

(No. 80.)



1899.

PARLIAMENT OF TASMANIA.

THE BROCK GOLDEN GATE SHARES ENABLING
BILL, 1899, (PRIVATE):

REPORT OF SELECT COMMITTEE, WITH MINUTES OF PRO-
CEEDINGS, ADDRESS OF COUNSEL, AND APPENDICES.

Brought up by Sir Edward Braddon, November 29, 1899, and ordered by the
House of Assembly to be printed.

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SELECT COMMITTEE appointed on the 21st day of November, 1899, to consider and report upon "The Brock Golden Gate Shares Enabling Bill, 1899, (Private).

MEMBERS OF THE COMMITTEE.

MR. SPEAKER.
MR. MINISTER OF LANDS AND WORKS.
MR. DAVIES.
SIR EDWARD BRADDON.

MR. URQUHART.
MR. DUMARESQ.
MR. PREMIER. (*Mover.*)

DAYS OF MEETING.

Wednesday, November 22; Monday, November 27; Tuesday, November 28; Wednesday, November 29.

REPORT.

YOUR Committee, having taken evidence in support of the allegations contained in the Preamble of the Bill, have the honour to report that the said Preamble, with an addition rendered necessary by the recent death of one of the Trustees, has been proved to their satisfaction.

Your Committee having agreed that the Preamble, as amended, should stand part of the Bill, then entered upon the consideration of the several Clauses, and have now the honour of submitting the Bill to the favourable consideration of your Honourable House.

E. BRADDON, *Chairman.*

Committee Room, House of Assembly, 29th November, 1899.

MINUTES OF PROCEEDINGS.

WEDNESDAY, NOVEMBER 22, 1899.

The Committee met at half-past 3 o'clock.

Members present.—Mr. Premier, Mr. Urquhart, and Sir Edward Braddon.

Sir Edward Braddon was appointed Chairman.

The read the Order of the House appointing the Committee.

Resolved, That the Trustees to the Brock Estate be heard by Counsel. (Mr. Premier.)

Accordingly Mr. Frederick Lodge appeared before the Committee on behalf of the Trustees.

Mr. Lodge put in, as evidence, the following documents connected with the case *Flexmore and others versus Brock and others* :—

1. The Decree of the Supreme Court of Tasmania in Equity.
2. The Affidavit of A. S. Flexmore and H. R. Brent.
3. The Affidavit of Thomas Andrews.
4. The Affidavit of H. J. Wise.
5. The Affidavit of H. W. Bayley.
6. The Affidavit of Winston Churchill Simmons.
7. *Mercury* report, giving decision of the Court as to the proposed sale of the New Golden Gate Mine.

Ordered, That the above-mentioned documents be printed (Appendices A. to G.), the last to be certified to by Mr. Justice McIntyre.

Mr. Lodge also put in :—

1. The Probate of the Will and Codicil of Henry James Brock.
2. The Affidavit of W. H. Hudspeth in the Case of *Flexmore and others versus Brock and others*.
3. Bill of Complaint in the same Case.
4. Answer to the Bill of Complaint.
5. Draft of the Brock Golden Gate Shares Enabling Bill.

The Committee adjourned *sine die*.

MONDAY, NOVEMBER 27, 1899.

The Committee met at noon.

Members present.—Mr. Premier, Mr. Speaker, and Mr. Davies.

Mr. Speaker took the Chair in the absence of the Chairman (Sir Edward Braddon).

Mr. Urquhart took his seat.

Mr. Lodge put in a letter dated 17th June, 1899, from Mrs. Georgina Brock to Messrs A. S. Flexmore and H. R. Brent, Hobart. (Appendix H.)

Mr. Lodge then proceeded to address the Committee on behalf of the Trustees to the Brock's estate.

The Committee decided that a telegram should be sent to Mr. Andrews, Mine Manager to the New Golden Gate Mine, asking him to furnish the Committee with any documentary evidence as to opinion expressed by the late Mr. Brock *re* sale of Shares.

The Committee adjourned till half-past 2 to-morrow.

TUESDAY, NOVEMBER 28, 1899.

The Committee met at half-past 2 o'clock.

Members present.—Mr. Premier, Mr. Speaker, and Mr. Minister of Lands and Works.

The Speaker took the Chair in the absence of the Chairman (Sir Edward Braddon).

The Minutes of the last Two Meetings were read and confirmed.

The Chairman read a telegram from Mr. Thomas Andrews, Mathinna, in reply to the telegram sent on Monday, 27th instant, by the instruction of the Committee. (Appendix J.)

The Committee adjourned till half-past Six to-morrow.

WEDNESDAY, NOVEMBER 29, 1899.

The Committee met at half-past Six o'clock.

Members present.—Sir Edward Braddon (Chairman), Mr. Speaker, Mr. Premier, Mr. Minister of Lands and Works, Mr. Dumaesq, and Mr. Davies.

The Minutes of last Meeting were read and confirmed.

The Committee then considered the Preamble of the Bill.

Amendment made (Mr. Premier), page 3, line 50, after "*Clark*," by inserting, "And whereas the said *Georgina Brock* died on the twenty-fifth day of November, one thousand eight hundred and ninety-nine."

Resolved, That the Preamble, as amended, be found proved.

The Committee then considered the various Clauses of the Bill.

Clause 1.

Amendment made (Mr. Premier), page 4, line 7, after "*Flexmore*," by striking out "*Georgina Brock*;" same line, after "or the," by striking out "survivors or."

Clause, as amended, agreed to.

Clause 2 agreed to.

Clause 3.

Amendment made (Mr. Speaker), page 4, line 26, after "thereby," by adding "but no sale shall be at a price less than the sum of twelve pounds and ten shillings per share."

Clause, as amended, agreed to.

Clauses 4 to 6 agreed to.

Draft Report brought up and agreed to.

The Committee adjourned *sine die*.

ADDRESS OF COUNSEL.

MONDAY, 27TH NOVEMBER, 1899.

Mr. Frederick Lodge (Messrs. Roberts & Allport) appeared on behalf of the Trustees under the Will of the late Henry James Brock.

On being introduced to the Committee—

Mr. Lodge said :—Mr. Chairman and Gentlemen : The evidence which I placed before this Committee some days since has been printed, and I presume that it has been looked at and considered by all Members of the Committee now present.

Mr. Urquhart : I think that is a presumption on your part that you cannot have absolute grounds for, Mr. Lodge.

Mr. Lodge : I merely presume it. Anyhow, to proceed :—The evidence is, for the most part, purely formal ; and such part of it as is not formal I have now to direct the Committee's attention to. The material points in the evidence can really be mentioned very shortly. But before I refer to that evidence, I should like now to adopt a suggestion made to me by the Honourable the Speaker, and to put in and ask for the printing of a letter from the late Mrs. Brock, which I have previously read to the Members of the Committee who are present. The letter reads :—

“AFTER full consideration, I have now come to the conclusion that a sale of the shares in the New Golden Gate Company, belonging to my late husband's estate, at the price now offered for the same (£12 10s. 0d.), will be greatly for the benefit of my children.

“If you should think fit to apply to Parliament for the necessary Private Bill, authorising the Trustees to sell the shares, I am quite willing to concur with you in the application and to do what I can to support it, and if we obtain the necessary authority I shall be ready to help in any way I can to carry out the sale.”

And I would, at the same time, call the attention of the Committee to the fact that in consequence of the death of Mrs. Brock on Saturday, it will be necessary to make some formal Amendments in the Bill. I presume that the Bill should now be a Bill to enable the two surviving trustees, or their executors and administrators, to sell, &c.—that would be in paragraph 1 ; and I presume that in the Preamble also the name of the late Mrs. Brock should be elided. I will ask the Committee to recommend that these Amendments shall be made. I think it will be necessary, first of all, for me to refer very shortly to the position of the testator, Henry James Brock, at the time he made the Will and the Codicil which has been put in, in order to explain what was then his situation, and what were then his probable motives in making such a Will. At the time the Will was made—the 11th of November, 1890—Mr. Brock was a landowner, owning the property known as Campana, and in addition to that, a very large number of the shares of the New Golden Gate Mine. He believed that these shares were very valuable, and he wished them to be held for his children. At the same time he was well aware that it might be necessary, in order to make more certain provision for his family, that some of the shares should be sold, and by his Will he authorised the sale of so many shares, if necessary, as should be required to make up the sum of £6000, as a provision for his widow.

The Chairman (Hon. Nicholas Brown) : And no more ?

Mr. Lodge : Sufficient to make up the sum of £6000—that was his explicit intention at that time.

The Chairman : And no more ? £6000, and no more ?

Mr. Lodge : And no more. That was the provision of the Will—so many shares as should make up £6000, and no more. The words of the will are :—

“Provided always, and I hereby declare, that if upon the sale or conversion of any real and residuary personal estate it shall be found that the residuary trust moneys before mentioned do not amount to the sum of Six thousand Pounds, then it shall be lawful for my trustees to sell so many shares in the said last-mentioned Company as shall be necessary to make up the sum of Six thousand Pounds hereinbefore directed to be set apart for the benefit of my wife during her life.”

Now, at the time when the late Henry James Brock made the Codicil to his Will—that is to say, on the 15th of April, 1896, his position was very much altered. He was then on the way towards making a large fortune out of these New Golden Gate shares. He had accumulated a large sum of money from dividends on the shares, and he had bought very valuable properties, well known as Lawrenny, and the adjoining properties, and had paid a large sum on account of the purchase-money. By his Codicil he certainly contemplated that all his New Golden Gate shares should be retained, and not be sold so long as any surviving child of his should be under the age of twenty-one. That, then, no doubt was his intention at that time. And now, of course, I shall have to adduce authority to this Committee to show that it is not a novel or unusual application that we are now making when we ask that Parliament will authorise the trustees of the Will to over-ride so explicit and clear a provision as that with regard to the shares being retained so long as any child of the late Henry James Brock, the testator, is under the age of twenty-one years. But before turning to that, there is one thing I should like to mention to the Committee, as a matter within my own knowledge. This Codicil was intended to be purely temporary ; in fact as to that I can appeal to the legal members of the Committee. The frame of this Codicil will show at once that it

