

MOORE COLLEGE: BROUGHTON LETTERS

Broughton to Coleridge, 2/4/1849

By the "Penyard Park" not many days ago I wrote to inform you of the unexpected and perplexing difficulty with which I was threatened by the Bank of Australasia serving me with notice of their intention to sue me for the entire debt due to them from the Bank of Australia; in which they allege that, as Executor of Mr Moore, I have become a partner, and therefore personally liable. I wrote at that time in much perturbation, as you may well suppose; and being assured that you will be filled with anxiety about the state of the affair I take the earliest opportunity of sending you this further account. The advice which I have taken since, and the consultations held by those who understand such matters, have but tended to make it more evident that I am personally held liable in law for an act very innocently done; but certainly not with a due acquaintance with its legal consequences, so much as a suspicion at the time that it was a matter of any moment. The circumstances were these. Mr Moore died possessed of £1760 in shares of the Bank of Australia a Joint Stock Company. I had been for several years so satisfied of its unsound condition (which subsequent events have so fatally manifested) that I formed at once a resolution not to become a partner by signing the Deed of Settlement: thinking it infinitely better even by the sacrifice of the Shares to keep the Estate clear of any continuation of connexion with so dangerous a Company. The Executors therefore applied only for the dividends up to the time of Mr Moore's death; meaning with that act to terminate their relation with the Bank. But when the Dividend we had applied for was paid to our credit as "Cash" it was larger in amount than we had expected. On applying to the Bank to explain this, they sent word that by mistake they had paid not only the Dividend to the time of Mr Moore's death; but also for the half year subsequent; amounting to £123-4. They were informed that this was a mistake on their part: as the Executors not having signed the Deed were not entitled to any such sum. I must acknowledge my own unacquaintance with the law of partnerships; nor had I ever suspected the possibility that any one could by implication be made a member of a firm without

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his own consent. Had I known it then as I do now, our first proceeding would have been to pay back to the Bank the Dividend they had wrongly paid us. But we did not do so, being under the impression that it was a mere error in account, and that it would be rectified, whenever the Bank should see fit, in the manner in which errors were usually rectified: that is by taking our Check (sic) for a like amount, and debiting us with it in the account Current. In fact we thought no more about it: and thus the Dividend not belonging to us remained in our possession: and it is not in my power to say or to prove that it may not have been used as if it had been our own money in discharging demands upon the Trust. Thus they say the Executors became partners: and they proceed against me personally by what is called (I find) Scire facias upon the judgment. I never heard of such a thing before. We had a consultation with Counsel on Saturday, the Bishop of Newcastle being also present; and the result so little satisfied me as to the possibility of escaping the legal liability, although erring altogether through ignorance of law, that I have formed a determination to try to effect some compromise. If I fail my ruin is complete; and hardly short of it even if I succeed. Whatever the penalty may be I suppose the time and mode of enforcing it will rest with the Bank of Australasia. I think you are acquainted with some of the Directors: and though well aware of the impossibility of their interposing in arrest of such a judgment, it might be in your power perhaps to obtain some leniency as to the time and mode of requiring payment. The only resource I have is in the Life Assurances which I had effected with a view to make some little provision for my family at my death. The value of the Insurances would then be £4700 or thereabouts: and of course they are now of a certain value. What may be I have not computed: but in London it may be ascertained in five minutes. I hope they may produce enough to satisfy the demand of the Bank. Perhaps I was a little too ready in adopting the suggestion of Sir George Gipps to relinquish any claim for a sum in compensation for the diminution of my income. It would have helped me a good

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deal. However it is too late to think of that now: nor indeed my dear Coleridge would I wish to trouble you at all about the practical details of the arrangement to be made with the Bank. Mr Francis who acts as my agent, and to whom also I am writing will undertake them. All I request of you is, if you can by speaking to any of the Directors, to produce on their part a feeling of forbearance: that at any rate I may not be, as St Paul says "pressed out of measure, above strength". Believe me to be, Yours very sincerely and affectionately, W.G. Sydney.