

1857 0707 Kemp Isaac Probate Packet Summary

Submission by Pickwood to Sydney 27 April 1857

Folios 40-44

Received 27 April 1857

Coversheet for Affidavit of death of Alfred Pickwood re property

*Police Office Dubbo
27 April 1857*

*To E Mackechnie Esq
Supreme Court House
Sydney*

Sir

I have the honor to forward the accompanying affidavits in the Estate of Isaac Kemp who met his death by falling off his dray. Deceased was found on the road to Maitland about 47 miles from Dubbo.

2. *From enquiries I have made from there to whom deceased was personally known for the last 15 years I am assured that he has no relative as next of kin in the Colony.*

[Note this "expert" is unnamed.]

3. *The dray and ten working bullocks were his own property and are now in possession of the landlord of the Public House at Cobra close to where the body was found who paid the funeral expences. Deceased I hear had 2/5/6 in money on his person at the time of his death which is also in possession of the landlord of the public house at Cobra. And he is possessed of about [!] 14 head of horses (and as far as is known) a few cattle, brand IK. They are on two or three stations on the Castlereagh. Given deceased was a carrier, and did not hold any licence for squatting purposes.*

4. *I have forwarded an affidavit if you think it necessary to (xxxx) it under the 15 Vict No 8. This is one of those cases where the property ca be so easily made away with in a short time that I have thought it expedient to place the circumstances before you and request such instructions as you may be necessary under the circumstances.*

*I have the honor to be
&c
Your most obedient servant
A Pickwood*

Folio 3

24 April 1857

Coversheet for Affidavit of death sworn by James Samuels.

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Folio 4

24 April 1857 – Pre-formatted form

Affidavit of Constable James Samuels, who swears that

Isaac Kemp departed this life on or about the eleventh day of April 1857 and as I have heard, and verily believe, intestate leaving no person of kin to him in the said Colony, and I further say that the said Isaac Kemp hath left some Personal Estate exposed and liable to waste, within the said Colony.

Sworn before Alfred Pickwood
a Commissioner for affidavits

Folio 5

27 April 1857

Affidavit of Joseph Cope Page, grazier of Burbigal, who swears that

Isaac Kemp late of Kurbin District of Bligh ... deceased intestate has left some property, consisting of horses, running in the bush and that the said horses will be purloined or otherwise lost if not taken charge of by some person authorised on behalf of the ... deceased.

Sworn before Alfred Pickwood
a Commissioner for affidavits

NOTES

- The person who is supposed to have advised that Isaac had no relatives is unnamed.
- No enquiries about the cattle “on two or three stations on the Castlereagh” seem to have been made.
- The legislation referred to in the memorandum 15 (1851) Victoria 8 is not on Austlii. It may have later been consolidated into the *Intestate and Insolvent Balances Act 1853 No 17a1*. This provided that collections in relation to intestate and insolvent estates be paid into consolidated revenue annually; and that subsequent claims be paid from general revenue.
- Apparently, Isaac was travelling to Maitland with a load of wool for Mr Bennett. The road from Dubbo to Maitland passes through Dunedoo. He died at a place along this road that is 47 miles from Dubbo and two miles past the public house of John Blakemore at Cobra. As far as I can determine, there is not now and never has been a place in NSW named Cobra. About 45 miles from Dubbo along the Dunedoo Road there used to be a village named Cobbora. Cobbora was established where the original track from Mudgee to Mendooran crossed the Talbragar River. In the late 1800s, it had a police station and was the main locality on the Talbragar. Cobb & Co coaches travelled through Cobbora twice a week in 1876 to 1879. However, in 1910 the railway took a route via Dunedoo which bypassed Cobbora, and the village went into a terminal decline. **I believe that Isaac Kemp died two miles north east of Cobbora on the road to Dunedoo.**

1857 0707 Kemp Isaac Probate Packet Summary

Supreme Court action in Sydney 8 May 1857

Folio 2

8 May 1857 – Pre-formatted form

Petition of S Raymond (Curator of Intestate Estates) to the Supreme Court of NSW

*That the above named Isaac Kemp departed this life on or about the eleventh day of April 1857 intestate, **without leaving any person of kin to him in the said Colony**, and leaving some personal effects therein now exposed and liable to waste.*

Your Petitioner therefore prays, that he may be authorised and empowered by order of this Honourable Court, to collect, manage, and administer the personal estate of the said Isaac Kemp deceased.