was only a temporary document, intended to remain in force until the purchaser could pay in full for the properties he had purchased, and so put his affairs in order for the proper disposition of his estate. It is known to me that that was the fact. The whole intention of the Codicil was to have something that would work until he (the testator) had paid for the properties I have mentioned, and could settle once and for all his wishes with regard to the disposition of his estate. At the time of his death the properties were not completely paid for, although they were nearly paid for; and since his death of course they have been completely paid for, and the properties are clear; while the shares are all still held under the instructions given in that Codicil. But certainly it was the late Mr. Brock's intention, some months before his death to make some alteration of his Will; although what the nature of that intended alteration was, of course, I do not know. But there was to be some alteration of the Will; because I was instructed to attend him, and to confer on the subject with him, but his health was then very uncertain, and finally the instructions were countermanded and nothing was done. In fact, for the last six months prior to his death, Mr. Brock was hardly in a condition to take a survey of his affairs at all. That was the position of the testator, then, with regard to his property; and with regard to his Will and Codicil, the position of his family was this: He left a widow surviving him, and also six children—four sons and two daughters; all of whom are still under age—the eldest son being now about seventeen, and the youngest daughter about eight. It is therefore not possible to consult children of that age on the matter of the disposal of these shares; not even the son who is seventeen—who is, of course, not at all practised in business. It is impossible, then, to ascertain what the children's wishes are on the subject. The only thing we can ask the Committee to do is to endeavour to stand in the place of the father of these children, and thus to ask themselves what he would now be likely to do for the benefit of his children if he was still alive. If Members of the Committee take that standpoint, I have very little doubt as to what conclusion they will come to. It must be for the advantage of these children that, instead of being dependent on the uncertain profits of these mines, they should have a certain—a very large and certain—fortune, which would be properly invested for them, and which would give to each of them a very ample fortune on coming of age. I will come now to the explanation of the position of Henry James Brock's estate with regard to the New Golden Gate Mine. The capital of the company which owns the mine consists of 32,000 shares of the nominal value of 6s. each, which are paid up to the amount of 5s. 3d. each. I am quoting now from the bill in the equity suit, which has been put before the Committee—32,000 shares of the nominal value of 6s., each and all paid up to 5s. 3d. a share. Of these 32,000 shares the estate of the late Henry James Brock holds 21,685. It is therefore impossible, practically, for the shareholders to entertain and consider any proposal whatever for selling the mine, or for amalgamating with other mines, or doing anything of either kind, without the consent of the trustees of Henry James Brock's estate. And the consent of the trustees must, of course, be within the lines laid down by the Will of Henry James Brock, unless Parliament will authorise them to act in some different direction. I would at this point call the attention of the Committee to the very large profit which would be made in respect of each of the original shares held by the testator if the sale now proposed was to be allowed. These shares were paid up to 5s. 3d. only, and the price which is now offered, and which we believe can be obtained, is £12 10s. per share in respect of all shares paid up to 5s. 3d. Of course I am well aware that the testator purchased many of his shares at a higher price than that—at all sorts of prices; but at prices nowhere near £12 10s. But in respect of every share he held as an original shareholder, there is now an opportunity of making the immense profit of getting £12 10s. for shares only paid up to 5s. 3d.; and, with due regard paid to the ups and downs of gold-mining, it would be very rash to predict that the offer of £12 10s. per share, if refused now, would ever be obtained again. I should like to make it plain to the Committee that the application that the trustees are now making for an Act to extend the powers conferred on them by the Will—say, to authorise them to do something which is not within the four corners of this Will—is nothing unusual, nothing unprecedented. I suppose that we shall all be ready to admit that in England they are not fond of hasty legislation, nor of interfering with the wills or altering the rights of individuals, without serious consideration, and and without just cause. But in England applications of this kind, although not frequent, are at least not unusual. The industry of the Honourable the Premier has supplied me with a number of instances, which I believe were mentioned to the House of Assembly when this Bill was introduced.

Hon. N. E. Lewis: No, I do not think that they were.

Mr. Lodge: But I would at any rate like to mention—

Mr. Urquhart: There is the case of Thelusson.

Mr. Lodge: Yes; but that was an absolute interference, an entire breaking of the explicit terms of a will; not for the benefit of persons named in the will, but to prevent somebody getting into a position the state could not approve. A man (the testator in that instance) tried to tie up his estate so that at the end of a very long period—120 years, I think—some person should become possessed of a huge fortune of something like £150,000,000. That was a regularly made will, and made by a man apparently sane, so far as anyone could judge—a splendid man of business, and all that sort of thing. But, although that will was made in those circumstances, and was explicit as to terms, Parliament upset it.

Mr. Urquhart: More on the ground of public policy, I think.

Mr. Lodge: On the ground of public policy, that was, of course. In England, many statutes—57-58 Vict., 59-60 Vict., 60-61 Vict., 61-62 Vict.—will be found modifying in certain

respects terms of different wills or settlements. First of all, in 52-53 Vict., there is one I had not mentioned Private Act, No. 2—"An Act for Sanctioning Arrangements for the Sale to a Proposed Limited Company of the Business and Property of H. Crawshay and Sons and H. Crawshay and Company, and other Property, and for Enabling the Executors and Trustees interested therein to Sell and to Accept, and hold Debentures, Stocks, and Shares in the Proposed Limited Company, and for Other Purposes." That was a case in which the parties interested had sought the sanction of the Court to a proposed sale of the business to a limited company in which they were to take certain interests. The Court said that that was not in accordance with the terms of the will, and that therefore it was impossible for the Court to help the persons interested in carrying out the arrangement; but the Court said that those persons might go to Parliament for authority, if they wished it. They did go to Parliament, and Parliament upset the will.

Mr. Urquhart: What did the terms of that will amount to?

Hon. N. E. Lewis: Leaving the business for a certain number of years to the children.

Mr. Lodge: That was authorising a sale in a manner and for purposes never contemplated by the testator, and not within the terms of the will. Among the number of other cases which I referred to are—the will of the late Duke of Cleveland. In that case an Act was passed to enable the trustees to borrow on mortgage for the benefit of the persons interested, where there was no power whatever given by his will.

Mr. Urquhart: That is not on all-fours with this, you know.

Mr. Lodge: But there is another Act of 59-60 Vict., for empowering the trustees of the will of the late John Chambers, with the consent of the Chancery Division to sell the colliery undertakings subject to his will. Now, there is Parliament authorising a sale which is not authorised by the will, again. Then there is the case of Robert Tuttle's estate.

Mr. Urquhart: That was tied up—makes all the difference.

Mr. Lodge: I would point out to the Committee that tying-up a gold mine for a very short period might be equivalent to tying-up, say, a coal mine, for the longest period admitted by the law. In the case of this estate of Henry James Brock, the time that must elapse before the youngest child comes of age is more than the probable life of any gold mine. I can confidently appeal to those of the Committee who have had experience of gold mines, to say, that a mine which has been going since 1889, will, by the time the youngest child of the late Mr. Brock comes of age, have attained to more than the life of a good gold mine, if it is still working then.

Mr. Urquhart: Plenty of mines are going twenty years, or more.

Mr. Lodge: Not plenty of gold mines.

Mr. J. G. Davies: The average life of a gold mine is only about five years.

Mr. Urquhart: Oh, I know it is not safe to rest on any calculation of more than four years or so.

Mr. Lodge: Also in New South Wales there are a number of Acts altering in different ways the provisions of wills—authorising sales, empowering trustees to borrow on mortgage, and other things similar to those which we find in England in almost every recent year. In Queensland there seems to be several cases of this sort, almost every year; but I do not rely so much on the example of Queensland. But I think that what has been done in Great Britain, and what has been done in a conservative colony like New South Wales—where they are not fond of over legislation, but are cautious about legislation,—a thing that they have no hesitation about doing there, I submit that this Committee need have no hesitation about recommending Parliament to do here. I come now to the actual evidence which has been taken and is before the Committee to prove that the sale will be, if carried out, beneficial to the children and to all persons who may be by any possibility interested in the Will. That evidence, of course, was all taken for the purpose of the equity suit in May last, upon which a decree was made by the Court on the 16th of June following, and while this Committee must, of course, form its own independent conclusion as to whether a sale would or would not be for the benefit of the children, and so ought or ought not to be authorised by Parliament, I would like to call the attention of the Committee to the words of the Court used in dealing with the subject. The Judges of the Supreme Court are, of course, accustomed to weigh evidence, and they are certainly persons of some authority relative to any question as to what should or should not be done for the benefit of individuals in any matter arising in law; and though the Committee must decide for itself what ought to be done, still I would urge that great respect should be paid to the opinion of the Court. That opinion of the Court, of course, is formally expressed in the Decree, which is part of the evidence, and the Decree says:—

"This Court Doth Declare that a sale of the said shares belonging to the Testator at the time of his decease in the New Golden Gate Gold Mining Company No Liability at the price or sum of Twelve Pounds and Ten Shillings per share will be for the benefit of the Infant Plaintiffs and the Infant Defendants to this Suit—And this Court doth also declare that it will be for the benefit of the Infant Plaintiffs and the Infant Defendants to this Suit and of all other persons interested in the estate of the Testator that an application should be made for an Act of Parliament for the purpose of conferring on the Trustees of the said Will and Codicil full and proper powers of selling and disposing of the shares in the said Company bequeathed by the Will and Codicil of the said Henry James Brock deceased—And let the Plaintiffs Albert Somerville Flexmore Georgina Brock and Henry Robert Brent the Trustees of the said Will and Codicil be at liberty if they shall think fit to make or join in making or cause to be made such application accordingly and let the Draft of the Bill for the purposes aforesaid be settled by His Honor Mr. Justice Clark and let so much of the Plaintiffs, Bill as seeks that a sale of the said shares to the said Syndicate at the said price may be sanctioned by this Honorable Court and carried into effect accordingly and that for the purposes aforesaid and so far as may be necessary the Testator's Estate may be administered by and under the direction of this Honorable Court."

So that we come here, relying on the recommendation of the Supreme Court—under the direct authority of the Supreme Court, and the Bill which we submit has been settled by one of their Honours, Mr. Justice Clark, as directed by the Decree. So that I submit to the Committee that we come here with the very best of recommendations. The Court would not have permitted the Trustees to make an application to Parliament at the expense of the estate unless the Court had been fully satisfied that it would be for the benefit of the children, and that it would be otherwise proper that authority should be given to sell these shares. His Honour, Mr. Justice M'Intyre, in delivering the judgment of the Court, said, among other things:—

“The affidavits filed in support of the Plaintiff's case have satisfied us, that in view of all the circumstances, the proposed sale would be for the benefit of the Testator's children.”

And he goes on to say, that the Court has no power to authorise the sale:—

“If, to use the words of Lord Langdale, in *Johnston v. Baber*, above cited, we proceeded on the action of what might be beneficial to the parties, we should assume a legislative instead of a judicial power.”

But the Court has no doubt that the Legislature would have power to authorise the sale; and the Chief Justice, when the question of costs was discussed, said:—

“Moreover, in the event of their proceeding to obtain a private Act of Parliament to give them power to sell, they had by these proceedings obtained the opinion of the Court that the sale, if it could be effected, would be beneficial to the infants. For these reasons the Court thought it might allow the costs out of the estate.”

So that I put it to the Committee, that we come here fortified with the best of recommendations, and the best authority we could obtain—the authority and recommendation of the Supreme Court of this Colony. Dealing with the evidence shortly, I would first refer you to a very short affidavit which was made by Mr. Thomas Andrews, the Manager of the New Golden Gate Gold Mining Company. Mr. Andrews says that he is a miner of forty-two (42) years' experience, and that he has been a mining manager for upwards of fifteen years. He further states that he has been in charge of the New Golden Gate Mine since the commencement of operations in 1888; and in paragraph 3 of his affidavit, we have this statement:—

“I have carefully considered the result of the past operations at and the future prospects of the said mine and the offer from the London Syndicate of Twelve Pounds and Ten Shillings per share for the same (being Two Pounds and Ten Shillings per share above the market value thereof) and I am of opinion that the offer of a price above the market value of the said shares is due solely to the intention of the said Syndicate to arrange for working the said mine in conjunction with the Golden Spur Mine comprising the mines formerly known as the North Golden Gate and the Golden Gate Extended the Jubilee Mine and the City of Hobart Mine.”

