

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of J. C. Dibbs and others v. Brown and others (No. 2570), and T. A. Dibbs and others v. Brown and others (No. 2717), from the Supreme Court of New South Wales, delivered 21st November 1882.

Present :

SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.
SIR JOHN MELLOR.
SIR ARTHUR HOBHOUSE.

In this case there are two appeals presented by three brothers, named John Campbell Dibbs, Thomas Allwright Dibbs, and George Richard Dibbs, from two decrees of the Supreme Court of New South Wales. The decrees both relate to the same property, and both bear date the 18th December 1880. One of them was passed in a Suit numbered 2570, in which the three Dibbses are Plaintiffs, and the three Respondents Alexander Brown, John Brown, and James Brown are Defendants. The other was passed in a Suit numbered 2717, in which the Respondents Alexander Brown and John Brown are Plaintiffs, and the three Dibbses and James Brown are Defendants. The property in dispute has been dealt with in a way that creates great complication, and in order to exhibit the present position of affairs it is necessary to enter in some detail upon the prior history of the case.

Q 2813. 100.—11/82.

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On the 12th April 1853 the Respondent James Brown and Alexander Brown the elder, who were brothers and who had then for some time been carrying on the business of coal factors and shipowners in partnership at Newcastle in New South Wales, executed a deed of partnership. They agreed to be partners in the trade of coal factors and shipowners for the term of 21 years from the date of the deed, if they should so long live. Their firm was to be "J. and A. Brown." Their capital was to be the capital which had accrued during their past partnership, their interest in coal mines at East Maitland and Newcastle, the plant belonging to those mines, and certain ships.

The brothers James and Alexander Brown subsequently acquired by grants from the Crown other tracts of land in the parish of Newcastle to the extent of 905 acres, and a mineral lease of, or a license to extract coal from, a portion of Newcastle common numbered 24 and measuring 280 acres. Some, or it may be all, of the grants were made to one Stephen Foyle as trustee for the Browns; whether wholly or partially a trustee is now immaterial. The Browns held and worked the lands and mineral lease in partnership together, and their works were called the New Lambton colliery.

On the 29th of October 1868 an agreement was made in writing between the Browns of the one part and the English and Australian Copper Company of the other part. The Browns are therein described as colliery proprietors, and throughout the deed are called "the said proprietors." The object of the Browns, as appears by the recitals, was to induce the Company to erect smelting works near the New Lambton colliery. For that purpose they agree to convey to the Company about 36 acres of land, and to give certain facilities for communication with the New

Lambton colliery. The deed then proceeds thus :—

“ And further, that during the period of 21 years from the first delivery of coal under the provisions hereof, the said proprietors or other the proprietors or occupiers of the said New Lambton colliery shall supply and deliver at the furnaces, and that of a good and marketable quality, all small coal that may be required by the said Company or their assigns or other the proprietors lessees or persons carrying on the works from time to time, for use at the said works, at the average current rate for the month for small coal as delivered from the Government cranes or staiths in Newcastle. Provided nevertheless that the price charged shall be at the rate of 3s. per ton only if such current rate exceed that price, and at the rate of 2s. 6d. per ton if the same shall be less than that price, and shall also deliver of a good and marketable quality such large coal as may be required as aforesaid at the average current rate as aforesaid for large coals.”

It is further provided that “ during this agreement the said proprietors or other persons aforesaid shall not dispose of any portion of the New Lambton property, nor agree to supply coal to any other persons for the smelting or refining of copper or other ores on more advantageous terms than are hereby granted.” The Company on their part agree not to purchase such coal from any other person or persons.

On the 22nd of June 1872 the Browns, in conjunction with Stephen Foyle, effected a mortgage to Thomas Walker to secure the sum of 22,000*l.* advanced by him to the Browns. The mortgage was effected by three deeds, which vested in Walker, first the 905 acres acquired by the Browns; secondly the New Lambton colliery with the railway and plant attached to it; and thirdly the benefit of the contract with the Copper Company.

