

7

# Excerpts

From the proceedings in the Court  
of King's Bench

in the Cause

The Honourable William M. Gillivray

and others

versus

The Hon<sup>ble</sup>. Roderick Mackenzie:—

Declaration— 30<sup>th</sup> May, 1819.

William M. Gillivray, of the City of Montreal, in the District of Montreal, Esquire, and James Reid of the same place Esquire, the only surviving Executors now resident in the Province of Lower Canada, of the last Will and Testaments of Simon M. Fovish, late of the said City of Montreal, Esquire, deceased, Complain of Roderick Mackenzie, of the parish of Terrebonne, in the said District of Montreal, Esquire, of a plea, that he do render to the said William M. Gillivray and James Reid, Executors, as aforesaid, the Sum of £424. Current Money of this Province, with Interest for the same from the first day of February, in the year of our Lord 1817, to be paid, which he owes to and unjustly detains from them; for that, Whereas the said Roderick Mackenzie, heretofore, viz: on the twenty eighth day of February in the year of our Lord 1817, in and by a Certain Deed of Sale made and Executed by and between the said William M. Gillivray and James Reid, Executors, as aforesaid, of the One part, and the said Roderick Mackenzie of the other, before Griffin and another, public Notaries, and bearing date the day and year aforesaid, in Consideration that the said William M. Gillivray and James Reid, Executors, as aforesaid,

aforesaid

aforsaid in this behalf authorized, as in and by the  
said Deed of Sale is set forth, had in and by the  
said Deed of Sale, granted, bargained sold and  
Conveyed to the said Rodrick Mackenzie, the  
Dief and Seignory of Terrebonne, in the said Deed  
of Sale described, together with the Isle St. Jean,  
in the said Deed of Sale also described, and all  
the appurtenances, as well in Dief as in Colture,  
grist Mills and Saw Mills, Seignioral Manor houses,  
and all other houses and buildings, erected and  
being on the said Isle Saint Jean, Cors at Portes,  
and generally all the rights, honours, Servitudes and  
prerogatives, unto the said Dief and Seignory at-  
tached, or belonging, and other the premises in the  
said Deed of Sale mentioned, did promise, bind and  
oblige himself, his heirs and Assigns, to pay or  
Cause to be paid to the Executors, and to the  
Survivor of them, or to the person or persons le-  
gally authorized in this behalf the Sum of  
£28,400. in the manner, and upon the terms and  
Conditions, in the said Deed of Sale mentioned, that  
is to say, that the said Rodrick Mackenzie, his  
heirs and Assigns should and would keep and  
retain in his and their hands vested and se-  
cured in and upon the said Dief and Seignory  
of Terrebonne, for and during the natural life  
of Margaret M<sup>rs</sup> Jarvis, Widow of the said Simon  
M<sup>r</sup> Jarvis, and now Wife of William Pendercote  
in the said Deed of Sale mentioned, the Sum of  
Twenty thousand pounds, and should and would  
yearly and every year during all that time, pay  
or Cause to be paid to the said Executors and to  
the Survivor of them, for the benefit and behoof  
of the said Margaret M<sup>rs</sup> Jarvis, or to the said  
Margaret M<sup>rs</sup> Jarvis, or to such person or persons  
as might thereafter be entitled or authorized to de-  
mand and receive the same, during the lifetime  
of the said Margaret M<sup>rs</sup> Jarvis, the sum of  
Twelve hundred pounds, as and for the Annuity  
given and bequeathed as aforsaid to the said  
Margaret

Margaret M<sup>c</sup>Tavish, from and after the first day  
of December then last past, the first of which  
payments should become due on the first day of  
December then next ensuing, and so to continue,  
yearly and every year afterwards during the lifetime  
of the said Margaret M<sup>c</sup>Tavish, and on the first  
day of December next after the decease of the  
said Margaret M<sup>c</sup>Tavish, he the said Rodonick  
Mackenzie, his heirs and Assigns should and would  
pay or Cause to be paid to the said Executors, and to  
the Survivor of them, or to such person or persons  
who might at any time thereafter be entitled and  
authorized to demand and receive the same, the  
aforesaid principal sum of Twenty thousand pounds  
and such arrears of interest as should or might  
be then due thereof; and also, that the said  
Rodonick Mackenzie his heirs and Assigns should  
and would keep and retain in his and their  
hands vested and secured in and upon the said  
Dief and Seigneurie of Terrebonne for and during  
the natural life of Marjory M<sup>c</sup>Tavish, Sister of  
the said Simon M<sup>c</sup>Tavish, the further sum of  
Nine hundred and twenty six pounds, and should  
and would yearly and every year on the first  
day of December pay or Cause to be paid to the  
said Marjory M<sup>c</sup>Tavish during her said natural  
life, or to such person or persons entitled or author-  
ized to receive the same, the sum of Fifty five  
pounds, Eleven Shillings and twopence equal to  
Fifty pounds Sterling Money of Great Britain; the  
annuity given and bequeathed to the said Mar-  
jory M<sup>c</sup>Tavish, as in the said Deed of Sale  
mentioned, the said payment to commence and  
be made on the first day of December then  
next, and continuing during all the time aforesaid  
and on the first day of December next after  
the decease of the said Marjory M<sup>c</sup>Tavish, he,  
the said Rodonick Mackenzie and his said heirs,  
should

