

At a meeting of the Executors of the last Will and Testament of the late Simon M<sup>c</sup>Tavish, Esquire, holden at Montreal this fourteenth day of May One thousand eight hundred and five, were present

Mess<sup>rs</sup> William M<sup>c</sup>Gillivray  
Duncan M<sup>c</sup>Gillivray  
Joseph Frobisher -  
Isaac Todd - and  
James Reid. —

who being assembled in order to take into consideration various matters respecting the Estate of the said late Simon M<sup>c</sup>Tavish and to form resolutions thereon for their guidance in the management of the said Estate, with a view as far as they are able and circumstances will permit, to carry into effect the last Will and Testament of the said late Simon M<sup>c</sup>Tavish and all his intentions regarding the same according to the best of their Judgment, and the legal opinions they have received. — It was thereupon determined and agreed as follows. —

First. It being ordered and directed, in and by the said last Will and Testament, that none of the legacies therein mentioned, exceeding one hundred Guineas, shall be paid out of the Estate left by the Testator, until seven years at least after his decease, unless sufficient monies for that purpose shall have been realised therefrom without loss or inconvenience to the Concern or Concerns in which the said Testator was a Partner, and a question being agitated thereon whether the House of M<sup>c</sup>Tavish Frobisher and Company, in which the property of the said Testator is chiefly vested, can be held and bound under any Construction of the said Will, to realise and pay over to the Executors the monies belonging to the Testator in that Concern before the expiration of the said term of Seven Years, and whether it be the right of the said Executors or of the Partners in the said House to determine, in what manner and when, the said Monies ought to be realised and can be paid without loss or inconvenience to the said Concern — The said Executors, considering the extensive business in which the said Testator was engaged as the leading Partner in the said House, his zeal in supporting and carrying on the same to the utmost extent, and his unlimited Confidence in the Partners of the said House, are well

well convinced and satisfied that it was his intention, that the Partners in the said House should not only have a sufficient time allowed them to realise his property in that Concern, but should be permitted to hold and enjoy the same for the space of seven years at least, after his decease, unless they should find it Convenient sooner to pay the same to the Executors - Considering also the opinions of Counsel on this point which strongly tend to confirm this explanation of the above Clause in the Will, and of the Testator's intention respecting the same - It is therefore agreed that the monies belonging to the Estate of the said Testator, now in the said House, shall remain therein until the expiration of the said Seven Years, or until the Partners in the said House shall give notice to the Executors, that the said monies, or any part thereof, can be sooner paid without loss or inconvenience to the Concern or Concerns in which the said Testator was a Partner, at which time only the said Executors conceive they will have a right to claim and receive the said Monies, and be bound to apply the same to the purposes of the said Will. -

Secondly... It being provided and determined in and by the said last Will and Testament, that there shall be paid and allowed for the board and maintainance of each of the Testator's children while they remain under the care of their mother a sum of fifty pounds annually; but the said Executors foreseeing that it will soon be necessary that some of the said Children be removed to England for their education, whereby a greater allowance than the said fifty pounds will be required for defraying the necessary expenses attendant thereon, and it being now proper to determine in what manner, and from what fund such extra-allowance shall be taken and paid - The said Executors pursuant to the terms of the said Will, and the opinions of Counsel thereon, do agree, that whatever sum  
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of money shall be required for the maintainance & education of any of the said Children exceeding the said annual sum of Fifty pounds, shall in the mean time, and until their respective legacies be realised and funded in such manner as to raise Interest thereon according to the said Will, be paid out of the legacy left to every such Child, on whose account such extra allowance may be required. —

