July 1880." "I bought Stirlington Herd 6000 B's and 4000 F's good delivery."

Extract from same book, page 218, Testator's letter to Mr. G. Ray, same date, "I bought Stirlington, Contract enclosed see and arrange Country case and right."

3976 ~~Journal~~  
Extract from same book, page 235 - date 14 July 1883 of Teetator's  
" telegram to G. R. Ray, Blackall "Arington Contract posted  
" 10<sup>th</sup> &c "

Extract from same book, page 241. 17 July 1883 of Teetator's letter  
" to Mr. G. R. Ray. "Mr. Badgery will explain to you how we  
" are thinking of working this herd of Arington's"

Extract from same book, page 248, 17 July 1883 of Teetator's letter  
" to Mess<sup>rs</sup> Mann, Melbourne. "I have bought the Arington  
" herd on the Barcoo, near Blackall as they are a grand herd  
" they might suit your buyer &c "

Extract from same book, page 258. 21 July 1883 of Teetator's  
" letter to Mess<sup>rs</sup> Pitt Son & Badger, "re Purchase of Arington  
" Cattle. If Mess<sup>rs</sup> Oliver Smith & Co will not accede to request of  
" allowing time for Mr. Badgery or Ray to arrange Country with  
" manager at Arington. I accept the Contract in its entirety  
" Country as specified in Contract &c "

Extract from same book, page 265. 23 July 1883 of Teetator's  
" letter to Mess<sup>rs</sup> E & G. Mann. "Yours of 20<sup>th</sup> inst. to hand  
" re Arington's female cattle &c "

Extract from same book, page 274. 25 July 1883 of Teetator's  
" letter to Mess<sup>rs</sup> W. Strane & Co. Sydney. "I bought Arington  
" herd 10900. &c "

Extract from same book, pages 348. 18 September 1883 of Teetator's  
" letter to Mr. J. Miller "I have sold all the females at  
" Arington about 4500 to be delivered by one Commara  
" Cox & Dowling. I had a hard fight, as I had to take  
" delivery of the females. (along letter) Mr. F. Badgery  
" who has 1/3 share in them goes up this boat with  
" your Muddock I pay his fare up and from commencement  
" of work give him £5 per week "

Extract from same book, page 354. 19 Sept. 1883 of letter  
" signed by Frank A. Badgery to Mr. G. Muddock, "I  
" have this day engaged you to proceed to Arington Station  
" Barcoo River, to assist in mustering & delivering Cattle &c "

Extract from letter written by Mr. P. Mann to Teetator 30  
" Sept. 1883. vide press letter Copy book No 31. page 374. 5



Ray in a letter to me said the Adingtons were  
 " a first rate thing a lot of money in them and he  
 " regretted I was not in them "

Extract from press letter copy book B, page 464 of Testator's  
 " letter to Mr. J. Miller. 19 Nov. 1883. " Badgery reports getting  
 " on well with Adingtons. "

Extract from same book, page 481 of Testator's letter to F.A.  
 " Badgery 26 October 1883. " I am trying Dowling at 45/-  
 " for the 82 Steers. "

Extract from same book, page 495 of Testator's letter to F.A.  
 " Badgery. 2 November 1883. " I have your wires re  
 " Adington Cows and steers I hope there will be no difficulty  
 " with Dowling over short numbers. "

Extract from same book, page 610. of Testator's letter to Messrs  
 W. Sloane & Co Sydney. 27 December 1883. " Dear Sirs,  
 " I acknowledge receipt of your letter of this date enclosing  
 " a P N from Messrs Cox Dowling & Co for £3061 2/- at  
 " six months from 19<sup>th</sup> Nov. in payment for first draft of  
 " Adington Cattle also cheque for £191. 12. 0 in payment for  
 " plant being net amount after deducting Commission on  
 " Sale " & "

The Testator drew upon his account with the Bank of  
 New South Wales - the following cheques for working expenses

Date	Cashed	for	Amount
1883 Sep 28	Oct 8. 1883	for	200 0 0
" " 29	" " 9 "	"	100 0 0
" Oct 1	" Nov 16 "	"	100 0 0
" Nov 5	" " "	"	100 0 0
" " 27	" Dec. 5 "	"	404 0 0
" Dec. 11	" " 11 "	"	<u>600 0 0</u> 1504 0 0