And in paragraph 4:—

“I have no doubt whatever that a sale at the price of Twelve Pounds and Ten Shillings per share above-mentioned would be for the benefit of the Estate of Henry James Brock deceased and of all persons interested therein not only having regard to the price offered but also to the fact that there are many risks and expenses incidental to mining operations which cannot always be foreseen.”

Then Mr. Henry Joshua Wise, the Legal Manager of the New Golden Gate Company, gives formal evidence as to the capital of the Company, and the property on which the mine is situated. And then he gives, in paragraph 4, what I submit is most material evidence. The mine had been doing very well for some five years previously to the present year; and, with regard to this five years, Mr. Wise tells us what the profits have been. They have averaged £1 0s. 9d. per share. Mr. Wise says:—

“The net earnings of the said mine from the First day of February One thousand eight hundred and ninety-eight to the First day of February One thousand eight hundred and ninety-nine amount to Forty-three thousand two hundred and seventy pounds eighteen shillings and threepence out of which dividends amounting to One pound five shillings and sixpence per share have been paid. The average of the dividends paid per share during the Five years ending Thirty-first January last has been One pound and ninepence per annum. The dividends paid for the Four months since Thirty-first January last amount to seven shillings and sixpence per share. The mining operations are now being carried on between the depths of Eight hundred feet and One thousand two hundred feet the shaft being now sunk to a depth of One thousand three hundred and thirty-one feet. The average value of the gold extracted from every ton of quartz is Three pounds ten shillings and fourpence and the average cost of working is at present One pound thirteen shillings and eight pence for every ton of quartz got out.”

So the price now offered—£12 10s. per share—is very nearly twelve years' purchase of the mine.

Mr. Urquhart: It is quite twelve years', is it not?

Mr. Lodge: It is, practically; there is, I think, a little difference, making it slightly less.

Mr. Urquhart: No, I cannot see that. Twelve years at £1 9d. would get you only £12 9s. The price offered, you say, is £12 10s. It is slightly more than twelve years' purchase at that rate.

Mr. Lodge: Yes, it is twelve years' purchase. That is to say, that, if the purchaser can only make the same profit that the present Company has done (and it is admitted on all hands, I think, to be a very well managed Company), all they will get will be between eight per cent. and nine per cent. interest on their money. Of course the thing is transparent. Eight or nine per cent. is a most inadequate return on the purchase of a gold mine. The offer of £12 10s. per share is an offer above what could have been anticipated from anywhere. The reasons for this offer being so

much are, of course, referred to in Mr. Andrews' affidavit, from which I have just read extracts. They are also referred to in Mr. Wise's affidavit. Mr. Wise says :—

"I have been informed by a member of the said Syndicate and verily believe that it is the intention of the Syndicate mentioned in the said letter if their offer for the said mine is accepted to form a Company in London with large capital for the purpose of working the said mine in conjunction with adjoining mines (that is to say with the Gate Extended Star of Mathinna Golden Spur Jubilee and City of Hobart mines) and that in consequence and in anticipation of its being possible to work the said mines together more economically and profitably than anyone or more of them alone the said Syndicate are offering a higher price for the said shares than the present market value thereof."

I need hardly enlarge before this Committee upon the benefits of the modern system of working mines on a large scale, in point of economy and better returns. There are several Members of the Committee—some now present—to whom this subject must be very familiar, who must know from experience what the advantage is of working on a large scale, and with consequent greater economy. And at this point I may touch on what is the only matter of public interest in connection with our application. The application in the main deals solely with the rights and privileges and benefits of individuals; but there is just one public aspect it has. These other mines which are intended by the proposed purchaser to be worked in connection with the New Golden Gate Mine are now unprofitable; that is, it has been proved that they cannot be worked at a profit when worked by themselves, under existing circumstances; they cannot be worked in such a way and with such economy as will enable a profit to be made. But if this Act is passed by the Legislature and this sale is carried out there can be very little doubt that there will be an immense development of gold-mining in the Mathinna District. We shall see then, for the first time in this Colony, what can be made of gold mining pure and simple, worked on a large scale by a powerful organisation.

But, to go back to the Evidence. There is the evidence of Mr. Henry William Bayley, who is well-known to all members of this Committee as a stock-broker, a stock-broker of as wide experience and as good standing as any in Hobart. He has been a stock-broker in Hobart for fifteen years, and has really been associated with the business from a boy. He says, in short, that these shares of the New Golden Gate Company are unsaleable in Tasmania; that there is no demand for them, and only a demand for the very smallest quantities in Hobart itself. So that, although the market-value is stated as being about £10 per share, the fact is that if even a parcel of five hundred shares were to be put on the Hobart market, it would take several months to dispose of them at that price. So that the real market-value is really below £10 per share.

Mr. Urquhart: Oh, there is no market for the shares in Hobart at all; we know that.

Mr. J. G. Davies: Nor in Tasmania.

Mr. Lodge: And Mr. Bayley's judgment and experience are worth some attention on a point like this. He says :—

"I believe that the offer which has been made of £400,000 on behalf of a London Syndicate to purchase the said Company's mine for Four hundred thousand pounds is a highly advantageous one for the shareholders in the said Company and in particular having regard to the large number of the said shares belonging to the estate of Henry James Brock deceased I am strongly of opinion that a sale at the said price would be most beneficial to the said estate and to all persons interested therein."

Mr. Urquhart: It seems to me that you might leave that point of the benefits to be derived from the sale of these shares: that seems pretty clear. Come to the question of the advisability of dealing with a man's will in the way you propose.

The Chairman: On that I would ask you to inform the Committee what evidence you have to bring before us as to any possible expression of opinion that may have fallen from Mr. Brock, between the time when he signed the Codicil and time of his death—opinion, that is, as to the possible advantage of selling these shares, at or near the price now offered.

Mr. Lodge: The only piece of evidence that I have, is in Mr. Flexmore's affidavit; but I will submit that it is a most striking piece of evidence.

Mr. Urquhart: If I may, I would direct your attention to the necessity of impressing on the Committee, the necessity or expediency of altering the disposition of the shares under this Will on public grounds. The large number of other shareholders, who have their interests tied up, &c.

Mr. Lodge: Of course, it is impossible for the other shareholders to do anything whatever with this mine unless the authority of Parliament is given to the trustees in the matter of this proposed sale. There are over 10,000 other shares in the New Golden Gate Company, held by all sorts of persons in various lots, some large and some smaller.

Mr. Urquhart: And do some of these wish to sell?

Mr. Lodge: All the large shareholders are in favour of this sale. Mr. Flexmore is a large shareholder, and he wishes to sell. But all these shareholders are at the mercy of H. J. Brock's estate. They can stir neither one way nor the other.

Mr. Urquhart: And if the trustees in H. J. Brock's estate will not accept £12 10s. per share it ought to be the duty of the estate to pay £12 10s. to the other shareholders.

Mr. Lodge: No; I should not suggest that.

Hon. N. E. Lewis: You might point out, too, Mr. Lodge, that even if this Bill is passed, a majority of the shareholders must sanction it before any sale can be completed.

Mr. Lodge: This Bill only authorises the trustees to consent to a sale; they cannot stir, as I have already pointed out, without the authority of Parliament. They have been to the Court, and the Court cannot help them.

Mr. Urquhart : And we may take it, I suppose, that this sale of the shares in this estate will really bring a large sum of money into the country.

Mr. Lodge : £400,000 straightway. That is what is offered ; and I should expect and hope to see a large development of the gold-mining industry about Mathinna.

Mr. Urquhart : I may tell you that that is the only thing that influences me—the consideration of the possible public benefit that may accrue. Otherwise, I don't care about upsetting any man's will.

Hon. N. E. Lewis : You might, perhaps, point out also, Mr. Lodge, that even if the trustees get this power to sell the shares, they cannot override the wishes of the majority of the other shareholders.

Mr. Lodge : No, there must be an absolute majority. The trustees have not a majority both as to number and to value—that is, as concerns the number of shareholders.

Hon. N. E. Lewis : I understand that the shareholders have to pass a special resolution to authorise the sale. There are some 70 shareholders, among whom Brock's estate stands as only one. They can do anything they like as far as number of shares is concerned, but when it comes to the number of shareholders they are only one.

Mr. Lodge : I was going to say that the trustees must keep strictly to the lines of their duty. They could not simply absent themselves, for instance, from a meeting where any resolution was to be proposed. They must, if they are to step outside the lines of the Will and Codicil, have express authority to do so. I was going to refer to the passage in Mr. Flexmore's affidavit, which shows, as plainly as anything can, that the late Mr. H. J. Brock had really changed his mind with regard to this matter of the shares. Paragraph 4 of Mr. Flexmore's affidavit says:—

"It was on my advice that Henry James Brock now deceased refused to join in selling the said first-mentioned mine at the price of Ten Pounds per share in or about the month of October one thousand eight hundred and ninety-seven."

That is to say, the codicil was made in April, 1896, and in October, 1897, Mr. Brock was considering the advisability of selling these shares, and only refrained from joining in the sale on Mr. Flexmore's advice. Why? Because Mr. Flexmore thought a higher price could be obtained ; and Mr. Flexmore was quite right. And it would appear that this is the real cause of the difficulty in this matter. If Mr. Brock had then carried out his intention of making an alteration in the Will, he probably would, on some condition or other, have permitted the sale of these shares.

"It was on my advice (says Mr. Flexmore) that Henry James Brock now deceased refused to join in selling the said first-mentioned mine at the price of Ten Pounds per share in or about the month of October one thousand eight hundred and ninety-seven. I believe then that a higher price could be obtained for the said mine. I do not believe that a higher price than Twelve Pounds and Ten Shillings per share is likely to be offered nor do I think that there is any prospect of the market value of such shares rising above Ten Pounds if the said mine is to be worked alone as at present. I believe that the sole means of getting a higher price than the present market value is by accepting such an offer as that which has now been made."

Mr. Flexmore knows the mine intimately. He has been a shareholder from the beginning, a director for a number of years past, and of recent years, Chairman of Directors, and that is his conclusion in regard to it. I do not wish to weary the Committee longer. I gather that those members of the Committee who are now here present, fully see the advantage it will be to the children of the late H. J. Brock if the mine should be sold. There is only one other thing I would like to mention, and it is this : we are not here with a hypothetical case on the bare prospect of selling. The position has much improved, even since we were before the Court. We have now been assured by Mr. David Barclay, through whom the offer was made, that at the back of this offer there is a financial luminary of the first magnitude in the great financial world of London. And, of course, proper terms will be made, and proper deposits paid. There is one other question that I have not yet dealt with all. If the Committee sees its way to recommend the Bill—to report in favour of it—and the Legislature sanctions the same, and the sale can be carried out, and this estate gets in for itself its portion of the purchase money (£270,000), it will be impossible to invest that purchase money within the narrow limits laid down by the Will. The Will was made when Mr. Brock's means were still comparatively small, and it only authorises investments in Government securities and mortgages and fixed deposits, in Tasmania, and nowhere else. If this sum I have mentioned is obtained for the shares it will be absolutely necessary to extend the range of the investments ; and the proposal of the trustees which they submit to the Committee is that any investments that the Legislature in Tasmania or in England may sanction as investments for a Trustee should be permitted to these trustees. The rules in England as to investments open to Trustees are, I need scarcely say, very strict : so strict, indeed, that they will not even have our colonial securities. Therefore there can be no possible reason against—no possible objection to—such an extension of the trustees' power. It is a necessary consequence of any extended power that any be granted with regard to these shares. And we have, of course, obtained the sanction of His Honour, Mr. Justice Clark, to this proposal as to the investments also. The proposal to extend the range of the investments in the manner and to the extent I have indicated is a proposal that he approves.