Thirdly. It being doubted whether the payment of the Legacies bequeathed by the said Will, exceeding one hundred Guineas, can be exacted before the expiration of the Seven years therein limited, and if it cannot, whether the legatees, or any, and which of them, will be entitled to interest upon their respective Legacies, as some of the said legacies are made payable at the age of majority of the Legatees, and the Interest on others directed to be applied in defraying the expence of their education — The said Executors considering that according to the terms of the said Will and the intention of the Testator, they are not authorised or enabled to call in or realise his property now in the said House of Mr Jarvis Frobisher and Company before the expiration of the said Seven years, do therefore agree and determine, that none of the said Legacies shall be paid before the expiration of the said period, unless monies arising from the said Estate shall be sooner paid by the said House into the hands of the said Executors, in which case the same shall be divided paid and applied, either pro rata, or in full satisfaction of the said legacies, according as such monies shall be sufficient to go or extend; That no Interest can legally accrue or be paid upon any of the said Legacies till from and after the time the same fall due, or monies be received to satisfy the same in manner as before mentioned, except upon the legacies to John and Alexander Mr Jarvis, the Testators nephews, and to Miss Sutherland, upon which, Interest shall be annually accounted for and paid from the time of the decease of the Testator, the same being expressly given by his Will, and ordered to be applied towards the expence of the education of the three last named Legatees, and whereby the said Testator places himself in loco parentis, with regard to them. —

And the said Executors considering also the legacy bequeathed by the Testator to Alexander Grant, now a boy at School, with the particular power given to them to secure pay and apply this legacy in such manner as they shall see fit, and conceiving it to be most advantageous for the said Alexander Grant that the Interest of the said legacy should be applied towards the expence of his education in the same manner as the Interest upon the Legacies made by the Testator to his said nephews and Miss Sutherland, It is therefore agreed that the sum of One thousand pounds bequeathed to the said Alexander Grant shall remain in the House of Mr Jarvis Frobisher & Co and that the Interest thereof be annually paid and applied to defray the expence of his education, until circumstances shall require a different application of the said legacy, of which the said Executors will judge —

Fourthly. It being provided by the said last Will and Testament that there shall be paid to Mrs Mr Jarvis annually during her life time a sum of twelve hundred pounds, and that the same be secured to her either upon real property, or in such other sufficient manner as shall secure and raise the aforesaid annuity — The said Executors in order to comply with the said Will as far as Circumstances will at present permit and also to pay the said annuity in such manner as will be most suitable and advantageous for the said Mrs Mr Jarvis do now agree and determine, that out of the present revenue of the Estate of Terrebonne there shall be secured and annually paid to her, a sum of Seven hundred and eighty pounds, also the sum of Seventy pounds arising from the rent of the farm at the Mountain, and that the remaining sum of three hundred and fifty pounds, to compleat the aforesaid annuity of twelve hundred pounds be paid out of the Testators property in the said House of Mr Jarvis Frobisher & Co by the Executors who are Partners in that House — That as soon as the Debts now due upon the said Estate of Terrebonne amounting to Seven thousand pounds, shall be paid off, the whole of the said annuity shall be secured upon that Estate. —

Fifthly —

Fifthly. It being also directed and provided by the said last Will and Testament that the sum of one thousand pounds Sterling shall be held in trust by Hugh Fraser William M<sup>r</sup> Gillivray and Duncan M<sup>r</sup> Gillivray, as Trustees for the use purpose and intent of applying the Interest thereof yearly and every year in assisting such of the Testators poor Relations in Scotland as he may have neglected to provide for by his said Will — The said Executors in order to give effect to the intentions of the Testator as far as they can judge thereof by the above bequest, do consent and agree, that the said sum of One thousand pounds, shall remain in the said House of M<sup>r</sup> Jarvis Frobisher and Company, or be otherwise vested and applied as the said Trustees shall see fit, and that the said Trustees shall be entitled and authorised to use, apply, and dispose of the Interest yearly accruing thereon from the decease of the said Testator, in manner as directed by the said trust.