Testator sold to Messrs Cox Dowling & Co portion  
 of the Adington <sup>herd</sup> purchased through Messrs <sup>at London & Badgery</sup> ~~W. Sloane & Co~~  
 Agents - <sup>which</sup> delivered by Testator's <sup>delivered by his</sup> drivers G. Murdoch  
 and Inman on the following dates. to Cox Dowling & Co

1883 Nov 19	1041 Cows	at 45/-	} 3061 0 0
	675 Yearlings	" 25/-	
Dec 3	794 Cows	" 45/-	} 2560 5 0
	619 Yearlings	" 25/-	

44

Dec 26	1220 Steers	at 42/6	2592 10 0
1884 Jan 21	135 Steers	" 42/6	
	355 Cows	" 45/-	} 1594 7 6
	247 Yearlings	" 25/-	
	20 Bulls	" 200/-	

33976  
 4900  
 1884

Testator received from Messrs Cox Dowling & Co 4 Promissory Notes of which the following are true copies  
 £3061 19<sup>th</sup> November 1883 - due 22 May 1884.

Six (6) Months after date we promise to pay S. M. Swift req. or order the sum of three thousand and sixty one pounds sterling - Value received

Payable at the Bank N.Z. Cox Dowling & Co Sydney.

(LCB 2665)

(on back)

BANK NZ PAID 22 MAY 1884

Endorsed & signed. S. M. Swift, Frank A Badgery and Pitt-Son & Badgery.

£2560.5.0 3<sup>rd</sup> December 1883. due 6 June 1884

Six months after date we promise to pay S. M. Swift or order the sum of Two thousand five hundred and sixty pounds five shillings sterling Value received

Payable at the Bank N.Z. Cox Dowling & Co Sydney.

(London C.B. 2665)

(on back)

BANK NZ PAID June 6 1884

S. M. Swift. Frank A Badgery. Pitt-Son & Badgery

£2592.10.0 26<sup>th</sup> December 1883 due 29 June 1884

Six (6) months after date we promise to pay S. M. Swift Frank A Badgery or order the sum of Two thousand five hundred and ninety two pounds ten shillings sterling Value received Cox Dowling & Co

Payable at the Bank N.Z. Sydney.

(LCB 2666)

(on back)

BANK NZ PAID 29 JUNE 1884

P. Harris & Co. H. Crocker, Executors in the estate of S. M. Swift Frank A Badgery Pitt-Son & Badgery For the London Chartered Bank of Australia 30 J. Millet f. Manager.

45

3976  
 1594  
 M  
 R

£1594. y. 6 Shg 21 January 1884. due 21 July 1884.  
 Six months after date we promise to pay S. M. Swift  
 and Frank A. Badgery or order the sum of Fifteen hundred  
 and ninety four pounds seven shillings and six pence Sterling  
 Value received Cox Dowling & Co

Payable at Bank of  
 Sydney. (on back) <sup>encb</sup>  
 VCB 2667 B NZ Paid 21 July 1884

J. Hann C. H. Croaker Executors in the estate of S. M. Swift  
 Frank A. Badgery. For the London Chartered Bank of  
 Australia Ltd Pitt Son & Badgery.

For the Cattle sold to Messrs Cox Dowling & Co, being  
 part of the Arington herd, Messrs Pitt Son & Badgery  
 sent the following invoice to the Testator - this <sup>original</sup> invoice  
 is in the handwriting of Mr. A. M. Pitt.

- " Exact copy. Pastoral Chambers
- " ~~Bank Chambers (ruled out)~~
- " Sydney Jan 8<sup>th</sup> 1884.
- " Mr. S. M. Swift
- " D<sup>y</sup> Pitt Son & Badgery
- " 1883 ~~Account Rendered (ruled out)~~

The following Cattle delivered on Arington  
 Station and being portion of the herd in terms  
 of Contract of date July 9. 1883

Oct 13 <sup>th</sup>	To	1195	head delivered
" 31 <sup>st</sup>	"	980	" "
Nov 15 <sup>th</sup>	"	1239	" "
" 30	"	<u>782</u>	" "
		4196	hd @ 45/- = 9441.0.0

Payable by P. N. at 6 months dating  
 from 31<sup>st</sup> Oct, 1883.

The P. N. given by Testator to Messrs Pitt Son & Badgery -  
 acting as Agents for Messrs Oliver Smith & Co, included  
 631 head of Cattle that had not been sold at date  
 of Testator's death - these were afterwards sold by Messrs  
 Pitt Son & Badgery to Messrs Danger & Bell at 63/- per head

33996  
Pittson & Badger

Extract from letter written by Mr. P. Hann to Mr. Kay March 1 1884 see press letter copy book N311, pages 248 and 249.