On the 12th March 1873 Stephen Foyle, in consideration of 1,000*l.* expressed to be paid to him by the Browns, transferred to them all his interest in the 905 acres of land.

It would seem that about this time dissensions occurred between the brothers Brown.

James desired to sell his interest in the New Lambton colliery, and requested John Campbell Dibbs, who was a clerk employed by the partners and well acquainted with the partnership affairs, to find a purchaser for him. Dibbs suggested himself as purchaser, and on the 11th of August 1873 James Brown wrote to J. C. Dibbs a letter in the following terms :—

“ Dear Sir,

11th August 1873.

“ I hereby agree to sell you the half share of the estate known as the New Lambton colliery, with all the machinery plant &c. connected therewith, for the sum of twenty thousand pounds (20,000*l.*), subject to my half share of the liability thereon of mortgage to Thomas Walker Esq. of (22,000*l.*) twenty-two thousand pounds, and on payment of the said twenty thousand pounds I hereby agree to execute a properly executed legal transfer of my said half share of the said estate.”

The offer was accepted on the 13th of August 1873 by J. C. Dibbs on the terms of James Brown's letter.

There has been a great deal of controversy whether J. C. Dibbs made this contract on his own behalf only, or on behalf of himself and his two brothers. On this point their Lordships concur with the Supreme Court. The exact nature of the interests taken by each brother does not appear, but their Lordships think it abundantly clear from the evidence that, as between the Dibbses and the Browns, the former must be taken to be jointly interested in the subject matter of the contract.

The contract was effected without the knowledge of Alexander Brown, who when informed of it was highly displeased and declared that he would not admit Dibbs into the partnership in the New Lambton colliery.

When the contract came to be executed, disputes arose between James Brown and J. C. Dibbs. Brown claimed to convey expressly subject to the partnership deed of April 1853 and

the contract of October 1868. Dibbs required an unconditional conveyance. There was also a dispute as to the mesne profits during the delay of execution. On the 27th May 1874 J. C. Dibbs filed a bill against James Brown, praying specific performance of the contract and compensation for the coal taken since its date. The Suit (No. 2493) was heard on the 14th October 1874 by Mr. Justice Hargrave, who made a decree for specific performance and for an account of the coal taken since the 1st of September 1873. With some variance as to the principle on which the account should be taken, the decree was affirmed on appeal by the Supreme Court on the 16th December 1874.

On the 26th of February 1875 J. C. Dibbs paid the purchase money into Court, and on the 6th of March 1875 James Brown signed an order requiring the agents of the partnership at New Lambton colliery to let J. C. Dibbs into possession of his half share. At this time Alexander Brown the elder was not in Australia. His nephew the Respondent Alexander Brown was acting for him, and he refused to let J. C. Dibbs into possession.

On the 2nd of June 1875 the bill in Suit 2570 was filed by J. C. Dibbs against Alexander Brown the elder alone. The frame of the Record was afterwards much altered, and its effect as altered will be stated presently.

On the 23rd of June 1875 Suit 2493 came on for further consideration before Mr. Justice Hargrave, who directed certain accounts to be taken with reference to the purchase money, and to the interest on Walker's mortgage, and to the coal gotten since the 1st of September 1873, and he ordered that, after payment of the balance, all parties should execute all proper conveyances bonds and assurances. No conveyance has ever been executed under this order. It was stated at

the Bar that when the conveyance came to be settled Mr. Justice Hargrave required J. C. Dibbs to give to James Brown an indemnity against liability under the contract of October 1868; that the Supreme Court reversed that decision; and that no effectual step has since been taken. But these latter proceedings are not set out in the Record.