Folio 7

8 May 1857 – Pre-formatted form

Order of the Supreme Court acknowledging folios 4 and 5 and *authorising and empowering Samuel Raymond (Curator of Intestate Estates) to administer the estate.*

Signed by I N Dickinson for the Supreme Court.

Folio 6

8 May 1857 – Pre-formatted form

S Raymond (Curator of Intestate Estates) **delegated the administration of the estate to Edmund Augustus Mackechnie, one of the official Assignees in Insolvency.**

The delegation was endorsed by I N Dickinson for the Supreme Court.

1857 0707 Kemp Isaac Probate Packet Summary

Second submission from Pickwood to Sydney 8 May 1857

Folio 8

Received 18 May 1857

Coversheet for claim to property under Deed of Gift.

Folio 9

8 May 1857

Memorandum from A Pickwood in the Estate of Isaac Kemp

Police Office Dubbo

8 May 1857

Sir

I have the honour to forward you the enclosed notice in the estate notes in the margin.

I subsequently to the affidavit I forwarded to you, a half caste natural son of the deceased, applied to administer through his solicitor in a deed of gift the deceased died on the road, and left no will, nor was it known that any deed of gift had been executed by him, it is only necessary for me to forward you the notice, and await any instructions you may forward.

I have the honour to be your most obedient servant.

A Pickwood

A copy of the document referred to is at folio 39.

[NOTE THAT – the document attached would, in my opinion, be characterised as a Will, not a deed of gift. That being so, the Supreme Court should have rescinded its earlier authorisation of the Curator of Intestate Estates as having been issued under a misapprehension. Then it should have authorised an executor of the will.

Furthermore, if treating it as a deed of gift, then Isaac Kemp's estate would have been zero and William Kemp would have been the sole owner of his dray, bullocks and horses. So, with no estate to administer, the Curator of Intestate Estates should have taken no further action.]

Folios 46

Address for folio 45 letter – to Alfred Pickwood

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Folio 45

Undated letter from Stuart Darby to Alfred Pickwood

Sir

In the Intestate Estate of Isaac Kemp deceased

I hereby as the attorney of William Kemp of the Macquarie know (sic) give you notice not to sell or dispose of any part of the Estate or Effects of the above named deceased, the said William Kemp holding a Deed of Gift of the same. Dubbo 8 May 1857.

I am &c

Yours obediently

Stuart Darby

To A Pickwood Esq

Agent for the Curator of Intestate Estates

Clerk of Petty Sessions

Dubbo

Folio 39

27 Aug 1856

True Copy by Alfred Pickwood of Isaac Kemp's will (referred to as a Deed of Gift)

This is to certify that I have this day given to my son William Kemp the whole of my property, consisting of a dray and all my working Bullocks, and any other Cattle of mine, money &c.

On condition of the said William Kemp paying all my just debts &c &c.

Signed *his*
 Isaac X Kemp
 mark

Witness

George Mathews

William Jones

This 27th day of August 1856

Merry Merry Creek

True Copy

AP

1857 0707 Kemp Isaac Probate Packet Summary

NOTES

- Despite the unusual wording, this is clearly a will, not a Deed of Gift. William Kemp's lawyer has let him down.
 - If William Kemp had been required to pay consideration in August 1856 (paying all my just debts), it would be a sale, not a gift. If it had been a sale, the document would be a receipt, not a Deed of Gift.
 - It follows that these words relate to payment of any debts that are due at the time of his (future) death. Therefore, the document is a will.
- The fact that Isaac Kemp retained possession of the dray and bullocks after this date is further evidence that the document is a will, not a receipt for sale or a Deed of Gift.
- The authorities seem to have made no attempt to investigate the document's authenticity by contacting Messrs Mathews and Jones.

Note

It is likely that George Matthews was the ex-convict who had arrived on the *Neva* on 21 Nov 1833. There was a marriage connection between the two families six years after George witnessed Isaac Kemp's will. According to research by Rod Warnock:

George Matthews arrived in Australia on the ship 'Neva' 21 Nov 1833. George was a native of Kent and was sentenced to 14 years at the Kent Assizes for stealing linen. He was stable boy and was 17 years old. In 1837 George was assigned to H. Brooks of Liverpool later in 1841 George had a Ticket of Leave for the Mudgee District and no doubt that is where he came into contact with his future wife Jane Grimes. In 1846 he had his Ticket of Leave cancelled as a result of an assault charge and being committed for Trial at the Cassilis Assizes on 26th October 1846. The results of this action are yet to be ascertained. Jane Grimes and George Matthews were married on 29th July 1849. In 1854 when George and Jane Matthews' son James was baptized George was a gold-miner at Tambaroora. Later George moved to Goorianawa Station near Baradine where he became overseer. In the late 1860-1870 he held two leases on the Warrego but as yet the exact location of these has not been found. The existence of these leases was determined by a letter George sent to Catherine Carlow seeking a loan of £40 to pay the lease fee in June of 1869. It does appear that George and Jane remained in the Baradine district for the remainder of their lives. George died at "Parmedman" Gulargambone the property of Matthew Thomas and Margaret Maria Kennedy (Margaret Maria being a daughter) on 26 August 1894, while Jane Matthews died at Coonabarabran on 27 July 1896.