Croaker and I met Frank Badger and Mc Donald together in Pittson & Badger's office and had a good talk over the cattle transactions and arranging matters. It ~~now~~ <sup>now</sup> stands as follows that Badger and Mc Donald relieve us from responsibility and working of the matter just accounting to us for the balance either way when the transactions finished.

Under the Arington arrangement you will want to make up the accounts in full of all the monies you spent on that account so that we may get repaid this money from Badger & Mc Donald from the proceeds of the Cattle sold to Dowling & Co.

Extract from letter written by Mr. P. Hann to Mr. W. Hild. March 4, 1884. same book, page 259. Messrs. Badger and Mc Donald are going to manage Arington stock

In the Supreme Court in Equity No. 5060. The <sup>P. Hann and C. H. Croaker</sup> executors admit having received (see page 3) the sum of £1000. Extract from Affidavit viz:-

Amount received from Pittson & Badger, Auctioneers and Station Agents, George Street, Sydney, as the amount advanced by Testator in his lifetime to Messrs. Swift Badger & Mc Donald in connection with the purchase of Arington herd £1000. 0. 0.

Extract letter from Mr. P. Hann & Mr. C. H. Croaker to the General Manager Bank N.S. Wales. 21 April 1884  
Dear Sir, In consideration of your handing over to us two Bills made by Messrs Dowling & Co for £500. 1. and £250. 5. maturing 22 May and 6 June respectively we hereby undertake to when required to give the Bank security over Baden Park and 20000 sheep there on provided the debt owing thereon to the Bank of New Zealand be paid by you now about five thousand five hundred pounds. Yours faithfully  
Swift & Hann

See extract back to come in

P. Hann } executors in estate  
C. H. Croaker } of S. M. Swift. see back to come in

These P.N. <sup>were</sup> never credited to Testator's account ~~and~~  
The Bank of New South Wales paid on ~~to me~~  
the sum of ~~but as that~~ The Bank  
were not in a position to transfer ~~the BNSW~~

placed the sum of ~~in 2~~ transfers and obtained  
a signature from Mr. Brodrick to the transfer  
I may here mention the property had been mortgaged to Mr Brodrick  
for £ ~~but the whole~~ of this mortgage had been repaid  
by Isidore - Decr. 1883 and transfers given to Brodrick to  
Testator which in blank which at the time of Testator's  
death had not been filed in the Courts office.

Knowing this the Bank of N S W with the  
Consent of P.A + C.A.C - obtained further transfers  
from Mr Brodrick - without <sup>payment of</sup> any consideration

(This is not in my affidavit.)

Dear Sir my dear Lavender. April 25. 1884

Book II page 500

"We have also arranged that the other partners in the  
Arminion Cable transaction shall take the whole thing  
into their own hands so that we are gradually obtaining  
our responsibilities

X

33976  
Heggs  
"Don't say"

Extract from letter written by Mr. P. Hamn to his former Partner Mr. James Smith Lavender 25 April 1884.  
vide press letter book N<sup>o</sup> 11, page 500 "If I could sell Minnosa by and bye" of course as a loss "I would then try and stick to Baden Park for myself."

Mr. P. Hamn states "he regards some of the statements by George Sandell as independent libels, <sup>I suppose he refers to the old adage greater the truth greater the libel.</sup> his discrimination is great and his self condemnation complete, as some of the serious allegations are admitted and the others proved.

Mr. P. Hamn says that the allegations of N<sup>o</sup> 7 of the affidavit "have already been the laughing stock of the Court of Equity." ~~I also have seen the Court, of Queen's Bench, England, smile at the antics of a clown and finally the Court of Equity in this Colony may have done the same, but I can aver that had the Court of Equity been in the possession of the evidence now before me <sup>a more serious</sup> ~~that Mr. P. Hamn~~ conclusion might have been arrived at and his ~~case~~ <sup>case</sup> ~~had~~ <sup>would have stood</sup> in the dock of the Colony's Criminal Court by now.~~

That I have been prompted and inspired solely by my professional duties, to lay before the Select Committee the true facts as to the value of the estate the late Mr. S. M. Swift did possess <sup>of</sup> ~~with~~ and that during that investigation I have been compelled to wade through some of the most noisome and fraudulent transactions, perpetrated by the Executors Mr. P. Hamn, Mr. C. H. Croaker and others, and if the necessity should arise shall not shrink for fear of threats - from disclosing them

Sworn by the Deponent on the day first above mentioned at Sydney before me O. P. Clayton J.P.  
Signed

Geo Sandell  
49

35976



2.