Mr. Urquhart : Will that be under the direction of the Court—his approval, I mean ?

Mr. Lodge : The approval, so far as I know, is only that of his Honor, Mr. Justice Clark. Then I have only two words more to say. As I gather that members of this Committee here

present are wholly convinced of the advantage of selling the shares held by H. J. Brock's estate as a means of giving the children certainty as against uncertainty, I merely wish to point out now that the sale of these shares will accomplish more than that, as it serves to get rid of all the difficulties that might otherwise arise in the carrying on of the mine during the time that elapses until the youngest child of the testator is twenty-one. If any difficulty did arise, and we still held these shares, the estate would have to finance the mine to the full extent of two thirds of any amount required. And there is a further question of public interest—a question arising out of the interest of the other shareholders—the question whether they should be deprived of the opportunity of selling their shares by the somewhat rigid tying-up of the shares held under this Will; and whether (from another aspect) the District of Mathinna should be deprived of the opportunity it has long been seeking for, of having not only one good mine shaft down, but a number of others also, and by that means having a large extent of country at present unprofitable rendered profitable.

Mr. Urquhart: And you think it would bring in other capital from outside, apart from any sum paid for these shares?

Mr. Lodge: It would bring in, I think, an entirely new era to the Mathinna District

The Committee adjourned.

WEDNESDAY, NOVEMBER 29, 1899.

Mr. Frederick Lodge was again introduced to the Committee.

By the Right Honourable Sir E. N. C. Braddon, Chairman: Mr. Lodge, the Committee desire to know whether there was any special reason why, in Clause 3, it should not be repeated that these shares are not to be sold for less than £12 10s. per share?

Mr. Lodge: I had considered that clause 2 makes it quite plain that the trustees, if this Bill passes, will only be authorised to sell at the price of £12 10s. per share.

The Hon. N. J. Brown: That is the first sale, supposing they have to re-sell.

Mr. Lodge: There can be no objection to inserting, in Clause 3, after the words "to rescind or vary any contract for sale," "but so that no such sale at any less price than £12 10s. per share shall take place."

The Chairman: That will make it plain.

Mr. Lodge: That I might make it plain to the Right Hon. the Chairman, I would say that the sole intention is to sell if a sale can be effected at £12 10s. per share, and at no less price. There is no intention whatever to ask Parliament to authorise the sale at any lower price than £12 10s. per share. If, on a re-sale, the sale could be only effected at £12 9s. 9d. per share there is no intention to ask Parliament to authorise such a re-sale with the risk of not being able to get the extra threepence per share from the persons who first contracted to buy.

Mr. N. J. Brown: Look at Clause 3; would not that leave it open.

Mr. Lodge: I do not think so; but to put the matter beyond dispute there would be no objection, I believe, to inserting, in Clause 3, words that will show that, under no circumstances, are the trustees to sell at less than £12 10s. per share.

The Chairman: Would it not put the case beyond doubt to insert after the the word "aforesaid," in the last line, the words "at no less a sum than £12 10s. per share."

Mr. Lodge: Yes, that would do, sir; after the word "aforesaid," I quite agree that you should insert the words "at no less a sum than £12 10s. per share."

The Chairman: Then it would read, "It shall be lawful for the said Trustees to insert any special or other stipulations in any contract for sale as they shall think fit, and to rescind or vary any contract for sale, and to re-sell the said shares or such portion of them as to which the contract shall be so rescinded as aforesaid, at no less than the sum of £12 10s. per share, without being responsible for any loss occasioned thereby."

Mr. Lodge: In that case the loss would be only the difference between the £12 10s. per share and the higher price that might be offered—up to between £12 10s. net, and £12 10s. with any expenses that might be added.

The Honourable the Premier: It would include the Dividend.

Mr. Lodge: The Dividend Tax? Yes.

The Hon. Edward Mulcahy: Would that not be an awkward wording?

The Chairman: It must either go in there, or there must be a distinct proviso.

The Hon. the Premier: Provided, that no sale shall be at a price of less than £12 10s.

Mr. Lodge: I would like to mention now, that in one of the cases which I referred to when addressing the Committee two days ago, that is, the Duke of Somerset's case in England, 52-53 Victoria, a sale was authorised of heirlooms which were intended to go with the mansion house, so long as the mansion house could be kept up, but, in spite of that, Parliament authorised the sale of those heirlooms in view of the circumstances of the person who was the occupant of the mansion. And in two cases in Queensland, that is to say, in the "Tooth's Estate Act, in 1879," where property was tied up for the life of the widow, the sale was authorised; and in the year 1884, in Queensland also, in "Pettigrew's Estate," a sale was authorised, though the property was tied up until the children should have attained the age of 21 years. That is a case which is, as near as

possible, on the same lines as the case which is now before the Members of the Committee. These are the only points which I would ask leave to mention in conjunction with those I mentioned in addressing the Committee a few days ago. I would respectfully ask the Committee if they have any further questions they would like to ask me?

The Chairman : Where would you prefer those words put in, Mr. Lodge ?

Mr. Lodge : I think after the word "aforesaid," in the last line of clause 3 of the Bill, sir.

The Hon. the Premier : You would sooner have it that way than at the end of the clause ?
 "That no sale shall be effected at less than £12 10s. per share."

Mr. Lodge : Well, it really does not make very much difference, provided that the Trustees make a sale at £12 10s. per share, and that sale is not completed, they then ask that Parliament will authorise them to sell to somebody else, at the same price, but not at any less figure, not even at the price of 3d. less per share, or 10s. less per share, or any other sum below £12 10s. I am quite sure the Trustees did not contemplate it—even if Parliament authorised them to effect any sale at a less price than £12 10s. per share, which, from the repeated offers made at that price, they have reason to think can be obtained from any syndicate that might wish to purchase its mine for working in conjunction with other mines, that they would not sell at less; the trustees do not wish that Parliament should authorise them to sell at any less price than £12 10s. per share.

The Chairman : The Committee have understood that.

Mr. Lodge withdrew, and the Committee deliberated.

APPENDICES.

(A.)

IN THE SUPREME COURT OF TASMANIA }
 IN EQUITY.

Friday the Sixteenth day of June in the Year of Our Lord One thousand eight hundred and ninety-nine,

Between ALBERT SOMERVILLE FLEXMORE GEORGINA BROCK and
 HENRY ROBERT BRENT and JAMES BROCK and HENRY ERIC
 BROCK Infants by the said Georgina Brock their Mother and next
 friend Plaintiffs

AND

HAROLD J. BROCK CLAUDIUS ALEXANDER BROCK KATHLEEN
 WINIFRED BROCK and LORNA DORIS BROCK Defendants.

UPON motion made on the ninth day of June instant unto this Honorable Court by Mr. Alfred Dobson and Mr. Frederick Lodge of Counsel for the Plaintiffs and upon hearing Mr. Neil Elliott Lewis of Counsel for the Defendants—And upon reading the joint and several voluntary answer of the Defendants filed the third day of June instant the Affidavit of Thomas Andrews filed the first day of June instant the respective Affidavits of the Plaintiffs Albert Somerville Flexmore and Henry Robert Brent of Henry William Bayley and of Wilfrid Hugh Hudspeth all filed the second day of June instant the Affidavit of Henry Joshua Wise filed the third day of June instant and the Affidavit of Winston Churchill Simmons filed the fifth day of June instant—This Court did Order that the Bill of Complaint filed herein on the thirtieth day of May last be amended in manner following that is to say by adding the words "other than the Plaintiffs James Brock and Henry Eric Brock" after the word "Plaintiffs" in the sixth line of paragraph 5 and by striking out the words "The Mineral Lands Act 1884" (47 Victoria No. 10) in the fifth and sixth lines of paragraph 7 and in lieu thereof inserting the words "The Gold Fields Regulation Act 1880" (44 Victoria No. 16) which are now held under "The Mining Act 1893" (57 Victoria No. 24) and three of which have been renewed" and by inserting after the word "renewed" in the eighth line of the said paragraph 7 the words "as aforesaid" and by inserting after the word "Plaintiffs" in the said paragraph 7 the words "Albert Somerville Flexmore Georgina Brock and Henry Robert Brent" and by striking out the words "April 1898" in the first line of paragraph 10 and in lieu thereof inserting the words "October 1897" and by striking out the word "then" in the fourth line of paragraph 12 and in lieu thereof inserting the words "the Plaintiffs Albert Somerville Flexmore Georgina Brock and Henry Robert Brent" and by striking out the word "Defendants" in the seventh line of clause 1 of the prayer of the said Bill and in lieu thereof inserting the words "Plaintiffs and the infant Defendant"—And this Court did also Order that the said motion should stand for judgment and the said motion standing this day in the paper in the presence of Counsel for the Plaintiffs and for the Defendants—And it appearing that Henry James Brock (who is hereinafter referred to as "the Testator") by his Will (which is referred to in the pleadings) after certain specific bequests therein mentioned gave devised and bequeathed all his real estate and the residue of his personal estate unto one William Langdon and the Plaintiffs Albert Somerville Flexmore and Georgina Brock their heirs executors administrators and assigns upon trust that the said William Langdon and the Plaintiffs Albert Somerville Flexmore and Georgina Brock or the survivors or survivor of them or the executors or administrators of such survivor or other the Trustees or Trustee for the time being of