Should and Would pay, or Cause to be paid to  
the said Executors, and to the Survivor of them,  
or to such person or persons who might be en-  
titled or authorized to demand the Same, the  
aforesaid last mentioned Sum of Nine hundred  
and twenty six pounds, and such arrears of interest  
as should or might be then due thereon; also,  
that the said Rodrick Mackenzie should and  
Would pay, or Cause to be paid, to Marie Anne  
D'Aquille, Widow of the late Andre' Nige' of Peris-  
bome, in the said Deed of Sale mentioned, on the  
twenty ninth day of September yearly, and every  
year during her lifetime, and to Commence on  
the twenty ninth day of September then next  
ensuing, the sum of Seventeen pounds ten Shillings,  
and as to the remaining Sum of Seven thousand  
four hundred and twenty four pounds, the said  
Rodrick Mackenzie, in and by the said Deed  
of Sale, did promise, bind and oblige himself  
and his heirs and Assigns to pay the Same to  
the said Executors, and to the Survivor of them  
in two payments, that is to say on the first  
day of June then next ensuing, the sum of  
£4420, and on the first day of December then  
next after, the remaining sum of £2784, and  
such interest as should be then due thereon;  
and in and by the said Deed of Sale, it was  
for the Consideration therein mentioned stipulated  
and Agreed, that the interest on the aforesaid  
sum of £28,400, should Commence and become  
due, from and after the first day of February  
then instant, as in and by the said Deed of  
Sale, of which the said William M'Gillivray  
and James Reid, being here into Court, a Notarial  
Copy among other things (reference being thereunto  
made) may more fully appear. And the  
said William M'Gillivray and James Reid, do  
aver, that on the first day of June next  
ensuing.

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ending, the making of the said Deed of Sale, to Wit, on the first day of June, in the year of our Lord 1817, the Sum of Four thousand Seven hundred and twenty pounds became and was due, by and from the said Roderick Mackenzie to the said William M. Gillivray and James Reid, Executors as aforesaid, under and in pursuance of the said Deed of Sale, and on the first day of December next after the said first day of June, to Wit, on the first day of December, in the year of our Lord 1817, the sum of £2754, became, and was due, by and from the said Roderick Mackenzie to the said William M. Gillivray and James Reid under and in pursuance of the said Deed of Sale, together with interest of the said two several Sums last mentioned, from the first day of February in the year of our Lord 1817: which said two last mentioned Sums of money and interest, as aforesaid, remain and are wholly due and unpaid by and from the said Roderick Mackenzie, to the said William M. Gillivray and James Reid, Executors, as aforesaid, whereby an Action hath accrued to the said William M. Gillivray and James Reid, Executors, as aforesaid, to demand and have of and from the said Roderick Mackenzie the said two several Sums of £4728, and £2754, making together the Sum of £7482, with Interest for the same from the first day of February, in the year of our Lord 1817, till paid, being the Sum of money and interest above demanded. Nevertheless, the said Roderick Mackenzie (altho' often required) the said Sums of £7482, with interest as aforesaid to the said William M. Gillivray and James Reid, Executors, as aforesaid, hath not yet paid, but hath altogether refused and neglected, and still refuses and neglects to pay the same.

Wherefore, the said William M. Gillivray and James Reid, Executors, as aforesaid, bring Suit, and pray, that the process of the Court, here,

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may issue to Compel the said Rodrick Mackenzie  
to be and appear in Court here, on  
day of June next, to Answer the promises, and  
that he may be then and there adjudged and  
Condemned to pay and Satisfy to them the said  
William McMillan and James Reid Executors,  
as aforesaid, the said Sum of £424, with in-  
terest and Costs of Suit.

Montreal, 30<sup>th</sup> May, 1819.

(Signed) J Stuart, for Plffs.

Exhibits filed by Plaintiffs in Sup-  
port of their demand.

1. Last Will of the late Simon M<sup>c</sup> Tavish, Esquire,  
2<sup>d</sup> July, 1804.
2. Copy Judgement of the Court of King's Bench  
20<sup>th</sup> October, 1815.
3. Deed of Sale of the Seigniorie of Terrebonne  
28<sup>th</sup> February, 1817.

Plea.

9<sup>th</sup> June, 1819.

And the said Defendant by Jean Roe  
Pollard, his Attorney, Comes and defends of  
and for plea saith, True it is, that in and  
by the Deed in part recited in the Plain-  
tiffs' Declaration, the said Plaintiffs did as  
the only Surviving Executors then in the Pro-  
vince of Lower Canada of the last Will and  
Testament of the said late Simon M<sup>c</sup> Tavish,  
Esquire, grant, bargain, sell and Convey to him  
the

the said Defendant, as far as in them lay, and they lawfully could or might do, the Fief and Seigneurie of Terrebonne, together with the said Isle Saint Jean, in the declaration of the said Plaintiffs described on the terms and Conditions therein mentioned; Yet the said Defendant saith, That they the said Plaintiffs cannot have or maintain their action and demand aforesaid, against him for the recovery of the price stipulated of in the said Deed of Sale; because he saith

1. That the Executors of the last Will and Testament of the said late Simon M<sup>c</sup> Davish were not authorized by law to dispose of the Real Estate.

2. That by the Will of the said late Simon M<sup>c</sup> Davish, it is required that the Majority of the Executors of the said Will should Concur in the Sale of such Real estate, as is thereby permitted to be sold under the Circumstances therein mentioned; and that at the time of the Sale, mentioned in the said Plaintiffs' declaration, there were four surviving Executors of the Will of the said late Simon M<sup>c</sup> Davish, to-wit, the said William M<sup>c</sup> Gillivray, John Fraser of London, Isaac Todd, then residing in England, and the said James Reid.

3. That before effecting the Sale of any part of the said Real Estate, the necessity of such Sale for the benefit of the Estate, ought to have been established, and the Sale ordered in due Course of law, which was not done in respect of the pretended Sale made by the said Plaintiffs to the said Defendants.

4. That before effecting a Sale of any part of the said Real Estate, the formalities required for the Sale of Real property, belonging to Marions, ought to have been had, so as to authorize the same, and that such Sale could only be had under the authority of the Court in the Course prescribed by law.

5. That

5. That the Will of the said late Simon M<sup>r</sup>. Jarvis, containing a substitution, the formalities required for the Sale of entailed property, ought to have been adopted, before effecting the Sale of any part of the said real estate.