MINUTES OF EVIDENCE

Taken Before

The Select Committee ~~appointed~~ appointed to enquire into t Probate duty paid on t late S.M. Swift's estate.

*estate of the late S.M. Swift of*  
*Pittsford*

Thursday December 22nd 1898

Present:

Mr McLean Mr McFarlane  
Mr O'Sullivan Mr Thomas.

W.M.Hughes Esq., in the chair.

George Sandell recalled & further examined.

33. Chr: How do you arrive at t conclusn tt Mr Hann has undervalued t estate? By comparng t concealed assets w t real assets.

14 Mr McFarlane: What do you regard as concealed assets? Those wh were not disclosed to t Stamp Commr, I wd suggest tt you h placed before you t absolute concealed evidence, o wh I h evidence tt t exors - especially Mr Hann - had knowledge prior to signg his statemnt. In t 1st place I wd submit to

you a statemnt o t wool acct as follows:-

*[Handwritten mark]*



late S.M. Swift Estate. Wool

Extract from the New Zealand Loan & Mercantile Agency Co. L<sup>d</sup> account

1884.

Feb'y	27	advance on 76 Bales ex "Dumbarton"	876	5	4
March	31	do 6 do "Rome"	65	11	6
April	3	do 188 do "Port Jackson"	3384	0	0
"	"	do 1 do "John Elder"	12	13	0
"	"	Surplus from 188 Bales	830	4	5
"	"	do " 76 do	839	18	9
			<hr/>		
			6008	10	4
			<hr/>		

Extract from the Australian Mortgage Loan & Finance Co. L<sup>d</sup> account

1884

March	13	advance on 98 Bales	1600	0	0
		Surplus from same	608	2	2
			<hr/>		
			2208	2	2
			<hr/>		

Extract from the Bank of New South Wales account

1884

Aug	15	Proceeds of 128 Bales	1418	5	7
			<hr/>		
Total 497 Bales. Amount			9654	18	3
			<hr/>		

I would refer the Select Committee to the accounts filed by the Executors, Messrs. Hoare & Croaker on the application for Probate on 5 April 1884. The Committee will see that not one Bale of this wool was therein disclosed and I say that it would be difficult to believe that Mr Hoare, who claims one half share partnership, and especially as the active partner keeping the Hoare account, could have been unacquainted of the existence of this wool - having the different Bank Pass book in his possession.

and on reference to Mr. Mann's letter to the  
 New Zealand Loan & Mercantile Agency Ltd. of  
 1884 and to <sup>Mr. Mann's letter to</sup> Mr J. S. Lawrence -  
 the Valuator of \* - 1884 it is clear  
 that Mr. Mann had a full knowledge  
 of 188 Bales and 100 Bales - prior to  
 swearing to the affidavit of 5 April  
 1884 and I say that such wool  
 therein named realized £5632.10.2  
 I produce the Bank Pass books for  
 the Select Committee's inspection

#

\* Date to be sent by witness.

*B. S. G. G. b*  
*with*  
*proceedings*

W regard to t wool wh I h now disclosed to you, ~~not 1 bale~~  
~~o t~~ amntg as I say to 497 bales, realising <sup>*not one bale*</sup> £9,634.18.3 was ever  
disclosed in t testators acct wh ~~was~~ <sup>Hann</sup> filed on applicatn f  
probate.

35 Chr: Was any mentn made abt tt in any subsequent  
equity suits? Yes. Nrly t whole o tt amnt has bn brought in,  
but there still remains a no o bales wh h not bn accounted  
f. On a former ~~re~~ occasn I brought to yr notice t concealed  
land o Mimosa west. If you refer to t valuatns made by t  
*executors*  
~~and~~ you will find tt they only disclose 960a o freehold  
land & 320a o conditional purchase, but on refce to Mr Hanns  
letter, Book 12, page 503, in Mr Hann's handwritg I find tt  
he says tt there shd h bn £5,789 worth o land additional.  
It has bn taken up in various selectors *names*, & on refce to  
Mr Hann's letter to Mr Lavender you will see t reason why  
he omitted this land fr his valuatn. T land conditns had not  
bn properly fulfilled & if he had disclosed these lands it wd  
h bn apparent to t Stamp Commr tt dummyg had bn carried on  
at the statns: hence t omisn. T value o t land amounted to  
£5,789, every bit o wh was withheld fr t statemnt he filed

5

on applicatn f probate.