On the 1st of March 1876 Alexander Brown the elder issued a notice dismissing all the workmen employed about the New Lambton colliery. He says he was desirous of diminishing the output of coal. Whatever his motive might have been, the effect of his notice was to create great irritation among the miners, and on the 18th of March, the day appointed by the notice for the cessation of work, a tumult occurred, in the course of which J. C. Dibbs, aided by his brother George R. Dibbs, took possession of the works. It is not necessary to inquire into the precise degree of violence used on this occasion, nor to apportion blame between the parties. Legally speaking, the possession taken by the Dibbses was taken forcibly.

On the 31st March 1876 an agreement was made in writing between the solicitors for the respective parties that, with the view of avoiding the serious consequences of breaking the contract of October 1865, the Dibbses should perform it, nominally as agents for Messrs. A. and J. Brown, so as to avoid committing themselves as novators of the contract. That arrangement appears to have remained in force until a Receiver appointed by the Court took possession of the colliery.

On the 2nd August 1876 Suit 2570 came on to be heard before Mr. Justice Hargrave, who gave the Plaintiff leave to amend his bill in any way he thought proper by adding parties or filing a supplemental bill or otherwise as he might be advised, within one month; in default

of which the bill was to stand dismissed. John C. Dibbs appealed against this decree, which was affirmed by the Supreme Court on the 18th of December 1877. The grounds of the decision do not appear. The Appellants' Counsel say that in the opinion of the Court Thomas Allwright Dibbs, George Richard Dibbs, and James Brown were necessary parties to the suit.

Pending the appeal in Suit 2570, and on the 19th of March 1877, the bill in Suit 2717 was filed by Alexander Brown the elder against the Dibbses and James Brown.

On the 29th of May 1877 Thomas Allwright Dibbs paid off Walker's mortgage, and took an assignment of it to himself. It has been much disputed whether in this transaction T. A. Dibbs was acting for himself alone or in the joint interest of himself and his brothers; but their Lordships think it unnecessary to determine that question.

On the 31st of May 1877 Alexander Brown the elder died. The Respondents Alexander and John Brown are his executors, and on the 26th of June 1877 they revived Suit 2717 which had abated by the sole Plaintiff's death. The prayer of the bill in its ultimate form is to the following effect: to have it declared that the share of the Dibbses in the New Lambton colliery is chargeable with the burden of the contract of October 1868, and of the other engagements of the firm of J. and A. Brown; to have the Plaintiffs indemnified by the Dibbses against breaches of the contract of October 1868; to have it declared that the Dibbses hold the share of James Brown only as James Brown would have held it if he had not assigned it, and have only such right in Walker's mortgage as James Brown would have had if he had paid it off, and that the mortgage is in fact satisfied;

or otherwise that the value of all coal taken by or on behalf of the Dibbses should be set off against the mortgage debt; for the accounts necessary to give practical effect to the declarations; for an injunction restraining the Dibbses from enforcing the mortgage, and from selling or disposing of the share of James Brown; and for a Receiver.

On the 28th of July 1877 T. A. Dibbs gave notice to the Browns that he would proceed to sell the property comprised in Walker's mortgage if the money was not paid in a month's time.

On the 5th May 1878 the amended bill in Suit 2570 was filed. It is now a bill by the three Dibbses as Plaintiffs, against the three Respondents as Defendants. It sets forth correspondence showing that J. C. Dibbs claimed to participate in the management of the colliery on an equal footing with Alexander Brown the elder, and complains that the claim was rejected. It prays for an account of coal timber and rents received by Alexander Brown the elder since the 6th of March 1875, the day on which James Brown gave the order for possession, in respect of the New Lambton colliery; that the coal should be valued as at the pit's mouth, after deducting the cost of severing and raising it; for payment to the Dibbses of one moiety of the amount so found; and for a Receiver.

Suit 2717 was heard on the 19th of November 1878 before Mr. Justice Hargrave, who pronounced a decree containing declarations to the following effect:

- (a) A declaration that the share of James Brown in the New Lambton colliery is owned by the Dibbses in equal shares.
- (b) A declaration that such share of the Dibbses is chargeable with the performance of, and any liens and charges

arising out of, the contract of October 1868, and the other engagements of the partnership of J. and A. Brown.