6. That the said Plaintiffs, as Executors, as aforesaid, had no right or title in the said real property so sold by them to the said Defendant, and that they could not, and have not transferred or Conveyed any right or title thereto, to the said Defendant, by virtue of the said Deed of Sale, in the Declaration of the said Plaintiff's mentioned.

7. That the pretended Sale made by the said Plaintiffs, as Executors aforesaid, to the said Defendant, as in their declaration mentioned, is wholly null and void in law.

8. That William M<sup>r</sup>. Jarvis, the residuary legatee <sup>having</sup> died on the fourth day of May, 1818, after his age of Majority, and intestate, the said Estate has devolved to his heirs, by whom the said Defendant may be troubled and molested in the possession of the property, so sold to him by the said Plaintiffs.

At which the said Defendant is ready to verify.

Wherefore the said Defendant, saving and reserving to himself his recourse against the said Plaintiffs and others whom it shall and may concern for an indemnity for all such damages and losses which he, the said Defendant hath suffered and will and may suffer, in consequence of the said illegal sale aforesaid, and for all such sum of money as he hath in good faith laid out and expended in buildings, repairs and Ameliorations on the said premises, and all improvements made thereon

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thereof, prays that the pretended Sale made, as aforesaid, by the said Plaintiffs to the said Defendant, as in their Declaration mentioned, may by the judgment of the Honorable Court be declared Null and Void, and that the Action and Demand of the said Plaintiffs may be dismissed with Costs.

(Signed) J. R. Hollenbeck.

for Defendant.

Montreal, 9<sup>th</sup> June, 1819.

Exhibits filed by the Defendant with his plea.

1. Protest of Defendant, and Notice to Plaintiffs, 22<sup>d</sup> March, 1819, Doucet, Notary, specifying that he the Defendant, considering, that the Sale of Terrebonne to him is Null and Void, and that he cannot hold it, is ready to restore and deliver up the possession (saving his recourse in damages, for all losses he had suffered and might thereafter suffer, for all improvements now laid out &c.) as previously and repeatedly notified to the Plaintiffs by the Defendant.

2. Inverness Courier, 21. May, 1818 announcing death of William M<sup>c</sup>. Tavish, in these Words, "Died on the 4<sup>th</sup> Curt. at Strand-on-the-Green, near River, in the 22<sup>d</sup> year of his age, Wm<sup>m</sup> M<sup>c</sup>. Tavish, Esquire of Dumardrie and Terrebonne, eldest son of the late Simon M<sup>c</sup>. Tavish, Esq. of Montreal, Canada"

Replication.

28<sup>th</sup>. September, 1819.

The said William M. Gillibray and James Reid surviving Executors, as aforesaid, for Replication to the plea of the said Roderick Mackenzie, in the said Cause made and filed, Say, that the said plea and the

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matters therein are insufficient in law to prevent the said William M. Gillibray and James Reid from having and maintaining their action against the said Frederick Mackenzie, in manner and form by them brought; and are also false, untrue, and unfounded in fact.

Wherefore the said William M. Gillibray and James Reid, surviving Executors as aforesaid, pray that the said plea of the said Frederick Mackenzie, may be overruled with Costs, and further pray as in and by their declaration in the said Cause filed, they have already prayed.

Signed J. Stuart for Plffs.

20 Sept. 1819.

1819, Oct. 13<sup>th</sup> This day being fixed for the adduction of Evidence, the Plaintiffs admitted

1. That there were four Surviving Executors of Mr. Mr. Tavish's Will at the time of the Sale of Terrebome to Defendant, two of whom, Mr John Fraser and Mr Isaac Todd, resided in England
2. That there were then living four Children of the late J. M. Tavish all under age, and that their Tutors resided in Montreal.
3. That William M. Tavish died after being of age.

The Defendant then also produced

1. A Copy of Judgment, obtained against one Legris by the 4 surviving Executors in October 1812 in an action in their joint names.
2. An authenticated Copy of the Appointment of Tutors for the four Children of the late Mr. M. Tavish, 1 April 1814. Mr Henry Mackenzie being appointed to the eldest son William, and Mr John M. Tavish to the other three.

The evidence on both sides was declared to be closed.

1819

1814. October 14<sup>th</sup> Cause was set down for hearing on  
Merits - on the

" - " - 15 Flood over to 18<sup>th</sup> when Court  
was incompetent to hear the Case.

" - " - 19 An Intervention was filed on  
the part of James Chisholme Mac-  
tavish, Tutor to Simon M<sup>c</sup>. Tavish.

Exhibits filed with this Intervention.

1. Appointment of J. C. M<sup>c</sup>. Tavish as Tutor to  
Simon M<sup>c</sup>. Tavish, in lieu of John M<sup>c</sup>. Tavish  
absent from the Province.
2. Copy Declaration and Demand, in Suit, instituted  
by George Selby Esquire, against the Executors of the  
late Simon M<sup>c</sup>. Tavish for accounts of a legacy of  
£200.
3. Authorization to J. C. M<sup>c</sup>. Tavish, tutor, on 29<sup>th</sup>  
September 1819.

The Petition to the Judges, by the Tutor, being  
a recital of the Will of the late Simon M<sup>c</sup>. Tavish -  
of the order of Court in October 1811, in Suit brought  
by George Selby Esquire for all Legates, and all  
persons interested to intervene, on the plea of the Exe-  
cutors of the Ward of Affels - of the intervention  
of John M<sup>c</sup>. Tavish, as tutor to Simon M<sup>c</sup>. Tavish  
and of all the legates, and persons having an interest  
under the Will - of the appointment of a Commission  
to take an Account of the property in the hands  
of the Executors - of the Confirmation of the Report  
and distribution of the Affels; and order to sell the  
Real Estate not devised (in the words of the judgement  
20<sup>th</sup> October 1815) - The Sale at the Court Room in  
Montreal, and Adjudication to Mr Mackenzie, best and  
highest bidder, 1 August 1816 after advertisements in public  
papers; and the Deed executed thereupon, on 28<sup>th</sup> Febru-  
ary 1817 - the Demand by action against Mr Mackenzie