George Matthews may have been a friend of William Kemp. He was about ten years older than William and they both worked in the grazing industry in western NSW. George moved to Baradine around the same time as he witnessed Isaac's will at Merri Merri Creek (near Quambone). Baradine and Quambone are both about 60km from the main town in this district, Coonamble, so they may have met there or on any of the stations in the area. Six years after he witnessed Isaac Kemp's will, Frances Kemp (William's eldest daughter) married his (wife's) nephew Atwood Charles Gardner on 24 Dec 1862. Atwood Charles Gardner was a son of George Gardner and his wife Mary Jane Grime, sister of George Matthew's wife Jane Grime.

1857 0707 Kemp Isaac Probate Packet Summary

Submission by Pickwood to Sydney 24 May 1857

Folio 34

24 May 1857

Coversheet for Memorandum of Alfred Pickwood re claim to property by son

Folios 35-38

24 May 1857

Memorandum of Alfred Pickwood re claim to property by son

Police office Sydney

24 May 1857

[Not addressed to anyone]

Sir

*I have the honor in reply to your letter of the 18th May to (rnelon?) of Copy of the document shewn to me by **the illegitimate son of the deceased** as a deed of gift. **I am unable to say whether it was executed prior to the death of the deceased.***

The property was in possession of Isaac Kemp at the date of his death. The dray and bullocks where (sic) on the road to Sydney, with wool, under agreement from a Mr Bennett and in his possession at the time of his (Kemp's) death.

*I learn also that the landlord of the public house at Cobra, (two miles from the place where deceased was killed), **drew up an agreement between deceased and one Moore, to the effect that Moore was to collect and break in 14 horses, the property of deceased, at 3/-/- (three pounds) per head.** This agreement was made by deceased the day prior to his death. Mr Blakemore the landlord can make affidavit of this.*

The dray and ten bullocks are at present at Dubbo, as they could not be kept at Cobra, so as to ensure their safety (e.g.) straying in the bush. They are {bey?) tailed at 2/6 per diem by a stockman at Dubbo who is responsible for their sustenance and safe custody.

In the event of your finally deciding on a sale, I would advise that Moore should be paid the sum agreed on between him and deceased, on condition of his delivering the horses at Dubbo. Their value at Auction would not exceed 4/-/- per head. (Remaining?) in the bush, delivered here they would be worth about 10/-/- each on an average.

Requesting your instruction...

A Pickwood

Notes

- I think this means that he estimates that the horses are worth only 4 pounds each unbroken. He recommends paying Moore 3 pounds each to break them and to then deliver them to Dubbo where they should fetch 10 pounds each at auction.
- There was obviously suspicion that William Kemp had forged the "Deed of Gift" and yet no effort was made to contact the two witnesses.

1857 0707 Kemp Isaac Probate Packet Summary

Submission by Pickwood to Sydney 26 Jun 1857

Folio 31

Received 31 Jul 1857 vide letter 26 June 1857

Coversheet for Memorandum of Alfred Pickwood requesting instructions.

Folios 32-33

26 Jun 1857

Memorandum of Alfred Pickwood requesting instructions.

Police Office Dubbo

26 June 57

In re Isaac Kemp

Sir

With reference to my last letter, in the above estate, I have the honor to request you will be so good as to instruct me as to the course to be pursued. As I mentioned, that the working bullocks and dray were brought to Dubbo for security and that the ten bullocks are being taken care of by one James Tipping in his paddock at two shillings and six pence per diem (2/6). This is the most reasonable rate at which I could procure there (sic) safe custody. As you are aware that if let loose they would inevitably be lost.

I have thought it expedient to mention this, fearing to incur any unauthorised expenses, so shall therefore be much obliged by your instructions in the point.

Note

There is nothing on the file to confirm that he was provided with any instructions.