- (c) A declaration that the same contract, lien, charges, and engagements are binding on the Dibbsses in priority to and paramount over Walker's mortgage.
- (d) A declaration that the Plaintiffs are entitled to be indemnified by the Dibbsses by all proper deeds, documents, instruments, and sureties against breaches of the contract of October 1868 upon their part.
- (e) A declaration that the Dibbsses are entitled to hold the assigned share of James Brown only as James Brown himself could hold it.
- (f) A declaration that the Dibbsses have no greater right in respect of Walker's mortgage than James Brown would have had if he had paid it off.
- (g) Declarations that on payment by the Dibbsses Walker's mortgage was satisfied and ceased to be any charge on the New Lambton colliery; that the Dibbsses are entitled in account to credit for the payment of that mortgage; and that the Plaintiffs may set off against the mortgage debt the receipts of the Dibbsses since the 18th of March 1876, and any sums which in the partnership accounts might properly be charged on James Brown's share of the New Lambton colliery in favour of Alexander's share.

The Court then directed the following inquiries :

- (h) To ascertain the quantity and value of coals and other property come to the hands of the Dibbsses on and since the 18th of March 1876 in respect of the New Lambton colliery.

- (i) To ascertain what liens and charges Alexander Brown the elder had, or the Plaintiffs have, against the New Lambton colliery as an asset of the partnership of J. and A. Brown, and to take the partnership accounts so far as may be necessary for that purpose.
- (j) To ascertain the amount payable by the Plaintiffs to the Dibbses on account of Walker's mortgage.

And the Court granted injunctions :

- (k) To restrain the Dibbses from selling or disposing of the New Lambton colliery or any part thereof in their character of mortgagees.
- (l) To restrain the Dibbses from selling disposing of or encumbering the purchased share of James Brown until they have indemnified the Plaintiffs against breaches of the contract of October 1868.

The other Suit (2570) came on to be heard on the 20th November 1878, before Mr. Justice Hargrave, who pronounced a decree to the following effect :

- (m) An order that J. C. Dibbs shall obtain from James Brown a proper transfer and assurance of James Brown's share.
- (n) An order that J. C. Dibbs shall do all things requisite for protecting the Defendants Alexander and John Brown against one moiety of the responsibilities under the contract of October 1868.

Upon J. C. Dibbs obtaining the transfer and giving the indemnity required, the Court directed the following inquiries :—

- (o) To ascertain what is a just allowance to be made to Alexander Brown's executors for his management of the colliery.

- (p) To ascertain the amount of coal taken from the colliery, and of timber cut on the land, and of rents and profits of the land received, by or on behalf of Alexander Brown the elder since the 6th of March 1875.
- (q) To ascertain the value of such coal at the pit's mouth, after deducting the costs of severing and raising the same.

The Dibbses appealed to the Supreme Court from both the decrees of Mr. Justice Hargrave, and both appeals were dismissed with costs by a Full Court on the 18th December 1880. The decrees of the Primary Judge therefore stand affirmed by the Supreme Court, and it is the correctness of those decrees which is challenged by the present appeals.

The principal objections which the Appellants raise against the decrees are as follows: In Suit 2570 they object that the relief is made contingent on J. C. Dibbs obtaining a formal transfer from James Brown and giving the indemnity thereby required. They contend that the contract of October 1868 is personal to the Browns, that it does not affect purchasers from them, and that the Dibbses have thus become owners of a moiety of the New Lambton colliery with no other obligation than that of indemnifying James Brown against Walker's mortgage. In Suit 2717 they object to the declaration that their purchase is subject to the partnership engagements, to the declaration that Walker's mortgage is satisfied, and to the consequent directions.