his Will should (except as to his Shares in the New Golden Gate Gold Mining Company thereafter mentioned) sell collect and convert the same into money and out of the moneys arising by such sale collection and conversion should pay his funeral and testamentary expenses and debts and a certain legacy of Seventy-five Pounds thereinbefore bequeathed to the Plaintiff Georgina Brock and should stand possessed of the residue of such moneys upon trust to set apart thereout the sum of Six thousand Pounds for the purposes therein-after mentioned and subject thereto upon certain trusts in favour of his children as therein mentioned and that the income of the said sum of Six thousand Pounds was to be applied in paying an Annuity of Three hundred Pounds to the Plaintiff Georgina Brock during her life and subject thereto the said sum was to fall into and become part of the residuary trust moneys before mentioned—And it also appearing that the Testator by his said Will declared that it should be lawful for his Trustees to let his unsold real estate or any part or parts thereof for such term or terms of years (not exceeding five years) as his Trustees should think fit or at the discretion of his Trustees to carry on upon the same any farming or grazing business in which he might be engaged at the time of his decease or to permit his wife to carry on the same and to use and employ in such business such parts of his estate as his Trustees should think fit without being responsible for any loss that might be occasioned thereby and to do repairs and effect insurances and generally to manage his unsold real estate and also declared that it should be lawful for his Trustees to pay out of his estate any call or calls upon any shares which he might at the time of his decease hold in any mining or other company or at their discretion to refuse to pay any call upon any such shares and to allow the same to become forfeited without being liable for any loss occasioned thereby and that the Testator further declared that his Trustees should stand possessed of all shares in the capital of The New Golden Gate Gold Mining Company No Liability which might belong to him at the time of his decease in trust for his only child or all his children who should live to attain the age of twenty-one years such shares to be equally divided between all his children (if more than one)—Provided always that if upon the sale and conversion of his real and residuary personal estate it should be found that the residuary trust moneys thereinbefore mentioned did not amount to the said sum of Six thousand Pounds then it should be lawful for his Trustees (with the consent of his Wife) to sell so many shares in the said last-mentioned Company as should be necessary in order to make up the said sum of Six thousand Pounds thereinbefore directed to be set apart for the benefit of his Wife during her life—And it also appearing that the Testator by a Codicil to his said Will (which Codicil is referred to in the pleadings) revoked the appointment of the said William Langdon as Trustee and Executor of his said Will and appointed the Plaintiff Henry Robert Brent to be a Trustee and Executor thereof in place of the said William Langdon and jointly with the Plaintiffs Georgina Brock and Albert Somerville Flexmore and that the said Codicil contained a direction that so long as any surviving child of the Testator should be under the age of Twenty-one years the Trustees should pay away and apply all dividends to be received in respect of the Testator's shares in the New Golden Gate Gold Mining Company as follows namely In the first place his Trustees should expend the same so far as might be necessary for any of the purposes mentioned and expressed in his said Will and in accordance with the provisions thereof In the second place his Trustees should pay and allow thereout such sums as should be required for the proper and adequate maintenance and support or for the education or otherwise for the benefit in the discretion of his Trustees of his children whether under age or not In the third place his Trustees should pay and discharge thereout any encumbrance or encumbrances upon his said estates and lands or any of them for the time being in existence And lastly his Trustees should pay the same dividends or so much as might remain thereof to the person or persons for whom the said shares were under the provisions of his said Will to be held in trust—And it also appearing that the Plaintiffs Albert Somerville Flexmore Georgina Brock and Henry Robert Brent as Trustees of the Will and Codicil of the Testator (which Will and Codicil are hereinafter referred to as "the said Will and Codicil") stand possessed of Twenty-one thousand six hundred and eighty-five Shares in The New Golden Gate Gold Mining Company No Liability upon the Trusts of the said Will and Codicil hereinbefore set forth—And it also appearing that the Shareholders in the said New Golden Gate Gold Mining Company No Liability have received an offer made on behalf of a London Syndicate to purchase the Mine the property of the said Company at the price or sum of Four hundred thousand Pounds being at the rate of Twelve Pounds and Ten Shillings for every share in the said Company—And it also appearing that a sale of the shares in the said Company belonging to the Testator at the time of his decease and now held by the Plaintiffs Albert Somerville Flexmore Georgina Brock and Henry Robert Brent as Trustees as aforesaid to the said Syndicate at the price or sum of Twelve Pounds and Ten Shillings per share will be for the benefit of the Infant Plaintiffs and the Infant Defendants to this suit—And it also appearing that it will be for the benefit of the Infant Plaintiffs and the Infant Defendants to this suit and of all other persons interested in the estate of the Testator that an application should be made for an Act of Parliament for the purpose of conferring on the Trustees of the said Will and Codicil full and proper powers of selling and disposing of the shares in the said Company bequeathed by the said Will and Codicil of the Testator—This Court doth Declare that a sale of the said shares belonging to the Testator at the time of his decease in the New Golden Gate Gold Mining Company No Liability at the price or sum of Twelve Pounds and Ten Shillings per share will be for the benefit of the Infant Plaintiffs and the Infant Defendants to this suit—And this Court doth also declare that it will be for the benefit of the Infant Plaintiffs and the Infant Defendants to this suit and of all other persons interested in the estate of the Testator that an application should be made for an Act of Parliament for the purpose of conferring on the Trustees of the said Will and Codicil full and proper powers of selling and disposing of the shares in the said Company bequeathed by the Will and Codicil of the said Henry James Brock deceased—And let the Plaintiffs Albert Somerville Flexmore Georgina Brock and Henry Robert Brent the Trustees of the said Will and Codicil be at liberty if they shall think fit to make or join in making or cause to be made such application accordingly and let the Draft of the Bill for the purposes aforesaid be settled by His Honor Mr. Justice Clark and let so much of the Plaintiffs Bill as seeks that a sale of the said shares to the said Syndicate at the said price may be sanctioned by this Honorable Court and carried into effect accordingly and that for the purposes aforesaid and so far as may be necessary the Testator's Estate may be administered by and under the direction of this Honorable Court and that all proper

directions may be given and accounts taken stand dismissed out of this Court and let any of the parties be at liberty to apply in Chambers for any further directions as they may be advised—And this Court Doth Order And Direct that the costs fees charges and expenses of all parties of and incidental to this suit be taxed by the Taxing Officer of this Honorable Court as between Solicitor and Client and that the same when so taxed be paid by the Trustees or Trustee of the said Will and Codicil out of any dividends received or to be received by them or him from the shares in the said Company thereby bequeathed as follows namely the costs of the Plaintiffs to their Solicitors John Roberts Curzon Allport Frederick Lodge and Dudley Allport or any of them and the costs of the Defendants to their Solicitors Neil Elliott Lewis and Tetley Gant or either of them.

Passed.

PHILIP S. SEAGER, Registrar.

7th July, 1899.

(B.)

IN THE SUPREME COURT OF TASMANIA }
IN EQUITY.

Between ALBERT SOMERVILLE FLEXMORE GEORGINA BROCK and
HENRY ROBERT BRENT and JAMES BROCK and HENRY ERIC
BROCK Infants by the said GEORGINA BROCK their Mother and
next friend Plaintiffs

AND

HAROLD J. BROCK CLAUDIUS ALEXANDER BROCK KATHLEEN
WINIFRED BROCK and LORNA DORIS BROCK Defendants

WE ALBERT SOMERVILLE FLEXMORE and HENRY ROBERT BRENT two of the above-named Plaintiffs severally make oath and say as follows:—And first I the said ALBERT SOMERVILLE FLEXMORE for myself say:—

1 I have been a Director of The New Golden Gate Gold Mining Company No Liability for nearly Ten years past

2 I have frequently inspected the mine near Mathinna belonging to the said Company both underground and above-ground during the time I have been a Director of the said Company and have made myself fully acquainted with the mining operations carried on thereat

3 In my opinion the offer of the London Syndicate now made to the shareholders of the said Company to purchase the said mine at a price equal to Twelve pounds and ten shillings per share is due solely to the intention of the said Syndicate to arrange for working the said mine in conjunction with certain adjoining mines and to the anticipation that by the formation of a new company in London with sufficient capital such mines can be worked together more economically and profitably than any one or more of such mines separately

4 It was on my advice that Henry James Brock now deceased refused to join in selling the said first-mentioned mine at the price of Ten Pounds per share in or about the month of October one thousand eight hundred and ninety-seven I believe then that a higher price could be obtained for the said mine I do not believe that a higher price than Twelve pounds and ten shillings per share is likely to be offered nor do I think that there is any prospect of the market value of such shares rising above Ten pounds if the said mine is to be worked alone as at present I believe that the sole means of getting a higher price than the present market value is by accepting such an offer as that which has now been made

5 I hold in my own right Three thousand six hundred shares in the said mine and am prepared to join in selling the said mine at the price of Twelve pounds and ten shillings per share now offered

6 I depose to the facts stated in this my Affidavit of my own knowledge and to matters of belief and opinion from my general knowledge of mining business and of the affairs of the said Company in particular And I the said HENRY ROBERT BRENT for myself say:—

7 I have been connected with the business of an Auctioneer for upwards of thirty three years past and during that time I have had experience of sales of all kinds of property I have been associated with the firm of Messieurs Roberts and Company (Auctioneers and Land and Estate Agents and now registered as a Company under the style of "Roberts and Company Limited") for twenty nine years past

8 Before the death of the said Henry James Brock deceased I had no knowledge of the said mine in the Bill in this Suit mentioned but since that time I have made myself acquainted with the results of the past operations at and with the future prospects of the said mine

9 I am strongly in favour of a sale of the shares held by the said Henry James Brock at the time of his decease at the price of Twelve pounds and ten shillings per share now being offered

10 The said Henry James Brock deceased had issue seven children and no more of whom one (namely Janet Isabel Brock) died in his lifetime an Infant and the remaining six are the Infant Plaintiffs James Brock and Henry Eric Brock and the Defendants Harold J. Brock Claudius Alexander Brock Kathleen Winifred Brock and Lorna Doris Brock (the said Defendants being also Infants)

11 The value of the real and residuary personal estate of the said Henry James Brock deceased apart from his shares in the said Mining Company but including dividends already received in respect of his said shares is ample to discharge his debts testamentary expenses and legacies including the sum of Six thousand pounds directed by his Will to be set apart for the benefit of the Plaintiff Georgina Brock and to meet all the requirements of the Will of the said Henry James Brock deceased The value of the said real estate which is now unencumbered amounts to Eighty-two thousand pounds or thereabouts The value of the said residuary personal estate exclusive of the said shares amounts to Twelve thousand pounds or there-

abouts the said personal estate consisting almost entirely of the live and dead stock employed in working the said real estate

12 I depose to the facts set forth in this my Affidavit of my own knowledge

ALBERT FLEXMORE

Sworn at Hobart in Tasmania by the above-named Deponent

Albert Somerville Flexmore this first day of June One thousand eight hundred and ninety-nine before me

PHILIP S. SEAGER a Commissioner of the
Supreme Court of Tasmania.

H. R. BRENT.

Sworn at Hobart in Tasmania by the above-named Deponent

Henry Robert Brent this second day of June One thousand eight hundred and ninety-nine before me

PHILIP S. SEAGER a Commissioner of the
Supreme Court of Tasmania.

[NOTE.—This Affidavit is filed on the part and behalf of the Plaintiffs.]

(C.)

IN THE SUPREME COURT OF TASMANIA }
IN EQUITY.

Between ALBERT SOMERVILLE FLEXMORE GEORGINA BROCK and
HENRY ROBERT BRENT and JAMES BROCK and HENRY ERIC
BROCK Infants by the said Georgina Brock their mother and next
friend Plaintiffs

AND

HAROLD J. BROCK CLAUDIUS ALEXANDER BROCK KATHLEEN
WINIFRED BROCK and LORNA DORIS BROCK Defendants.

I THOMAS ANDREWS of Mathinna in Tasmania Mine Manager make oath and say as follows :—

1. I have been connected with mines and mining operations for upwards of forty-two years and have been a Mine Manager for upwards of fifteen years.

2. I am the Manager of the Mine belonging to The New Golden Gate Gold Mining Company near Mathinna aforesaid I have been in charge of the said mine since the commencement of the said Company's operations in the year One thousand eight hundred and eighty-eight.