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for the purchase money and his plea - Simon M<sup>r</sup>  
Cavish's interest (as heir to his brother William) in the  
matters in Contest and in the said Sale, in order to  
ascertain, whether under the circumstances of the  
Case, such Sale had been made according to the in-  
tentions of the Testator, and in the most advantageous  
manner for the interest of the residuary legatee: - The  
Petition conceiving, that the Sale ought to be confirm-  
ed without entering into any discussion as to the right  
of the said Executors to make said Sale - Con-  
cluding - that the Judges do appoint Pindhommes  
to value property, and do thereupon, after taking, the  
advice of the Relations and friends of the Minor,  
authorize the Petitioner to intervene, in the said Cause  
and to agree that the Sale be confirmed, or to Con-  
test the Validity thereof as may be advised. - To  
the Petition is annexed the order for Pindhommes -  
Mr Hall, Mr Porteus and Mr Alderson, and their  
Report, with the advice taken of Seven persons call-  
ed together as friends of the Minor, in default  
of Relations. Their advice is "that after Consider-  
ing the petition of the Tutor, the Report of Pind-  
hommes, the lease of Terrebonne in 1804, they are  
of opinion, that the Sale to Mr Mackenzie  
was advantageous to the Estate, and to the Minor,  
Residuary legatee, and that the same ought to be  
ratified by the Tutor." The order of the Judge  
follows for ratification, authorizing the Tutor to take  
all legal Course for that purpose.

4. Lease to Perry Mackenzie, Esquire, 17 Nov. 1804.  
of the Seigneurie and Mills of Terrebonne, for the  
yearly rent of £1200

5. b. 7. Quebec Gazette, Containing Advertisement  
of Sale of Terrebonne, and other Real property be-  
longing to the Estate - Notice in the following  
Words - "The whole of the foregoing described

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be kept up for sometime at least. In order to ascertain the nature and extent of the necessary repairs, it will be proper that some statement of them should be made by some person of competent knowledge, that the Executors may be advised how far they can be warranted in advancing money to the extent required. - Mr. Blakem, I think, would be a proper person to give us this statement, if he will take that trouble.

I have no doubt, but that the people about Terrebonne were much gratified in the idea that you had purchased the Estate, and this for many obvious reasons, as they are not much disposed to see a stranger among them as their Seigneur, and I therefore take it, their Congratulations were sincere - and had you really been the purchaser I should, very readily, have joined them, for I long thought you were the fittest person to own that Estate, and should be very glad to see you the proprietor of it.

Mrs Reid joins in best respects to Mrs Mackenzie and you, with him who has the honor to be - yours, very truly - Signed - J. Reid.

Roderick Mackenzie, Esquire  
Terrebonne.

2. Letter of Same to the Same.

Montreal, 9<sup>th</sup> December, 1837.

My dear Sir!

I understand from Mr M. Gallinay, that you hold a Power of Attorney from Mr William M. C. Parish, to represent him in this Country, but that you do not mean to act under it, at least for any length of time - this I shall regret, because I know no man better qualified for the trust than <sup>man</sup> your self; and there are besides, reasons which I think ought to induce you to continue to act for him - your

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you know better than most people the true State of  
William's interests in this Country - that the endeavours  
of the Executors have been throughout to save what  
they could for him from his father's Estate, and al-  
though the judgement already given touching the distribu-  
tion of the Assets in the hands of the Executors  
has been through their exertions rendered upon the  
most advantageous principles for William, yet ma-  
nagement will still be requisite to make the most  
of what remains. I have no doubt but, that William  
will be anxious to turn every thing here into money  
he conveniently can without Consideration of Consequences  
and much must depend upon the management and  
prudence of his Attorney. William being now of age,  
is entitled to enter upon the immediate possession of the  
farm at the Mountain, being part of the entailed  
property; and as residuary legatee, he may claim a  
right to Sell and Dispose of the real Estates not  
yet sold, such as the houses at Terrebonne and Town-  
ship of Dorset; and although the proceeds of these  
must go to pay the legacies, yet there can be no reason  
why they ought to be sacrificed to satisfy the anxiety  
of Mr William: - I suppose for a moment that William  
were to appoint, as his Attorney, a person of a different  
way of thinking from yourself, a man who has no  
feeling for the interests of either party, further than  
to gratify William's main object of realizing what  
he can in Canada, I leave you to judge of the  
Consequences. William may be easily advised to create  
a great deal of trouble to his friends here by persons  
who do not understand his interests, or who do not  
wish to understand them - it has even been said  
by some of our Lawyers here that a great question  
might be raised, whether the Executors had the pow-  
er to sell the Siquony of Terrebonne under the Will.  
It is certainly very easy for these gentlemen to raise  
doubts and questions about the clearest matter,

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and although the sale of that Estate has been made  
with every precaution and to the best advantage, yet  
it might be considered a fine thing to tell William  
M<sup>r</sup>. Davish that the Sale was good for nothing, and  
that he might sell it over again. Such advice could  
produce only litigation and expence without any  
benefit to either party, and it is therefore right that  
Mr Williams's Attorney in this Country should be a  
prudent man.

There is one object in which William is very  
particularly interested, and which will soon come  
under discussion, which is, An Appeal from  
the Judgement of distribution above noticed, which  
Mr Simon M<sup>r</sup>. Gillray, as guardian to Anne and  
Simon M<sup>r</sup>. Davish, has been directed to institute un-  
der an Order of the Master of the Rolls - Of  
this you, as Attorney of William will have offi-  
cial Notice some day given you, and when you  
next write to William, I think it would be right  
to intimate to him the necessity of resisting this  
Appeal, for should it be allowed, he is without  
the hope of ever getting a Shreance from his fa-  
ther's Estate in Canada. The Executors have no  
interest in this question, and will, of Course be  
at no expence - All things considered I hope  
you will not decline to act under William's  
power of Attorney: it cannot give you much  
trouble, but in improper hands much trouble  
might arise from it.