Reading the decrees by the light of the reasons delivered by the learned Judges, it appears that their guiding principle is that the Dibbses shall not take the property of the partnership, while ridding themselves of its obligations. That is a just principle, but the method by which the decrees enforce it is irregular, and

leads to results that are difficult to maintain. The relief given in Suit 2570 should hardly be dependent on the formal completion of the sale by James Brown. It cannot be right to require two indemnities for the estate of Alexander Brown, one from J. C. Dibbs alone against a moiety of the liabilities resulting from the contract of October 1868 and from Walker's mortgage, and the other from the three Dibbses with sureties against their breaches of the same contract. The accounts directed against Alexander Brown during his possession and against the Dibbses during their possession should be in the same terms, which is not the case. The accounts directed in Suit 2570, being for the produce of the colliery and not for the profits of the concern, proceed on the principle that the Dibbses are co-owners of the specific property; whereas in Suit 2717 Walker's mortgage in the hands of T. A. Dibbs is treated in a way which is not defensible except upon the principle that the Dibbses are, or are to be treated as, partners in the concern.

It appears to their Lordships that the fundamental question in the case is the question what did the Dibbses buy of James Brown; and that depends on the position of the New Lambton colliery under the contract of October 1868. The Appellants contend that the interest sold to the Dibbses was not partnership property at all. They say that persons may be owners of the soil as tenants in common, while working its products in partnership. That is possible, no doubt; but their Lordships held that it was not the case with respect to the New Lambton colliery.

It is well established by the evidence in Suit 2717 that James and Alexander Brown acquired the grants of land and mineral lease before mentioned with partnership money, and that they carried on their works at New Lambton as part of their general partnership business. Therefore

in October 1868 New Lambton colliery, with the land plant and everything connected with it, was a portion of the concern which was governed by the partnership deed of 1853 for a term which had still more than five years to run. It would require very clear evidence to show that the brothers Brown intended to take this large and valuable portion of their partnership property out of that category altogether, and to constitute themselves partners only in the working, becoming ordinary joint tenants in the corpus of that property. There is no evidence of their intentions except the deed of October 1868, and that deed does not, in their Lordships' judgment, exhibit any such intention as the Appellants seek to find there. On the contrary, their Lordships are clear that the intention of the Browns in October 1868 was to extend the duration of their existing partnership, so far as regards New Lambton colliery, for the term covered by the contract with the Copper Company. They contract to trade in a certain way, for a certain term of years, and with express reference to a property already held and worked by them in partnership.

That is not all. It is obvious that a change of ownership might interfere with the performance of a contract of this kind. Some changes of ownership, such as occur on death or bankruptcy, cannot be avoided. The contract is therefore framed so as expressly to bind other proprietors than the Browns. But it further binds the Browns not to dispose of any portion of the New Lambton property during the agreement. As between the Browns and the Company there exists a covenant, which has been impugned as a restraint on alienation but which their Lordships hold to be of a perfectly lawful and reasonable nature, restraining the Browns from any voluntary alienation of the property during the agreement. It follows further from the nature

of the transaction and the relations between the parties, that as between the two brothers Brown themselves each of them could hold the other to the observance of this covenant if he was proceeding to violate it, for a breach of the covenant by one of the partners might inflict a serious injury on the partnership.

We arrive then at this conclusion, that Alexander Brown had a right to say to his brother James that, during the existence of the contract of October 1868, he could not transfer *in presenti* any portion of the New Lambton property. James might transfer his share of the profits as they accrued, or his ultimate right to the property *in futuro* and after the completion of the contract; but if he attempted to do more, it would not be valid as against the rights of Alexander as a partner.

Then did the sale actually made by James to the Dibbses work a dissolution of partnership between him and Alexander? Their Lordships think not. It is not necessary in this case to determine the precise effect which a sale of his share by one partner would have on a partnership formed for a term of years. In the present case there is a term of years protected by an agreement not to dispose of any portion of the property. In their Lordships' opinion it was competent to Alexander to say that, notwithstanding the sale by James, he would treat the partnership as subsisting, and that, inasmuch as James had withdrawn, he would carry it on himself, only paying James's share of the profits to his transferees instead of himself.