3. I have carefully considered the result of the past operations at and the future prospects of the said mine and the offer from the London Syndicate of Twelve Pounds and Ten Shillings per share for the same (being Two Pounds and Ten Shillings per share above the market value thereof) and I am of opinion that the offer of a price above the market value of the said shares is due solely to the intention of the said Syndicate to arrange for working the said mine in conjunction with the Golden Spur Mine comprising the mines formerly known as the North Golden Gate and the Golden Gate Extended the Jubilee Mine and the City of Hobart Mine.

4. I have no doubt whatever that a sale at the price of Twelve Pounds and Ten Shillings per share above-mentioned would be for the benefit of the Estate of Henry James Brock deceased and of all persons interested therein not only having regard to the price offered but also to the fact that there are many risks and expenses incidental to mining operations which cannot always be foreseen.

5. I depose to all the facts set forth in this my Affidavit of my own knowledge except as to the intention of the said Syndicate with regard to the working of the said Mine of which I have been informed by the Manager of the said Company.

THOS. ANDREWS.

Sworn at Hobart in Tasmania this First day of June

One thousand eight hundred and ninety-nine before me

PHILIP S. SEAGER, a Commissioner of the
Supreme Court of Tasmania.

NOTE.—This Affidavit is filed on the part and behalf of the Plaintiffs.

(D.)

IN THE SUPREME COURT OF TASMANIA }
IN EQUITY.

Between ALBERT SOMERVILLE FLEXMORE GEORGINA BROCK and
HENRY ROBERT BRENT and JAMES BROCK and HENRY ERIC
BROCK Infants by the said Georgina Brock their mother and
next friend Plaintiffs.

AND

HAROLD J. BROCK CLAUDIUS ALEXANDER BROCK KATHLEEN
WINIFRED BROCK and LORNA DORIS BROCK Defendants.

I HENRY JOSHUA WISE of Hobart in Tasmania Accountant make Oath and say as follows :—

1 I am the Manager of The New Golden Gate Gold Mining Company No Liability and I have been Manager thereof for nine years past as I know of my own knowledge.

2 The said Mining Company was formed in the year One thousand eight hundred and eighty-eight Its present nominal Capital is Nine thousand six hundred Pounds divided into Thirty-two thousand shares of the nominal value of six shillings each all of which are paid up to five shillings and threepence I know this of my own knowledge.

3 The said Company carries on mining for gold in certain quartz reefs situated in certain forty-three acres of land near Mathinna in Tasmania originally held under leases from the Crown under the provisions of "The Gold Fields Regulation Act 1880" (44 Victoria Number 16) which are now held under "The Mining Act 1893" (57 Victoria Number 24) And three of which have been renewed The said land is comprised in five separate leases three of which (including the most valuable one being a lease of ten acres of land in which alone the gold obtained by the said Company has actually been found) have recently been renewed as aforesaid while the two others with a certain water right held by the Company will shortly expire and will have to be renewed I know this of my own knowledge.

4 The net earnings of the said mine from the First day of February One thousand eight hundred and ninety-eight to the First day of February One thousand eight hundred and ninety-nine amount to Forty-three thousand two hundred and seventy pounds eighteen shillings and threepence out of which dividends amounting to One pound five shillings and sixpence per share have been paid The average of the dividends paid per share during the five years ending Thirty-first January last has been One pound and ninepence per annum The dividends paid for the four months since Thirty-first January last amount to seven shillings and sixpence per share The mining operations are now being carried on between the depths of Eight hundred feet and One thousand two hundred feet the shaft being now sunk to a depth of One thousand three hundred and thirty-one feet The average value of the gold extracted from every ton of quartz is Three pounds ten shillings and fourpence and the average cost of working is at present One pound thirteen shillings and eight pence for every ton of quartz got out The cost has gradually increased from One pound five shillings and threepence per ton at Thirty-first January One thousand eight hundred and ninety-six The cost of sinking varies from Three pounds fifteen shillings to Five pounds seven shillings per foot The mine up to the present time is practically free from water and it has never been necessary to set up any special pumping-plant baling from time to time only being required I know the facts deposed to in this paragraph partly of my own knowledge and partly from having kept and made up from time to time the accounts of the said Company.

5. At the time of his death the late Henry James Brock was possessor of Twenty one thousand six hundred and eighty-five shares in the said Company The said Twenty one thousand six hundred and eighty-five shares are now held by and are registered in the names of the Plaintiffs Albert Somerville Flexmore Georgina Brock and Henry Robert Brent as the Trustees of the said Henry James Brock's Will I know this from having referred to the books of the said Company kept by me as such Manager as aforesaid.

6. In or about the month of October One thousand eight hundred and ninety seven an offer was made on behalf of a London Syndicate to purchase the said mine for the sum of Three hundred and twenty thousand pounds but the said Henry James Brock refused to join in selling the said mine at that price I know this of my own knowledge.

7. On or about the Twenty fifth day of May last I received from David Barclay of Hobart aforesaid Bank Manager a letter containing an offer on behalf of Mr. Montagu Rhys Jones and a London Syndicate to purchase the said mine for the sum of Four hundred thousand pounds A true copy of the said letter (omitting formal parts) is in the words and figures following:—

"Hobart 25th May 1899.

"On behalf of Mr. M. Rhys Jones and a London Syndicate, I desire to make you an offer to purchase your mine for the sum of Four hundred thousand pounds (£400,000). A deposit of £5000 to be paid immediately I am able to get a communication from London in reply to my advice that the offer has been accepted, and the balance, £395,000, to be paid within six months. The exact terms and conditions can be settled when I learn from you whether this offer is accepted or not."

I know this of my own knowledge.

8. I have been informed by a member of the said Syndicate and verily believe that it is the intention of the Syndicate mentioned in the said letter if their offer for the said mine is accepted to form a Company in London with large capital for the purpose of working the said mine in conjunction with adjoining mines (that is to say with the Gate Extended Star of Mathinna Golden Spur Jubilee and City of Hobart mines) and that in consequence and in anticipation of its being possible to work the said mines together more economically and profitably than anyone or more of them alone the said Syndicate are offering a higher price for the said shares than the present market value thereof I know this of my own knowledge.

H. J. WISE.

Sworn at Hobart in Tasmania this Third day of June
One thousand eight hundred and ninety-nine.

Before me PHILIP S. SEAGER a Commissioner
of the Supreme Court of Tasmania.

NOTE.—This Affidavit is filed on the part and behalf of the Plaintiffs.

(E.)

IN THE SUPREME COURT OF TASMANIA }
IN EQUITY.

Between ALBERT SOMERVILLE FLEXMORE GEORGINA BROCK and
HENRY ROBERT BRENT and JAMES BROCK and HENRY ERIC
BROCK Infants by the said Georgina Brock their mother and next
friend Plaintiffs

AND

HAROLD J. BROCK CLAUDIUS ALEXANDER BROCK KATHLEEN
WINIFRED BROCK and LORNA DORIS BROCK Defendants.

I HENRY WILLIAM BAYLEY of Hobart in Tasmania Sharebroker carrying on business therein co-partnership with William Crosby Walch under the style or firm of "Bayley & Walch" make oath and say as follows:—

1. I have been carrying on the business of a sharebroker in Hobart aforesaid for over fifteen years past.

2. My said firm has effected sales of shares in the New Golden Gate Gold Mining Company No Liability during the month of May last past at prices varying from Nine Pounds Seventeen Shillings and Sixpence to Ten Pounds. Sales of the said shares are infrequent and only small parcels are and for more than twelve months past have ever been sold.

3. The demand for the said shares is almost entirely confined to Hobart aforesaid. Very few sales take place in Launceston and there is no market whatever for them outside of this Colony.

4. The present market value of the said shares is Ten Pounds or thereabouts but I believe that if Five hundred of the said shares were put upon the market it would take several months to dispose of them at or about that price.

5. I believe that the offer which has been made on behalf of a London Syndicate to purchase the said Company's mine for Four hundred thousand Pounds is a highly advantageous one for the shareholders in the said Company and in particular having regard to the large number of the said shares belonging to the estate of Henry James Brock deceased I am strongly of opinion that a sale at the said price would be most beneficial to the said estate and to all persons interested therein.

6. I depose to the matters of fact set forth in this my Affidavit from my own knowledge and to the matters of belief or opinion from my knowledge of mining business generally and my experience in the sale and purchase of shares generally and in the sale and purchase of the shares in the said Golden Gate Gold Mining Company in particular.

Sworn at Hobart in Tasmania this Second day of June

One thousand eight hundred and ninety-nine.

H. WM. BAYLEY.

Before me GEO. BROWNE a Commissioner
of the Supreme Court of Tasmania.

NOTE. This Affidavit is filed on the part and behalf of the Plaintiffs.

(F.)

IN THE SUPREME COURT OF TASMANIA }
IN EQUITY.

Between ALBERT SOMERVILLE FLEXMORE GEORGINA BROCK and
HENRY ROBERT BRENT and JAMES BROCK and HENRY ERIC
BROCK Infants by the said Georgina Brock their Mother and next
friend Plaintiffs

AND

HAROLD J. BROCK CLAUDIUS ALEXANDER BROCK KATHLEEN
WINIFRED BROCK and LORNA DORIS BROCK Defendants.

I WINSTON CHURCHILL SIMMONS of Churchill near Richmond in Tasmania Agriculturist and Grazier make Oath and say as follows:—

1. By the Order of Mr Justice Clark dated the First day of June One thousand eight hundred and ninety-nine I was assigned the Guardian of the above named Defendants who are all Infants by whom they may defend this suit—This I know from having perused the said Order.

2. I knew and was intimately acquainted with Henry James Brock deceased the Testator named in the Plaintiff's Bill of Complaint from his boyhood till his death—I was appointed by the Will of James Brock the father of the said Henry James Brock the Guardian of the daughters of the said James Brock and sisters of the said Henry James Brock and have since acted as such—The said Henry James Brock attained the age of Twenty-one years prior to his father's decease—I have known the Infant Defendants from their birth and I sincerely desire to see their interests carefully protected—I hold no Shares in the New Golden Gate Gold Mining Company No Liability and have no interest directly or indirectly in the questions to be submitted to this Honorable Court by this suit.

3. I have read the Plaintiff's Bill of Complaint and have this day as Guardian of the Defendants as aforesaid sworn an answer to such Bill—I have also read the drafts of the affidavit of Albert Somerville Flexmore and Henry Robert Brent Thomas Andrews Henry Joshua Wise Henry William Bayley and Wilfred Hugh Hudspeth filed or proposed to be filed in this suit and have discussed with the said Thomas Andrews the Mine Manager of the New Golden Gate Mine the value of the said Mine and its future prospects.

4. I have formed an opinion that the offer which has been made on behalf of a London Syndicate to purchase the said Company's mine for Four hundred thousand pounds (£400,000) is an advantageous one for the defendants and that having regard to the risks always attending mining ventures and the long period that must elapse before the youngest defendant attains the age of twenty-one years a sale of Twenty-one thousand six hundred and eighty-five Shares in the said Company belonging to the estate of the said Henry James Brock at the price of Twelve Pounds Ten Shillings per Share will be most beneficial for the defendants and that it will secure them an assured fund and thus be greatly to their advantage to have the shares realised at that price and at the present time and the proceeds of the sale invested upon the securities authorised by the Will of the said Henry James Brock.