Folio 1

No 2042

Isaac Kemp

late of Kurbin
carrier

Adv. 7 July 1857

1857 0707 Kemp Isaac Probate Packet Summary

Submission by Pickwood to Sydney 13 Nov 1857

Folios 23-25

13 Nov 1857

Memorandum of A Pickwood to E A Mackechnie Esq, Official Assignee

This memorandum accompanied a remittance of 81/7/-

... being the amount of my collections ... together with the inventory and abstract of expenses incurred.

The amount paid by me to James Topping was an expence incurred previous to the sale, and pending the decision of the Court, relative to the claim of the illegitimate son of the deceased, to the pro party, which I had the honor to warranty to you.

I advance the sale of the eight of brand, of which Isaac Kemp was supposed to be possessed, at the period of his death on the 14 of October last but there were no bidders in attendance and as there is little probability of arriving at the amount of stock (if any) I will have again advertised the Brands (IK) for sale by Public Auction at Dubbo. And if no purchasers are found at Public Auction I presume it will not be irregular to effect a sale in the best manner practicable...

Folio 22

Inventory in the Estate of Isaac Kemp deceased.

<i>1 Bullock Dray and ten working Bullocks sold to Allen Kennedy of Dubbo</i>	<i>100/-/-</i>
<i>Due to the estate and received from Mr White Storekeeper Wellington</i>	<i>4/-/-</i>
<i>Found on the person of deceased</i>	<i>2/5/6</i>
<i>Total</i>	<i><u>106/5/6</u></i>
<i>A Pickwood</i>	
<i>Agent</i>	

Folio 28

Coversheet for Affidavit of Travelling Expenses of 4/16/- by Alfred Pickwood

Folio 29

1 Nov 1857 Pre-formatted form

Receipt from Alfred Pickwood for Travelling Expenses of 4/16/-.

For travel from Dubbo to Cobra and return: 96 miles at 1 shilling per mile. [This makes Cobra 48 miles from Dubbo, about the same distance as Cobbora.]

Folio 30

21 Nov 1857

Alfred Pickwood, agent for the Curator of Intestate Estates, swears that the travelling expenses were legitimate.

1857 0707 Kemp Isaac Probate Packet Summary

Folio 26

Coversheet for Auctioneer's receipt for 2/-/-.

Folio 27

Undated and unsigned pre-formatted form

Receipt for Auctioneer's fee of 2/-/-

[Note that the auctioneer is not named and did not sign the receipt!]

1857 0707 Kemp Isaac Probate Packet Summary

Submission by Pickwood to Sydney 28 Nov 1857

Folio 10

Received 4 Dec 1857

Coversheet for claim by George Snell for 11/10/-.

Folio 11

28 Nov 1857

Memorandum from A Pickwood to E A Mackechnie recommending payment of Snell's claim.

Folio 13

Money Order for 11/10/- by Isaac Kemp for George Snell.

11/10/-

Eringanering 18th October 1856 [Probably Eringanerin on outskirts of Gilgandra]

Please pay George Snell or bearer the sum of Eleven pounds Ten Shillings

his

Isaac X Kemp

mark

Witness A Balderston

Corner torn off leaving just

... Jude

... Plains

[This could be a reference to John Jude who owned Armitree station near Quambone.]

Folios 15 and 16

10 Jun 1857

Affidavit of George Snell before W T Blackman JP that

*the said John Jude refused Payment on a/c of not having Sufficient funds to his Credit
"Isaac Kemp's".*

Folio 12

Coversheet for Affidavit by A Balderston of Debt 11/10/- to George Snell.

Folio 14

10 Jul 1857

Affidavit of A Balderston of Eringanering before W T Blackman JP that

*The accompanying [Money] Order was drawn by Isaac Kemp ... in favor of George Snell
made payable by Mr John Jude, Emu Plains ...*

1857 0707 Kemp Isaac Probate Packet Summary

A RETURN made under the Acts of Council, 11 Victoria, No. 24, and 15 Victoria, No. 8, of all moneys received and paid, and of all balances in the Commercial and Joint Stock Banks of Sydney, in respect of Estates of deceased persons, entrusted to David Bruce Hutchinson, Esquire, all which sums of money were collected by Edmund Augustus Mackechnie, one of the Official Assignees in Insolvency, from the 1st day of January, to the 30th day of June, A.D. 1858, inclusive.