The position in which Alexander was placed by James's sale to the Dibbses has not, as their Lordships think, been varied by the conduct of the parties. The decree made in Suit 2493, whether right or wrong as between the Dibbses and James, cannot affect Alexander. It is true that in the disputes between Alexander and the

Dibbses he has not taken the clear and strong position which he might have done. Indeed in so very peculiar and novel a case it is not surprising to find some confusion of view. But it seems to their Lordships that Alexander and those who represented him have throughout held the Dibbses at arm's length, and as against them have intended to assert all their rights, whatever those rights might turn out to be.

Such was the position of things in Alexander's lifetime, and the case then, though presenting some peculiar features, was comparatively simple. What difference is made by Alexander's death? In one way and for some purposes it makes a great difference, because it necessarily works a dissolution of the partnership, and James having withdrawn by sale of his interest, there is nobody left who can as of right carry on the business. But it cannot give to the Dibbses any greater right of management or interference, or any greater right to the specific property of the partnership, than they had before. There is still the contract of October 1868 to be provided for, and the joint trading stipulated for by that contract must go on until its completion or other determination. The case is one of those in which a partnership, though dissolved by death, must be treated as continuing for the purpose of completing current transactions. The only peculiarity of it is the unusual length of time for which the current transactions may endure.

In the great majority of cases difficulties arising from death or transfer of interest are met by arrangements dictated by the good sense and common interests of the parties. In default of such arrangements, and there seems to have been little disposition to make them in this case, the Court must do the best it can. The right of the parties interested in the property is to have a Receiver and Manager appointed by the Court.

Both Suits pray for a Receiver. Beyond that the Record contains no mention of any Receiver, or any indication how the colliery is now managed. It is stated at the bar that a Receiver has been appointed in some other suit. That may possibly create some complication, but their Lordships must on these appeals act with reference to the interests of the parties before them, leaving others, who are not bound by these proceedings, to maintain their own rights. They consider that the executors of Alexander Brown the elder have a preferable right to the management of the partnership affairs until the winding up can be effected. If they decline, and if the parties cannot agree upon a Manager, the Court must appoint one.

The question then is, what decrees should be made to work out the principles above laid down. It is obvious that the relief prayed by the Dibbses in Suit 2570 is entirely inconsistent with them. That Suit is founded on the principle that the Dibbses had acquired a right to a moiety of the New Lambton property in specie, and a right to take part in the management of the mine. They had no such rights, and in strictness the bill should have been dismissed at the hearing. Suit 2717 is not framed definitely on the views taken by their Lordships, but as regards the parties, and as regards the accounts prayed for, and as regards the submission of the Plaintiffs to pay, the frame of the suit is sufficient to justify a decree covering the whole ground of controversy.

As regards Walker's mortgage, the first observation is that as it was taken with notice of the contract of October 1868, it must be held subject to that contract. In fact it is a violation of the covenant against disposal of the property, and invalid as against the Company. The second observation is that T. A. Dibbs must be taken as

having jointly with his brothers been in possession of the property on and after the 18th of March 1876, and the enforcement of the mortgage must be subject to his accounting for his receipts. Moreover in such a case as this, when the corpus of the partnership property mortgaged is being consumed every day, their Lordships are of opinion that the proceeds should be applied in the first instance to the reduction of the debt. They do not consider that there is any ground for treating the mortgage as satisfied by operation of law and without actual payment, but they think that T. A. Dibbs is rightly subjected to the adjustment of accounts before he can put his securities in force.