5. I depose to the facts stated in this my affidavit of my own knowledge and to matters of belief and opinion from my general knowledge of business.

WINSTON C. SIMMONS.

Sworn at Hobart in Tasmania by the Deponent Winston Churchill
Simmons this Second day of June One thousand eight hundred
and ninety-nine before me

PHILIP S. SEAGER, a Commissioner of the
Supreme Court of Tasmania.

This Affidavit is filed on the part and behalf of the Defendants.
LEWIS AND GANT, Solicitors for the said Defendants.

(G.)

SUPREME COURT.

FRIDAY, JUNE 16.

FULL COURT IN EQUITY.

Before His Honour the CHIEF JUSTICE, and Justices CLARK and M'INTYRE.

PROPOSED SALE OF THE NEW GOLDEN GATE MINE.—COURT CANNOT SANCTION IT.—PROBABLE APPLICATION TO PARLIAMENT.

In the matter of the Bill filed by the trustees for power to sell shares held by the late Mr. H. J. Brock in the New Golden Gate G.M. Co., Mr. Justice McIntyre delivered the decision of the Court as follows :—

This is a suit instituted by the trustees and executors of the will of the late Henry James Brock, for the purpose of obtaining the direction of the Court as to the desirability of a sale of certain shares in the New Golden Gate Gold Mining Co., No Liability, held in trust for the infant children of the said H. J. Brock. The testator by his will, dated November 11, 1890, after making certain specific bequests, gave all his real and residuary personal estate unto his trustees, upon trust (except as to his shares in the said company) to convert the same into money, and after payment out of such moneys of his funeral and testamentary expenses and debts, and a legacy of £75, to stand possessed of the residue, upon trust to set apart the sum of £6,000 for the purposes in the will mentioned, and, subject thereto, upon certain trusts in favour of his children. The income of the £6,000 was to be applied in paying an annuity of £300 to the testator's widow during her life, and, subject thereto, the said sum was to become part of the residuary trust moneys before mentioned. The testator empowered his trustees to pay any calls upon any shares which he might, at the time of his decease hold in any mining or other company, or to refuse to pay any call upon any such shares and to allow the same to become forfeited without being liable for any loss occasioned thereby. And he declared that his trustees should stand possessed of all shares in the capital of the New Golden Gate G. M. Co. which might belong to him at the time of his decease in trust for his only child, or all his children who should live to attain the age of 21 years, such shares to be equally divided between all his children, if more than one, provided that if upon the sale and conversion of his real and residuary personal estate it should be found that the residuary trust moneys did not amount to the said sum of £6000, it should be lawful for his trustees, with the consent of his wife, to sell so many shares in the said company as should be necessary to make up the said sum of £6000, directed to be set apart for the benefit of his wife. By a codicil dated April 13, 1896, the testator directed that, so long as any surviving child of his should be under 21, the trustees should apply all dividends to be received in respect of the testator's shares in the said company, in the first place, so far as might be necessary for any of the purposes mentioned in his will, and in accordance with the provisions thereof; in the second place, to pay thereout such sums as should be required for the proper and adequate maintenance and support, or for the education, or otherwise for the benefit, in the discretion of his trustees, of his children, whether under age or not; in the third place, to pay and discharge any encumbrances upon his estates and lands; and lastly, to pay the same dividends, or so much as might remain thereof to the person or persons for whom the said shares were, under the provisions of his will, directed to be held in trust. The testator died on July 28, 1898, having had issue seven children, of whom six are now living, one, a daughter, having died in his lifetime under the age of 21 years. At the time of his death the testator was possessed of 21,685 shares in the New Golden Gate Gold Mining Co. The total number of shares in the company is 32,000, of the nominal value of 6/ each, all being paid up to 5/3. The present market value of the shares is about £10 per share, and it appears that sales have been recently made at about that price. The value of the real and residuary personal estate of the testator, apart from the said shares, but including dividends already received on such shares, is ample to discharge his debts, testamentary expenses, and legacies, including the said sum of £6000, and to meet all the requirements of the testator's will. The value of his real estate, which is unencumbered, amounts to £82,000 or

thereabouts, and the value of his personal estate, exclusive of the said shares, amounts to about £12,000. The average of the dividends paid on the shares in the said company, during the five years ending January 31 last, has been £1/0/9 per share per annum. The dividends paid for the four months since January 31 last amount to 7/6 per share. In or about April, 1898, an offer was made by a London syndicate to purchase the mine for £320,000, but the testator refused to concur in a sale at that price. The shareholders in the Company have now received from a London syndicate an offer to purchase the mine at the price of £400,000, being at the rate of £12/10 per share. If this offer is accepted and the sale carried out, the testator's estate will receive £270,000 out of the purchase money, which will be held by the trustees for the testator's children under the provisions of the will. The Bill prays that it may be determined whether or not a sale of the shares belonging to the testator at the time of his decease in the said company to the last-mentioned syndicate at the price of £12/10 per share will be for the benefit of the infant children of the testator, and that if such sale be determined to be beneficial, it may be sanctioned by the Court, and carried into effect accordingly. The defendants, in their answer by their guardian, admit all the statements in the Bill, and submit to the judgment of the Court whether or not a sale of the shares will be for their benefit, and submit their rights and interests in the matters in question to the care and protection of the Court. The affidavits filed in support of the plaintiff's case have satisfied us that in view of all the circumstances the proposed sale would be for the benefit of the testator's children. The question for consideration is whether this Court has jurisdiction to sanction a sale of the shares belonging to the testator's estate, the testator having given those shares in specie to his children, and having in effect prohibited the sale by his trustees of any of such shares, except in the event which has not happened, of there being insufficient money, apart from the shares, to realise the said sum of £6000. The Solicitor-General frankly admitted that he had been unable to find an authority in point. In the cases of *Johnston v. Baber* (8 Beav., 233), *Calvert v. Godfrey* (6 Beav., 97), and *Blacklow v. Laws* (2 Haïre, 40), cited by him, real estate was sought to be converted into personalty, and in each case the Court refused to sanction the conversion. The Solicitor-General contended, however, that the case before us was taken out of the general rule, inasmuch as the property was personal estate, and it was an investment consisting of mining shares. It is settled law that the Court has no power to order the sale of an infant's real estate merely because it thinks it would be for his benefit that it should be sold. All that can be done is to give a reference to inquire whether it would be for the benefit of the infant to apply for an Act of Parliament. *Calvert v. Godfrey*, above cited; *Field v. Moore*, 19 Beav., 176; *Russell v. Russell*, 1 Moll., 525; *in re Staines*, 33 Ch., D. 172. The Court has jurisdiction, however, to allow personalty to be converted into realty if it is shown to be clearly for the benefit of the infant. *Inwood v. Twyne*, Amb. 417; see also *Ashburton v. Ashburton*, 6 Ves. 6, where personal property of an infant was ordered to be laid out in the purchase of land, on the petition of the infant, who had attained the age of 18, although there was no authority in the will for changing the nature of the property. The ground upon which the Court acts is as we have pointed out, that the change from personal into real estate will be for the benefit of the infant. But after a laborious investigation of authorities, commencing with the year 1686, we have been unable to find any case in which the Court has ordered realty or personalty to be converted where the will has prohibited such conversion. The fact that no authority is to be obtained goes far to show that the point has never been considered sustainable, as the question must have arisen before this. Where a trust is for the benefit of several persons in succession, and the trust property is of a wasting or perishable nature, a direction or implication by the testator that the property is to be retained in the same state, takes the case out of the general rule as to the duty of trustees to convert perishable property. *Gray v. Siggers*, 15 Ch. D., 74. The real question in such cases is whether the settlor has with sufficient distinctness indicated his intention that the property should be enjoyed in specie. *Macdonald v. Irvine* 8 Ch. D., 112. Moreover, assuming that it would justify us in sanctioning the proposed sale, no overwhelming necessity is shown for the conversion of the shares. If the mine were to give out to-morrow, and the shares to become worthless, the infants would be well provided for out of the rest of the testator's estate; in fact, they would be comparatively rich. We are of opinion that this Court has no jurisdiction to sanction the proposed sale of the shares in question, although we believe that the sale would be for the benefit of the infants. To do so would be to act in direct contradiction to the directions of the will, which it is the duty of the Court to carry into execution. If, to use the words of Lord Langdale, in *Johnston v. Baber*, above cited, we proceeded on the motion of what might be beneficial to the parties, we should assume a legislative instead of a judicial power. The Bill must be dismissed.

The Solicitor-General (instructed by Messrs. Roberts & Allport for the trustees): Under the circumstances, as the trustees applied for the direction of the Court, and the infants through their counsel also, I apprehend your Honors will direct the costs of this suit to come out of the estate. The application is a most important one in the interests of the children and the property. Of course we may come to the Court any day for advice and direction under the Trustees Act. If we are offered a million for the shares, we know now that as the law stands we have no power to sell.

Hon. N. E. Lewis, M.H.A. (who appeared for the infants through their guardian, Mr. W. C. Simmons), said the application was of very great importance to his clients, and thought the trustees were perfectly right in thus seeking the opinion and direction of the Court as to what they should do, and therefore he thought the Court might allow the costs to come out of the estate.

The Chief Justice said the Court would be slow to give trustees costs of such an application where the law was absolutely settled; but in this case the Court thought there was, perhaps, some justification for obtaining the opinion of the Court, the law being such that the trustees did not like to take upon themselves the responsibility of deciding one way or the other. Moreover, in the event of their proceeding to obtain a private Act of Parliament to give them power to sell, they had by these proceedings obtained the opinion of the Court that the sale, if it could be effected, would be beneficial to the infants. For these reasons the Court thought it might allow the costs out of the estate.

The Solicitor-General said that probably the trustees would apply for a private Act of Parliament, a course that was being taken in many instances relating to trust estates in England every year.

The Chief Justice: No doubt the expression of the opinion of this Court on that point will be useful to you.

The Court then rose.

(H.)

Hobart, 17th June, 1899.

DEAR SIRS,

AFTER full consideration, I have now come to the conclusion that a sale of the shares in the New Golden Gate Company, belonging to my late husband's estate, at the price now offered for the same (£12 10s. 0d.), will be greatly for the benefit of my children.

If you should think fit to apply to Parliament for the necessary Private Bill, authorising the Trustees to sell the shares, I am quite willing to concur with you in the application and to do what I can to support it, and if we obtain the necessary authority I shall be ready to help in any way I can to carry out the sale.

Yours faithfully,

GEORGINA BROCK.

To Messrs. A. S. Fleamore and H. R. Brent, Hobart.

(I.)

Hobart, November 27, 1899.

TELEGRAM for transmission to — ANDREWS, Esq., New Golden Gate Mine, Mathinna.

CAN you furnish to the Committee any documentary evidence as to opinions expressed by the late Mr. Brock contrary to expressions used in his Will which are adverse to sale of shares in Golden Gate or any expression of opinion by Mr. Brock at any time in favour of the sale of shares wire reply.

NICHOLAS BROWN, *Acting Chairman of Committee on Bill.*

(J.)

Mathinna, 28th.

To N. J. BROWN, M.H.A.