Sixthly Inasmuch as by the Laws of Scotland, the devise and limitation made by the Testator, of the Estate of Dunardry, cannot take effect in exclusion of the absolute right of Inheritance of the Heir at Law to the said Estate, and as the said Executors are desirous in every respect to fulfill and carry into effect the intentions of the said Testator as expressed in the said Will, they do therefore determine and agree, that in case the Heir at Law to the said Estate shall refuse when he comes of age, to confirm the devise and limitation aforesaid respecting the Entail of the said Estate, the said Executors shall use every means of Controversy in their power both at Law and in equity to enforce the said Entail in terms of the said Will — And as it will be necessary for the due management of the said Estate of Dunardry and the revenues thereof that some person or persons be appointed as Tutor or Tutors to William M<sup>r</sup> Jarvis the present Heir, now a minor, until he shall attain the age for electing his own Curator or Curators; and considering that M<sup>r</sup> Simon M<sup>r</sup> Gillivray hath heretofore been appointed Tutor to the said Heir and to the other minor children of the said Testator for the special purpose of representing them at the Inventory made of the Estate and effects left by the said Testator in this Country, and at the delivery of the legacy bequeathed to M<sup>r</sup> M<sup>r</sup> Jarvis by the said Will, it is therefore thought fit and proper that the said Simon M<sup>r</sup> Gillivray jointly with John Fraser Esq. of London, and Hugh Fraser, Esq. of Brightmerry be appointed Tutors to the said William M<sup>r</sup> Jarvis for the —  
purposes

purposes aforesaid; and in case of the refusal of any of the said Gentlemen to accept this charge, that some other person be appointed in his room.

Seventhly

It being a matter of the greatest moment, that every care and attention be had to the education of the Children of the Testator upon their removal to England, and considering that none of the said Executors, except John Fraser, Esq. constantly resides in England and that he is a person well acquainted with the proper course to be used in this respect, the said Executors therefore hope, that as the friend, and one of the Executors of the deceased, he will accept of this charge; and it is agreed that the said John Fraser, and such of the other Executors as shall happen from time to time to be in London, shall have the charge care and management of all matters and things touching the proper course of education to be followed respecting all or any of the said Children, provided that nothing be done herein contrary to the Consent and approbation of the other Executors — And it is recommended with regard to the said William McTavish, that he shall receive the best education that can be procured.

Eighthly.

The said Executors having received communication of a claim made by the said Hugh Fraser for a sum of One hundred pounds to be annually paid him out of the Estate of the deceased, to defray the expenses of the education of his Grand Children, in consequence of two letters addressed to him by the Testator containing a promise to this effect — Are unanimously of opinion and do agree, that this mode of gratuity in the deceased cannot operate an obligation on his Estate nor raise a debt, which the Executors can or ought voluntarily to satisfy — That however desirous the Executors feel to discharge their trust in strict conformity to the intentions of the Testator, and however gratifying it would have been to them in this particular instance, had it been in their power, to continue the gratuity and benevolent intentions of the Testator to a promising family, yet in going out of the will, no choice is left to them, nor can they admit any claim of this nature with security to themselves as accountable characters for the property entrusted to them under the will of the deceased, and for the execution of which only, that trust was given — In order however to prevent all misunderstanding among the Executors, and the unpleasant sensations that might

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be occasioned by proceedings at Law, the Executors will propose a means of accommodation, to enable them to pay the above sum of one hundred pounds with that security which they ought reasonably to expect in their situation - which is, that the said Hugh Fraser will agree and undertake by some Instrument in writing, carrying a sufficient security under the Laws of Scotland to reimburse and pay to the said Executors or to the Residuary Legatee, to whom they will be accountable, all such sums of money as shall from time to time be advanced and paid by the said Executors from and after the decease of the Testator, in case the said Executors shall be held by Law to account for and pay to such Residuary Legatee the whole or any part of the said monies. Upon this Security and undertaking, the said sum of one hundred pounds will continue to be annually paid for such length of time as shall be conceived reasonable, and be agreed on between the parties. - But should the said Hugh Fraser decline to accept this proposal, and as one of the Tutors to the Heir of Dunsardry retain in his hands such part of the revenues of that Estate, as shall be sufficient to satisfy the above claim, in that case the Executors wish it to be understood, that the said Hugh Fraser must be alone responsible for this act, and accountable to the Heir when he comes of age, should he dispute his claim. -

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