36 Mr McLean: To whom do t records show tt land be-  
 longed? To t statns interested. Mr Hann's words give you tt  
 in his letter. I produce a copy o t letter fr t <sup>press-</sup> 1st letter  
 copy book No 31, p 437 in Mr Hann's writg where he gives t  
 details o this run & says -

~~Mimosa West - Land: Freehold 960a: C.P.S., S & H:~~

Mimosa—Land—Freehold, 960 acres.  
 C.P's. S & H to Freehold, 640 acres.  
 C.P's. outside 3,848 acres in S & H interest.  
 T.P's. applied for 1,280 acres.  
 " " pre leases 1,520 acres.

~~interest: I.P's applied f 1280a: I.P's applied on~~

~~3 leases 1520a: makg a total aggregate o 6,248a.~~

It follows on a letter written on t 3rd Octr 1883 so tt Mr  
 Hann had a perfect knowledge tt there was a large quantity  
 o land on t 3<sup>rd</sup> o Octr 1883: yet in makg his statemnt to t  
 Stamp Commr on April 5th 1884 he only declared, as I h mentiond  
 960a o freehold land & 320a o C.P.land so tt he withheld a  
 large <sup>parcel</sup> ~~part~~ o tt land

37 Chr: H you any acc's to put in? Yes as far as regards  
t suppressn of t Mungie Bundie estate. There has bn a grt  
supressn o t assets as far as t<sup>a</sup>t este is concerned. Here is  
a report made on t 24th day o May 1887. This is in t handwritg  
o Messrs Peal & Borradaile, accountants, & it is signed by  
John McDonald . He was t claimant to 1/2 o t este & this occurs:

"There were 85,241 sheep on t ppty's & at t date o t late  
Mr S.M. Swift's death." In his schedule to t valuator<sup>s</sup> he  
disclosed only 60,000 sheep. I am merely instancg this as <sup>one</sup>  
o t gross deceptns or concealmts o t assets o t este. McDonald  
by t<sup>e</sup>t statemnt acknowledges he made a false statemnt & t<sup>e</sup>t is  
corroborated by t Stock Assessment returns he made up & sent  
in. It shows t<sup>e</sup>t there are 79,000 sheep upon wh they pd  
stock assesmnt. I n t original statemnts wh were sent in.

8 Mr McFarlane: What was t amt filed on t whole o t  
estate? £48,000.

9 <sup>or</sup> after yr examinatin what do you increase t amt  
by? By 190,000.

40 Do you arrive at t<sup>e</sup>t by n examinatin o t books & acct's?  
By an examinatin & analysis o t statemnts made by Hann & his

co-exors. The evidence Mr Hann gave before the various courts proves these valuations to be correct.

41 Some reference was made to the Cox-Dowling estate? Yes. I have examined a statement given by Mr Hann in the action of Swift v the Bank of New South Wales. Mr Hann says this

Bills of Cox-Dowling & Co matured on the 22nd of May & the 6th of June:- The Bank handed over the bills as well as the gross payments to the Bank.

Mr Hann admits that the Bank handed over those notes to him & his co-exor, but in his statement of the 27th September last he says the testator had no interest in them. In his evidence he admits he received them as exor.

2 There is some mention in your statement with regard to wool in transit. What does that refer to? The statement I have handed in will embrace that wool.

3 What does that wool refer to? At the time of the testator's death there was certain wool belonging to the estate which had been given to the various banks for realisation & the value of that wool was

Banks  
K

8

*Sgt. Sullivan*  
not declared at that particular time.

44 wd it be possible for the exors not to have any knowledge of it? They could barely send wool to the Bks w<sup>o</sup> having knowledge of it.

5 Did the exors send it? Yes.

6 I understand that the value of the wool in transit was not filed? Not a bale of wool was declared in the probate statement

7 Mr O'Sullivan from the tenor of your evidence I gather that you are under the belief that wrong accounts have been filed? Fraudulent *acc<sup>t</sup>*  
no man could make a wrong acct.