Accept my best respects, and believe me to  
be, My dear Sir, yours very truly

(Signed) J. Reid

Roderick Mackenzie,  
Esquire,  
Toronto



is to proceed in such manner as to operate us from  
future Claims and difficulties. If you are willing  
to keep the Estate on the Conditions at which it has  
been adjudged to you, it will be right that you  
should say so, and leave to the Court to determine as  
to the Steps to be taken to render that adjudication  
Valid, or, if this cannot be done, then to proceed  
to another Sale.

Should you feel no objections to Communicate the  
points of Defence you mean to raise, I shall very  
readily give you my ideas how far we can accede  
to them, for we can have no interest in raising or  
maintaining any Contest on the Subject.

I hope you will have a quiet session and dis-  
patch a great deal of business - Should Mr Touch-  
ard's trial come on, it will break in upon you  
very much.

With best respects, believe me to be,

My dear Sir,

Yours very truly

James P. Reid

The Hon. R. Mackenzie, Esquire

Quebec.

5. Letter of Defendants to Mr. Reid

Quebec, 28<sup>th</sup> January, 1819.

My dear Sir!

In answer to your letter of the 24<sup>th</sup> Instant, I  
beg leave to inform you, that having been taught to  
place no Confidence in our past transactions regarding  
the Sale of Terrebonne Signiory, I am determined, by  
way of obviating all difficulties hereafter, to restore  
that property if possible; - for it is acknowledged  
on all sides that my title is vicious and cannot

support  
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Support my Claim without the assistance of foreign  
aid. As I was not aware of opposition, I have not fixed  
upon any points of Defence - these will, of course,  
greatly depend upon the points of attack and upon  
Circumstances. Once the business fairly enters the field  
of Contest to create expense, I have desired my At-  
torneys to act as the law directs, and spare nothing  
to provide against the Worst. My wish is for  
peace and Security - your Wish seems the same,  
and therefore I cannot blame you should your  
Measures affect mine. Still I think, since we  
made this Contract, we can undo it if we chuse,  
and, by explanation, obtain the sanction of the  
Court, without incurring much expense. You will  
recollect, that the family in England, on hearing of  
the Sale to me, expressed, their disapprobation of it,  
nor have they since thought proper, in their Corre-  
spondence, to acknowledge me as the purchaser - the  
heir, from his Conduct, tacitly declined his Confir-  
mation, and at his death his Executors published  
boldly to the World, that Terrebome's will Consti-  
tuted part of his Estate. I took the liberty to  
write Major Penderleath, in September, my mind  
upon this ill usage. In his Answer, he merely noticed,  
that he is sorry the Estate must be sold again,  
- because such an occurrence may obscure or  
affect, at this critical moment for his finances, the  
regular payments of Mrs Penderleath's annuity.

I have reason to consider Terrebome as the hand-  
somest property of the kind in Canada - Gentlemen  
who were judges, and had an opportunity to visit  
and examine the Works established there, stiled me  
as very fortunate in account of that acquisition, par-  
ticularly, Sir John Johnston, who assured me, that,  
if Terrebome was his property, he would not part  
with it for fifty thousand guineas - Now I declare  
to you, that, if I were Sir John Johnston, and

his  
C

3<sup>d</sup> - Letter of Defendant to Mr. Reid.

Quebec, 21. January, 1819.

My dear Sir!

Having been Compelled to engage professional men to defend my Right to the property acquired from the Executors of the late Simon M<sup>e</sup>. Davish, they have lately forwarded by post a plan of Operations for my opinion and instructions. As it grieves me extremely to embark into serious difficulties with my friends and Connections, I must beg of you once more to Consider my Situation and say how I am to act with justice to myself without disobligeing the Executors or injuring the Concerned? I have Consulted experienced and professional men of every description, both at Montreal and in this place - Their opinion forms but one; which is, that another sale must take place to Secure a good Title: - For which reason I am willing to Relinquish the property without further trouble or expense. It therefore remains with you to point out the measures to be adopted in order to Secure mutual Satisfaction to all the parties interested in the transfer. I cannot afford to lose, nor am I ambitious to gain. To Consider me in the light of Agent instead of Proprietor, and to Refund duly my disbursements is all I require. From Offers, or rather, Suggestions made to me both last year and this, I have reason to believe the property, when regularly brought forward for Sale, will go beyond my reach. On the other hand, should it go low, the heir ought to have it, since he had the means; for I look upon the Estate of Mr M<sup>e</sup>. Davish as a Bankrupt Estate, since his Will cannot be fulfilled should each

Call  
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call for his own without making it such. This I discovered from glancing over the Accounts as the late heir's Attorney; and I discovered also that the property purchased by me for £28,400, Costs the Estate upwards of £42,000 near disbursements independent of Interest &c. &c. This depreciation when Considered will be an additional and prominent point against the Sale to me. From my view of all the transactions it is my humble opinion that all legal discussions and Controversies ought to be avoided, and that the Executors ought to lose no time in closing that disagreeable Concern - let who will suffer the Consequences.

I remain, My dear Sir, Faithfully yours,

(Signed) R. Mackenzie.

Hon<sup>ble</sup>. Mr Reid

3<sup>d</sup> Rivers. →

4. Letter of Mr Reid to Defendant.

Three Rivers, 24 January, 1819.

My dear Sir!

The object of Contest between you and the Executors of the late Mr M<sup>r</sup>. Davish ought not to excite in your mind apprehensions of difficulty or misunderstanding between you and them, as I Consider the Suit about to be instituted against you as an Amicable Suit on all sides, which cannot lead to a very lengthy discussion nor heavy expence - indeed I should have no difficulty to meet your wishes in taking back the Estate, could we be Warranted in so doing; but this is impossible without incurring a responsibility which we cannot assume. Whatever course the Court may direct to be taken, it is impossible that you can be a loser - On this point we can have no discussion, as what you demand appears reasonable, and what we are looking for

is  
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this property really mine without risk or reproach and  
with means to do it justice, I would consider ~~about~~  
Fifty thousand pounds, as no object in comparison of  
of £. - Signed - N. Mackenzie.