No documentary evidence but Brock when eight pounds per share was offered left matter entirely with Flexmore to accept or reject by past conversation am fully convinced he would if alive accept offer now made.

THOS. ANDREWS.

As amended by the Select Committee

A

B I L L

TO

Enable the Trustees for the time being of the Will and Codicil of *Henry James Brock*, deceased, to sell and dispose of certain Trust Property bequeathed thereby. A.D. 1899.

WHEREAS *Henry James Brock*, late of *Campania* and of *Lawrenny*, in *Tasmania*, Esquire, (hereinafter referred to as "the Testator") duly made and executed his last Will, bearing date the Eleventh day of *November*, One thousand eight hundred and ninety, and appointed one *William Langdon*, *Albert Somerville Flexmore*, then of *Stockdale*, near *Jerusalem*, but now of *Claremont*, in *Tasmania*, Esquire, and the Testator's wife, *Georgina Brock*, Trustees and Executors thereof; and by his said Will, after certain specific bequests (which are not material to be herein set forth), gave, devised, and bequeathed all his real estate and the residue of his personal estate unto the said *William Langdon*, *Albert Somerville Flexmore*, and *Georgina Brock*, their heirs, executors, administrators, and assigns, upon trust that the said *William Langdon*, *Albert Somerville Flexmore*, and *Georgina Brock*, or the survivors or survivor of them, or the executors or administrators of such survivor, or other the Trustees or Trustee for the time being of his Will should (except as to his Shares in The *New Golden Gate* Gold Mining Company, (therein and hereinafter mentioned) sell, collect, and convert the same into money, and out of the moneys arising by such sale, collection, and conversion should pay his funeral and testamentary expenses and debts, and a certain legacy thereinbefore bequeathed to the Testator's wife, the said *Georgina Brock*; and should stand possessed of the residue of such moneys upon trust to set apart thereout the sum of Six thousand Pounds for the benefit of his wife for life as therein mentioned, and subject thereto, upon certain trusts, in favour of his children, as therein mentioned :

And whereas the Testator by his said Will declared that it should be lawful for his Trustees to let his unsold real estate, or any part or parts thereof, for such term or terms of years (not exceeding Five years) as
[*Private.*]

* * The words proposed to be struck out are enclosed in brackets []; those to be inserted, in parentheses ().

A.D. 1899.

his Trustees should think fit, without being responsible for any loss that might be occasioned thereby, and to do repairs, and effect insurances, and generally to manage his unsold real estate ; and also declared that it should be lawful for his Trustees to pay out of his estate any call or calls upon any Shares which he might at the time of his decease hold in any Mining or other Company, or at their discretion to refuse to pay any call upon any such Shares, and to allow the same to become forfeited, without being liable for any loss occasioned thereby ; and also declared that any moneys liable to be invested under his said Will should be invested upon real or Government securities in *Tasmania*, or upon fixed deposit in any Bank or Banks carrying on business in *Tasmania*, but in no other securities ; and also declared that his Trustees should stand possessed of all Shares in the capital of The *New Golden Gate* Gold Mining Company, No Liability, which might belong to him at the time of his decease, in trust for his only child or all his children who should live to attain the age of Twenty-one years, such Shares to be equally divided between all his children (if more than one) : Provided always that if upon the sale and conversion of his real and residuary personal estate it should be found that the residuary trust moneys thereinbefore mentioned did not amount to the said sum of Six thousand Pounds, then it should be lawful for his Trustees (with the consent of his wife), to sell so many Shares in the said last-mentioned Company as should be necessary in order to make up the said sum of Six thousand Pounds thereinbefore directed to be set apart for the benefit of his wife during her life :

And whereas the Testator duly made and executed a Codicil to his said Will, dated the Thirteenth day of *April*, One thousand eight hundred and ninety-six, whereby he revoked the appointment of the said *William Langdon* as Trustee and Executor of his said Will, and appointed *Henry Robert Brent*, of *Hobart*, in *Tasmania*, Auctioneer, to be a Trustee and Executor thereof in place of the said *William Langdon*, and jointly with the said *Albert Somerville Flexmore* and *Georgina Brock* ; and declared it to be his wish that so long as any surviving son of his should be under the age of Twenty-one years his Trustees should carry on or permit his wife to carry on his business of a Farmer and Grazier, as well upon his Estates of *Campania* and *Lingrove*, as upon the Estates of *Lawrenny*, *Kimbolton*, and *Langloh Park*, then recently purchased by him, and upon any other lands which might belong to him at his decease, pursuant to the power in that behalf in his said Will contained :

And whereas by the said Codicil the Testator directed that so long as any surviving child of his should be under the age of Twenty-one years his Trustees should pay away and apply all dividends to be received in respect of the Testator's Shares in The *New Golden Gate* Gold Mining Company, No Liability, as follows ; namely :—In the first place, his Trustees should expend the same so far as might be necessary for any of the purposes mentioned and expressed in his said Will, and in accordance with the provisions thereof ; in the second place, his Trustees should pay and allow thereout such sums as should be required for the proper and adequate maintenance and support, or for the education or otherwise for the benefit, in the discretion of his Trustees, of his children, whether under age or not ; in the third place, his Trustees should pay and discharge thereout any encumbrance or encumbrances upon his said Estates and lands, or any of them, for the time being in existence ; and lastly, his Trustees should pay the same dividends, or so much as might remain thereof, to the person or

persons for whom the said Shares were, under the provisions of his A.D. 1899. said Will, to be held in trust :

And whereas the Testator died on the Twenty-eighth day of *July*, One thousand eight hundred and ninety-eight, at *Campania* aforesaid without having altered or revoked his said Will, save as appears by his said Codicil, and without having revoked his said Codicil :

And whereas Probate for the said Will and Codicil was, on the Seventeenth day of *August*, One thousand eight hundred and ninety-eight, granted by the Supreme Court of *Tasmania* in its ecclesiastical jurisdiction to the said *Albert Somerville Flexmore, Georgina Brock, and Henry Robert Brent* :


And whereas the Testator left him surviving Six children and no more, all of whom are still living and are under the age of Twenty-one years, the eldest being now of the age of Seventeen years or thereabout, and the youngest of the age of Eight years or thereabout :

And whereas the Testator had One other child, a daughter, who predeceased him without having attained the age of Twenty-one years or having been married :

And whereas the Testator at the time of his death was possessed of Twenty-one thousand six hundred and eighty-five Shares in "The *New Golden Gate Gold Mining Company, No Liability*" (hereinafter called "the said Company,") which said Shares are still held by the said *Albert Somerville Flexmore, Georgina Brock, and Henry Robert Brent* upon the trusts of his said Will and Codicil, and none of which Shares have been sold or will be required to be sold in order to make up the sum of Six thousand Pounds in his said Will mentioned :

And whereas the Shareholders in the said Company have received an offer to purchase the mines and property of the said Company at the price or sum of Four hundred thousand Pounds, being at the rate of Twelve Pounds and Ten Shillings for every Share in the said Company :

And whereas in a certain suit instituted in the Supreme Court of *Tasmania* in its equitable jurisdiction to obtain the direction of the said Court as to the desirability of a sale at the said price of Twelve Pounds and Ten Shillings per Share of the Shares in the said Company held by the said before-named Trustees upon the trusts of the said Testator's Will and Codicil above set forth it was declared by decree of the said Court dated the Sixteenth day of *June*, One thousand eight hundred and ninety-nine, that a sale of the said Shares at the said price would be beneficial to the infant children of the said Testator, and also that it would be for the benefit of the said infant children and of all other persons interested in the estate of the Testator that an application should be made for an Act of Parliament for the purpose of conferring on the Trustees of the said Will and Codicil full and proper powers of selling and disposing of the Shares in the said Company bequeathed by the Will and Codicil of the Testator, and that the said Trustees should be at liberty, if they should think fit, to make or join in making or cause to be made an application to Parliament for such an Act as aforesaid, and that the draft of the Bill for such Act as aforesaid should be settled by His Honor Mr. Justice *Clark* :

(And whereas the said *Georgina Brock* died on the Twenty-fifth day of *November*, One thousand eight hundred and ninety-nine.) 

And whereas it appears that a sale of the said Shares at the said price will still be for the benefit of the aforesaid infant children and other persons :

And whereas the draft of this Bill has been settled by His Honor Mr. Justice *Clark* :

And whereas it also appears that it will be for the benefit of the aforesaid infant children and other persons in the event of a sale of the

4 *Brock Golden Gate Shares Enabling.* [63 VICT.]

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said Shares to confer upon the Trustees of the said Will and Codicil powers of investing the proceeds of the sale thereof upon securities other than those mentioned in the said Will :

Be it therefore enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows :—

Power to Trustees
to sell.



1 It shall be lawful for the said *Albert Somerville Flexmore*, [*Georgina Brock*] and *Henry Robert Brent*, or the [survivors or] survivor of them, or the executors or administrators of such survivor, or other the Trustees or Trustee for the time being of the said Will and Codicil of the said *Henry James Brock* deceased (all and every of whom are and is hereinafter referred to as “the said Trustees”) at their or his discretion to sell and dispose or join in selling and disposing of the said Shares in “*The New Golden Gate Gold Mining Company, No Liability*,” so as aforesaid bequeathed by the said *Henry James Brock* deceased.

Mode of sale.

2 It shall be lawful for the said Trustees in their discretion to sell the said Shares in such manner, at such time, on such terms and conditions, and either for cash or on credit, or partly, for cash and partly on credit, as they shall think fit, and at any price, not being less than the sum of Twelve Pounds and Ten Shillings per Share.

On special con-
ditions if
necessary.



3 It shall be lawful for the said Trustees to insert any special or other stipulations in any contract for sale as they shall think fit, and to rescind or vary any contract for sale, and to resell the said Shares or such portion of them as to which the contract shall be so rescinded as aforesaid without being responsible for any loss occasioned thereby. (But no sale shall be at a price less than the sum of Twelve Pounds and Ten Shilling per share.)

Application of
purchase moneys.

4 The said Trustees shall stand possessed of the money to arise from any such sale or sales upon trust in the first place to pay their costs, charges, and expenses of and attending the applying for, obtaining, and passing of this Act, and any other costs attending the sale and disposition of the said Shares. And as to the residue of such moneys upon trust to invest the same in their names at interest upon the securities mentioned in the Will of the said *Henry James Brock* deceased, or upon any securities for the time being authorised by the laws of the United Kingdom of *Great Britain and Ireland*, or of the Colony of *Tasmania*, as investments for trust moneys (with full power for the said Trustees from time to time to transpose and vary investments), and to stand possessed of the said securities and of the interest and income thereof upon and for the same trusts, intents, and purposes as are in the said Will and Codicil mentioned with respect to the said Shares and the dividends or income thereof respectively.

Trustees' receipts
to be good
discharges.

5 On any such sale as aforesaid the receipts in writing of the said Trustees for any money which may become payable for the purchase of any Shares sold under the provisions hereinbefore contained shall be good and sufficient discharges to the purchaser or purchasers thereof, and he or they shall not be bound or required to see to the application nor be affected by the mis-application or non-application thereof.

Short title.

6 This Act may be cited as “*The Brock Golden Gate Shares Enabling Act*.”