8 Your opinion is that ~~incorrect~~ <sup>fraudulent</sup> accounts have been filed & that the Government has been defrauded of a considerable amount of Stamp Duty in consequence? It is my opinion.

9 Have you made any estimate as to the amount of duty of which the Government has been defrauded? The probate on about £190,000.

50 What wd tt come to? At tt period t duty was 1 %  
T amnt wd come to £1900.

1 It means tt t filg o these fraudulent accts has  
caused t Govt to be defrauded o £1900? Yes, practically.

✓ Chr: <sup>Two</sup> 2 things follow fr tt. <sup>one</sup> 1 is tt t Govt h bn  
defrauded & t other is tt t este has bn defrauded. I think t  
este has bn defrauded o more than tt bec Mr Henn has carried  
on these transactns "on his own" & he has sent grt nos o  
sheep to t various statns, usg t statns, & t expenses against  
t statns, & makg grt profits on his own acct.

3 Mr O'Sullivan: Then Mr Henn has really bn workg  
some o t Swift pptys f t benefit o Mr Henn? Entirely. In  
fact I can show certain transactns here o a very doubtful  
nature in wh Mr Henn sold to a partner o his then existg -  
Mr Halloran - sheep o t statn in wh he was professg to be a  
 $\frac{1}{2}$  share partner, wh had already bn sold to anor person - Mr  
Winter Irving - f a larger amnt. He sold these sheep to Mr  
Halloran at 8/- & he had already sold t sheep f t este f 10/-

10



*3576*  
*Smallman*  
*Barker*

He makes out <sup>one</sup> 1 acct f this doubtful transactn & t este lose t profit o 2/- a hd on 8000 sheep. I h ~~Mr~~ t invoice o Mr Bates t gent emen who sold t sheep sho says he sold them f Swift & Hann. Then Mr Hann writes<sup>s</sup> back to this man at Melbourne & says "You must change these to Halloran". Halloran is Mr Hann's partner & Mr Bates changes them to Halloran. He says "It makes no differnce to t purchaser: I am arrangg t bills as I want them to be. He send t 4 bills & Mr Winter Irving signs them accordg to Mr Halloran's arrangement. 2 o them come into t este & 2 o them do not.

54 Do you know whether Mr Hann is alive & flourishg? I don't know whether hs is flourishg but he is alive.

5 Is it not an extraordinary thing tt tt kind o thing can go on in a civilised country wt being checked? There are more wonderful things still. Take t proceedgs o t Bk o N S W so far as regards t mortgage. You will find tt t Bk o N S W arranged w Mr Hann to give him an overdraft after t testators death. There are letters wh Mr Hann wrote to t Bk on t 25th

//

Febry 7 days after t testators death askg t BK to give him  
an overdarft & to continue t acct in t name o Swift & Hann.  
T Bk allowed hi m but they required a further mortgage. Then  
Hann, in his private capacity, sends to t Bk o N S W & says  
"I will give you a further charge upon Baden Park & 20,000  
sheep". Mrs Swift declined to enter into this trans-  
actn, T Bk still presses & Hann & Croaker carry out tt mortgage  
after t testator.s death. T Bk o N S W then tried to get a  
proper mortgage but they lst o all h to find out who holds  
t ppty. Mr Broadribb, who had lent t testator £8000 upon  
this ppty had bn pd off on t 3rd Decr 1882, but still t runs  
remained in Mr Broadribb's name & they still remain. T testator  
in t meanwhile had obtained a loan fr t N Z Bk f £8000 odd  
& had given no equitable charge upon t ppty, but intended to  
do so. T Bk o N S W wished to get hold o tt ppty. T Bk o N S W  
go to t Bk o N Z & pay t Bk o N Z in March 1885, £4,300 then  
they go to Mr Broadribb & say to him "Give us a transfer  
o these runs," Placg t consideratn value - £4300 - in t 2  
transactns. They never gave a penny piece to Mr Broadribb &  
obtained t value o tt run. T value o t ppty they had thus  
acquired - wh was a fraudulent transfer - for £4300, amounte d,

12

fr t Bks stat emnt wh I h in t Bk Managers handwritg, to £60,000  
Durg 1885, 1886. <sup>7</sup> 1886 t Bk o N S W received by way o sales  
o sheep - I can give you t details - & t clips, £21,300 f  
their advance o £4300 to t N Z Bk Co. What sort o a transactn  
do you call tt. T Bk knew o t testator's death & they knew  
perfectly well tt Mr Hann had no right to mortgage.