The Hon<sup>ble</sup> James Reid, Esquire,  
Montreal. -

B. Letter of Mr Reid to Dependents.

Montreal, 10th. February, 1819.

My dear Sir!

The business of the term has prevented my ac-  
knowledging your last letter sooner, and since I re-  
ceived it, I have been revolving in my mind what  
course could be taken to meet your ideas without  
affecting in any material point what has been exe-  
cuted between us. Supposing then that we should be  
means of a judgement affect a Sheriff's sale of the  
Signify, so as to give a clear title to the purchaser  
on the conditions of our Deed to you - Will you  
undertake to bid the Estate up to the same sum  
you agreed to pay us? and in case you become  
the purchaser, that all things shall remain in the  
state the now are, without affecting, in anywise, our  
Contract, which shall be considered, as between us,  
binding in every respect - the only alteration being  
that of giving you a new Title to the Estate. This  
will bring matters to a short close, and without any  
discussion with you, I only think that in this case,  
you ought to participate in the expense, say for one  
half, as I am not clear, that we are justifiable in  
charging any part of it to the Estate.

Mr Stuart is now busy in preparing the Suit,  
which will be entered this term. I will thank  
you to intimate to me your opinion on this  
point as soon as you can, as it may occasion,

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a change in the Court to be adopted.

Yours very truly

(Signed) J. Reid.

The Hon. R. Mackenzie

Esquire. —

Y<sup>r</sup>. Letter, Defendant to Mr. Reid.

Quebec, 15<sup>th</sup>. February, 1819.

My dear Sir!

I have been favoured with your letter of the 10<sup>th</sup>, and feel at a loss how to answer it from this distance. If the property must be sold again to obtain a good title, it is clear the former Sale was no sale, and that our Contract is void. I do not see the great necessity, nor, indeed, any necessity, for either party, at this stage, to enter into new arrangements of doubts and inconveniences to serve the purpose of others, who may not be disposed to thank us. I should think, that private arrangements as proposed, will tend but to make bad worse — since it is natural to suppose, that in such a case I must have advantages in view with which, from my Superior knowledge of the business in my charge, others might not be acquainted — thus, instead of closing continue the way open to suspicious investigations, troubles &c. &c. — Why should I Court, or my friends wish me to embark into risks that can be avoided. If such rise out of the nature of things, it cannot be helped, and I shall be ready to meet them without regret and without murmur. I have suffered enough from the past to learn Caution — for a twelvemonth and more, have I been situated like a blind man loaded with responsibility and my hands tied behind <sup>my</sup> back — My transactions

could  
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Could not secure the Confidence of the public, nor  
yet my own - You will recollect, my good For, it was  
with Reluctance, that I came into your former views.  
I had ample Reasons for this Reluctance - those Reasons  
still exist; they consist of heavy demands which de-  
pend upon a breath, and which therefore may come  
upon me at a moment's warning. I am Sorry you  
entertain so poor an opinion of the property after all  
the ameliorations introduced within these two years, as  
to be afraid that it will not realize the Value  
"Stamped" upon it by the last Transfer. I see no danger  
from that side when the property comes regularly be-  
fore the public; if Confidence can be placed in the  
Sale, you need not be anxious about purchasers.  
There are many in this place, let alone other parts  
of the World, who are looking out for such securi-  
ty in order to call their money from the funds, where,  
at present, it does not produce three per Cent. Ano-  
ther Circumstance which will prove favourable to  
Seignories is a subject actually under the Consideration  
of the Imperial Parliament for a Complete develop-  
ment, as it is called by our Orators, of the Bri-  
tish Constitution in this Province - Nor is it my  
wish to part with the property, but my wish is  
to do that which is right, fit and proper - I have  
been put out of my way and have Suffered -  
Since the Deceitours will not take upon themselves  
to place me where they found me, I do believe  
my wisest plan is to remain quiet for the expect-  
ed legal decision - Then, if the property becomes  
mine, my intention is still, what it was before,  
which is, to dispose of two Seignories in so many  
lots, and Content myself with the third -

Remain, My dear For,

Yours faithfully

Signed J. D. Mackenzie.

The Hon<sup>ble</sup>. James Reid

Esq.

8. Extracts from the Report of the Commissaire.
9. Protest of Defendants and Notice to Plaintiffs  
22<sup>d</sup> March 1819. already filed with plea  
to original relief.
10. Gazette, Incomes Courier - already filed.
11. Appointments of Judges to sittings, M<sup>e</sup>. Tardif  
in 1814, already filed.
12. Certificate of Birth of William M<sup>e</sup>. Tardif  
showing him to have become of age on  
the 1817. →

Summary of the Affairs

of

The late Simon M<sup>e</sup>. Tardif  
Esquire of the City of  
Montreal. -

affaire de la Seigneurie  
de St. Hubert,

achet par M<sup>e</sup>.  
M<sup>e</sup>. Tardif  
de la ville de

22



# Summary of the Affairs of

The late Simon M<sup>c</sup>. Jarvis,  
Esquire, of the City of  
Montreal.

Mr M<sup>c</sup>. Jarvis died on the Sixth, and was buried on the Eighth, days of July, in the year, One thousand eight hundred and four, as appears from the Certificate of Mr Mountain, Rector, of the Protestant Congregation of Christ's Church in the City of Montreal.

He left a Will and Testament, which was found in his house, dated the Second day of July 1804; and "signed, sealed, Published and Declared" in presence of Simon Fraser, Bout de l'Isle de Montreal, William Gilmour, of the City of Montreal, and Louis Charles, of the same place. On the Fifteenth day of August, in the same year, this Will and Testament was duly Proved in presence of the Honourable Piere Lewis Parot and Isaac Ogden, Justices of the Court of King's Bench for the District of Montreal, in the Province of Lower Canada; and on the twentieth day of October following, it was "read and published with an audible voice in open Court" and Registered in the Register of Intimations of the said Court.