It remains now to indicate the heads of the decree which should be made in Suit 2717 by way of varying the decree appealed from. But there are so many details to be considered, and it is so desirable to avoid slips or disputes as to the meaning of the decree when the Suit gets back to the Colony, that their Lordships will be glad to have full minutes of a decree prepared on behalf of the Plaintiffs in that Suit. If the parties agree the minutes can be handed in to the Registrar. If they disagree the minutes must be discussed before their Lordships. When settled they will form the substance of the recommendation which their Lordships will humbly make to Her Majesty. The tenor of the decree, as they are at present advised, should be as follows :—

- (a) Declare that according to the true construction of the articles of agreement dated the 29th of October 1868, James Brown and Alexander Brown therein mentioned undertook and agreed to trade with the New Lambton colliery in partnership for the term and in the manner therein appearing.

- (b) Declare that the New Lambton colliery, and all the property of James and Alexander Brown belonging thereto or used therewith, was their partnership property.
- (c) Declare that according to the said partnership agreement, it was not competent to either partner to dispose of any portion or share of the partnership property, as against the other partner, during the existence of the contract with the Copper Company.
- (d) Declare that under the sale made by James Brown to the Dibbses the latter did not, during the existence of the contract with the Copper Company, take any present right or interest, except the right to receive such share of the profits of the partnership as would properly come to the hands of James Brown after settlement of partnership accounts.
- (e) Declare that the sale made by James Brown to the Dibbses did not effect a dissolution of the said partnership.
- (f) Declare that the said partnership was dissolved by the death of Alexander Brown on the 31st of May 1877.
- (g) Declare that under the circumstances it is necessary to carry on the partnership business until the completion or other determination of the contract with the Copper Company.
- (h) Declare that the mortgage effected on the 22nd day of June 1872 to Thomas Walker is subject to the performance of the contract with the Copper Company.
- (i) Direct accounts of the proceeds of the New Lambton colliery and of any partnership property held therewith or used for the purposes of that colliery,

which since the 6th of March 1875 have come to the hands of Alexander Brown the partner, or of his representatives, or of the Dibbses, or of any one on their behalf, and of the net profit resulting therefrom.

- (j) Direct an inquiry how much of such profit is properly attributable to the share of James Brown, and take the general accounts of the partnership of J. and A. Brown so far as may be necessary to answer this inquiry.
- (k) Let the profits of the New Lambton colliery be applied first to keep down the interest, and next to pay off the principal, due on Walker's mortgage.
- (l) Subject thereto, let the profits attributable to the share of Alexander Brown be paid to the Plaintiffs, and the profits attributable to the share of James Brown be paid to the Dibbses according to their interests.
- (m) Restrain T. A. Dibbs from proceedings to enforce his mortgage until the foregoing accounts have been adjusted.
- (n) Restrain T. A. Dibbs from proceedings to enforce his mortgage during the existence of the contract with the Copper Company in any such manner as to contravene the covenant of the Browns not to dispose of any portion of the New Lambton property.
- (o) Declare that as between the parties to this suit the Plaintiffs have a preferential right to manage the New Lambton colliery. If they decline and fail to do so, and if the parties cannot agree upon a Manager, refer it to the Master to approve of some proper person to manage.

(p) Reserve further consideration and liberty to apply.

With respect to Suit 2570, after all that has taken place their Lordships will not insist on dismissing the bill. But for the reasons above given they cannot allow the existing decree to stand, though the Respondents say that they are not dissatisfied with it. They are willing to give the Dibbses a decree conformable to the decree in Suit 2717 so far as relates to the period of Alexander Brown's possession; and they suggest, as in the other suit, that minutes of it should be prepared by the Plaintiffs. If the Dibbses do not desire that, the bill must be dismissed with costs.

The effect of the appeals being to vary the decrees materially, though in a way which is probably beneficial to the Respondents, their Lordships consider that there should be no costs of the appeals. They are unwilling to conclude without impressing upon the parties that the interference of courts of law with partnership transactions is usually disastrous, and that it is impossible for any Court to do for the parties what they may do for themselves by reasonable arrangements. Possibly they may see their way to such arrangement, now that their strict legal rights have been ascertained.