Name of Intestate.	Colonial Residence.	Supposed British or Foreign Residence.	Money Received.	Money Paid.	Balance to credit of Estate.	Date of Order to Collector.	REMARKS.
— Continued.							
Name of Intestate.	Colonial Residence.	Supposed British or Foreign Residence.	Money Received.	Money Paid.	Balance to credit of Estate.	Date of Order to Collector.	REMARKS.
Charles Burrows	Manning River .....	.....	£ s. d. 53 17 4	£ s. d. 52 17 4	.....	1 March, 1858	
Edward Howe	Cockfighter's Creek .....	.....	113 13 0	113 13 0	.....	2 Feb., 1857	
George Easton	Sydney .....	.....	99 2 6	34 12 7	64 9 11	10 Feb., 1858	
Isaac Kemp .....	.....	.....	.....	8 0 0	65 6 7	.....

Submission by Pickwood to Sydney 26 Dec 1858

Folio 19

26 Dec 1858

Memorandum of Alfred Pickwood to the Curator of Intestate Estates recommending payment of 8/-/- to John Blakemore.

Note

This is odd, because Blakemore had provided a receipt for payment 8 months earlier (see folio 18). Also, the above return in the Government Gazette indicates that the 8 pounds had been paid before 30 June 1858. It looks like the 8 pounds was paid twice.

Folio 17

Coversheet for Affidavit of Debt of 8/-0/- to John Blakemore

Folio 21

Coversheet

Folio 20

4 May 1858 – Pre-formatted form

Claim on the estate by John Blakemore (publican of Cobora) for 8/-/- in funeral expenses. Sworn before W T Buchanan JP.

Folio 18

28 May 1858

Receipt of John Blakemore to Edmund A Mackechnie for 8/-/-

1857 0707 Kemp Isaac Probate Packet Summary

Estate of Isaac Kemp	Amount				Balance		
	Pounds	Shillings	Pence	Cr/Dr	Pounds	Shillings	Pence
<u>Assets</u>							
1 bullock dray and 10 working bullocks	100	0	0	Cr	100	0	0
Mr White, Storekeeper at Wellington	4	0	0	Cr	104	0	0
Cash on deceased	2	5	6	Cr	106	5	6
<u>Liabilities</u>					106	5	6
A Pickwood for travelling expenses	4	16	0	Dr	101	9	6
George Snell for refused money order	11	10	0	Dr	89	19	6
John Blakemore for funeral expenses	8	0	0	Dr	81	19	6
Mystery expenses	0	12	6	Dr	81	7	0
Remitted 13 Nov 1857	81	7	0		81	7	0
Mystery expenses	8	0	5	Dr	73	6	7
Gov Gazette 13 Jul 1858	8	0	0	Dr	65	6	7
<u>Unaccounted assets</u>							
14 horses (at 10/-/- per head)	140	0	0	Cr	140	0	0
Cattle on several Castlereagh stations					140	0	0
Balance on account with John Jude					140	0	0
Unaccounted assets					140	0	0
<u>Unaccounted liabilities</u>							
Moore for breaking 14 horses	42	0	0	Dr	42	0	0
James Tipping for agisting 10 bullocks for about 200 days at 2/6 per day	25	0	0	Dr	67	0	0
Unnamed unsuccessful Auctioneer	2	0	0	Dr	69	0	0
Unaccounted liabilities					69	0	0
<u>Unaccounted balance</u>							
Unaccounted balance					71	0	0
Credit Balance 13 Jul 1858					65	6	7
Available for beneficiaries					136	6	7 plus

Isaac's Estate

- Based on the information in this Probate file and page 5 of the Government Gazette of 13 Jul 1858, there should have been at least 136/6/7 available for Isaac's beneficiaries.
- That does not include the value of his "cattle on several Castlereagh stations". Nor does it include the balance of his account with John Jude. While there may not have been enough to pay George Snell 11/10/-, there must have been a reasonable sum.
- It is therefore possible that Isaac's estate could have been worth 150 pounds or more.
- William Kemps's lawyer failed him in two ways:
 - Referring to the 1856 document as a Deed of Gift rather than a will;
 - Failing to advise William to make a claim on the estate through the Supreme Court.
- It seems that the authorities paid John Blakemore's 8 pounds at least twice, if not three times!
- The authorities erred in not recognising the 1856 document as his will in favour of William Kemp.
- If we accept that the 1856 document was a Deed of Gift, not a will, the authorities erred in treating the dray, bullocks and horses as Isaac's property rather than William's.
- Even after all those errors, William Kemp should still have been entitled to the balance of the estate, as his only kin. Surely his illegitimacy would not have affected that.
- Ultimately, **the NSW Treasury ended up with more than 65 pounds that should have been paid to William Kemp; and another 71 pounds is unaccounted for.**