For the due execution of this Will, the following Executors were therein named and Appointed:—

William M<sup>c</sup>. Gillivray, Esq.  
Duncan M<sup>c</sup>. Gillivray Esq

Joseph  
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Joseph Frobisher, Esquire,  
 John Fraser, of London, Esquire  
 Hugh Fraser of Brighton, Esquire  
 Isaac Todd, of Montreal, Esq. - and  
 James Reid, Esquire.

On the Fifteenth of September 1804, an Inventory was taken, at Montreal, "of all and singular, the Estate, property and effects, moveable and Immoveable" of which belonged to the Testator; but as this Inventory contains a superficial disclosure of the affairs of the M<sup>r</sup>. Tavish, it is not judged necessary to give an abstract of it in this place, because the Report which was afterwards made up by a Commissaire duly appointed by the Court, will afford a better opportunity for presenting a better view of these affairs.

On the Fourteenth day of January, Eighteen hundred and five, the said William M. Gillmore, Esquire, one of the Executors for said, and one of the partners in the house of M<sup>r</sup>. Tavish, Frobisher and Company, appeared before certain Notaries, in the presence of the Tutor, to the Minor Children of the Testator, the sub-tutor and the other Executors to the said last Will, and Declared, *inter alia*, "That on winding up the Accounts of the said house of M<sup>r</sup>. Tavish Frobisher and Company, on the thirteenth day of November last, there appeared to be due to the Estate of the said late Simon M<sup>r</sup>. Tavish, a Sum of Forty thousand, Seven hundred and Seventy three pounds, fourteen Shillings and five pence Currency, after having charged him with his proportion of the outfit to the North West of last year, amounting to Twenty five thousand Nine hundred and Ninety nine pounds

" pounds, eighteen Shillings, and two pence, the value  
 " for which may probably be realized in two years  
 " and will be placed to the Credit of the said  
 " Estate, when ascertained" — " That, from the  
 " Nature of the business in which the above men-  
 " tioned Funds are engaged, no part thereof can be  
 " paid to the said Executors without loss and in-  
 " convenience to the Concern in which the said  
 " late Simon M<sup>c</sup> Tavish was a partner, before the  
 " Seven years from the decease of the said Simon  
 " M<sup>c</sup> Tavish, as expressed in his last Will and  
 " Testamenty." —

It appears, that an action was brought  
 into the Court of Kings Bench, for the District  
 of Montreal, wherein George Selby, one of the Lega-  
 tes named in the said last Will, appeared as  
 Plaintiff, and the said William M<sup>c</sup> Gillivray and  
 others, Defendants — which action came to involve  
 diverse interesting points relative to the Estate of  
 the said Simon M<sup>c</sup> Tavish, Esquire, and the ad-  
 ministration of the said last Will and Testament.  
 On the Nineteenth day of October 1811, " The Court  
 " having seen and considered the Pleadings in this  
 " Cause filed, and the Account therein also filed, by  
 " and on the part of the said Defendants, whereby it  
 " appears, that assets realized from the Succession of  
 " the late Simon M<sup>c</sup> Tavish, Esquire, and which have  
 " come to the hands of the Executors of his last Will  
 " and Testament, are insufficient for payment of the  
 " Legacies by his said Will bequeathed" — and then or-  
 dered a full hearing of the parties to take place on  
 the first day of the term in October then next.

On the Eighteenth day of June, Eighteen  
 hundred and fourteen, the Court pronounced an  
 Interlocutory Judgement, by which it was " Ordered  
 " that James Caldwell, Esquire, be appointed Comptroller  
 " or Examiner to enquire and Report upon the State  
 " of the Effects and Estate of what value soever

"of the said deceased, which were at the time of  
 "his decease and since"; and in conformity thereto,  
 furnished the said Commissaire with a Code of  
 Instructions for the due Execution of the said  
 Report.

After various prolongations of this Judgement  
 and Appointments, in consequence of the indispo-  
 sition of the said James Caldwell Esq, who  
 was rendered incapable of executing the duties  
 required of him, the Court, upon the Twen-  
 tieth day of February, 1815, appointed "Robert  
 "Griffin, of the City of Montreal, Gentleman, in  
 "the place and stead of the said James  
 "Caldwell". —

On the First day of October, Eighteen  
 hundred and Fifteen, Mr Griffin made up  
 a clear and distinct Report of the affairs  
 of the Testator, in terms of the instructions  
 of the Court, from which the following Ex-  
 cepts and other articles of information are  
 presented.

First.

Amount of the Testator's Real  
 Estate . . . . . £56416. 5. 5.

" Personal Estate on

30<sup>th</sup> November, 1804,

When his Accounts  
 Current with his Part-  
 ners was settled, ac-  
 cording to their Ar-  
 ticles of Agreement,  
 as far as the same  
 could be at the  
 time ascertained . . . 68835. 19. 8½

Amount of Real and Personal Estates £125,250. 5. 1½

Second

Second.

Amount of Debts due by the Testator at the  
time of his decease — — — — £2137. 15. 7<sup>d</sup>

All these Debts were paid by order of the  
Executors by his partners previous to the Account  
Current aforesaid being balanced on the 30<sup>th</sup> Nov-  
ember 1804, and entered on the Inventory the 14<sup>th</sup>.  
January, 1805. The Funeral Expenses, and Sundry  
legacies, under one hundred guineas, were likewise  
paid by his partners and charged in the above  
mentioned Account of 30 November 1804.

Mortgages and Incumbrances charged on  
his Real Estates. . . . £8203. 12. 4.

Besides Three hundred pounds, per annum, paya-  
ble, during her Natural life, to Margaret M<sup>c</sup>.  
Tavish, Wife of the Testator in virtue of her  
Marriage Contract. —

Third.

Amount of Personal Property received  
by the Executors . . . . . £40,236. 19. 5<sup>1</sup>/<sub>2</sub>.

Personal Property discovered Since the death  
of the Testator . . . . . £3018. 18. 2<sup>1</sup>/<sub>2</sub>

Amount of Profit and Interest, arising to  
the Estate of the Estate of the Testator  
from that part of his personal property  
and Effects which consisted of the ba-  
lance of his Account Current with his  
late Partners on the 30<sup>th</sup> of November  
1804, arising from the Sundry transactions  
in which the said Balance was engaged

according  
to

according to their Articles of Copartnership  
of . . . . . £25312. 4. 5 1/2

Amount expended by the Executors on  
Account of and respecting the  
Personal Estate . . . . £3252. 18. 11 1/2

Add Amount to the Wife  
M. Gillivays prior to the  
Testator's death . . . . . 1111. 2. 2.  
£4364. 1. 1 1/2

Here Mr Griffin Reports, "that it does  
not appear that sufficient Assets have at any  
time come to the hands or power of the Executors  
or Trustees to have enabled them to invest any  
Sum or Sums of money upon Security according  
to the directions in the Will. And I further  
that it appears, that the Household Furniture  
trinkets &c given by the said Testator to his  
Wife Margaret, have been delivered to her.

### Real Estates

Come into the hands of the Executors.

<p>The Estate or Signiory of Terrebourne. Isle St. Jean - or Isle Niger. A Bake House on Isle Moulins. A House and Lot in Saint Louis Street Terrebourne. A House and Emplacements in Saint Fran. Street Ditto. Another House and D. in Saint Louis Street Ditto Sunday Emplacements bought of Chamost.</p>	}	<p>All which are leased to Henry Mackenzie Esquire, at the rate of Two hundred pounds Currency per Annum.</p>
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The Farm at the Mountain - leased to  
Lewis Charles for Seventy pounds Currency  
per Annum.

The Township of Dowset, which has been  
neither visited nor improved, and is without  
any Revenue or profit arising therefrom.

And it is Reported, "that not sufficient  
" Assets having been received by the Executors from  
" the Estate of the Testator to raise and Secure the  
" annuity of Twelve hundred pounds to his Wife as  
" mentioned in his Will, they, the said Executors  
" have fixed and Secured the said Annuity to her the  
" said Wife in the following manner as will appear  
" more fully per Agreement ~~passed~~ with her, passed  
" before Notary Beck, on the 12th July, 1805 (which  
" States - "Whereas the said Executors in order to Com-  
" ply with the said last Will and Testament, as far  
" Circumstances will at present permit, have determined  
" and Agreed, that out of the present revenue of the  
" Estate and Siquery of Terrebonne, there shall be Se-  
" cured and Annually paid to the said Margaret Mac-  
" tawish, a sum of Seven hundred and eighty pounds;  
" also the sum of Seventy pounds arising from the rent  
" of the farm at the foot of the Mountain; and  
" that the Remaining sum of Three hundred and fifty pounds  
" to Complete the present Annuity of Twelve hundred  
" pounds, be paid out of the Testator's property, in the  
" hands of John Gregory, William McGillicray, Duncan  
" McGillicray, William Balwell, and Rodrick MacKenzie,  
" Trading under the firm of M<sup>c</sup>. Jarvis, Probersher  
" and Company; and that as soon as the debts now  
" due upon the said Estate of Terrebonne shall be  
" paid off, the whole of the said Annuity shall be  
" Secured to the said Margaret MacTawish from the  
" Revenue of that Estate." In Consideration of which  
" she, the said Margaret M<sup>c</sup>. Jarvis, gave up all  
" Claims respecting the said Annuity, upon the Testator's

" other real Estates, as well as personal property."

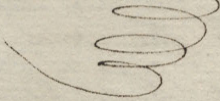
Amount of Receipts, Issues and Pro-  
fits from Real Estates £8057. 4. 4.

Amount of Disbursements for, and on ac-  
count of Charges touching the Testator's  
Real Estates, and for upholding the  
same . . . . . £10413. 7. 6½

It is Reported " that the Estate  
" of Dumardry, in that part of Great Britain  
" called Scotland is not in the hands, power, or  
" possession of the Defendants, the Executors; and  
" that the same is under the direction of certain  
" persons, legally named and appointed according  
" to the laws of that Country - Nevertheless, the  
" said Executors have received a certain sum of  
" money from such persons, amounting to £431. 4. 4.  
" which has been applied by them for the use  
" of the heir at law, William M<sup>r</sup>. Tavish, and  
" is accounted for by them in this their gesture."

" And also, that the Dwelling house of  
" the Testator, situated in St. Jean Baptiste Street,  
" in the City of Montreal, is in the occupation  
" and possession of his Widow, Margaret M<sup>r</sup>. Tavish  
" under the authority of his will."

It is found " that there is no other  
" real Estate whatever, come to the knowledge  
" of the said Defendants, the Executors."

Abstract  




Abstract of the Will of  
The Testator.

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After reciting his Marriage Contract with his Wife, wherein it was stipulated, that after his decease, she should receive and enjoy during her life an Annuity of £300 Currency out of his Estate, He gives his said Wife over and above to such Annuity, an additional sum of £900. Currency p. Annum during her natural life, making altogether an Annuity of £1200 Currency; and he directs his Executors to secure, out of the just Assets arising from his Estate, sufficient money to be employed upon Real or other sufficient property to raise the said Annuity of £1200.

He also gives to his said Wife the free use and occupation of his then present dwelling house in the City of Montreal, with its appurtenances free from all incumbrances during life; with a Remainder to his residuary Legacies.

He further gave to his Wife all his Household Furniture and Plate, one pair of Horses, a four Wheel'd Carriage and a Coach: also, all the Trunkets, Cloaths, and Wearing Apparel he possessed in the Province.

He directs, that until his Children were of an age to go to England, they should remain under the Care of their Mother, to whom he orders a further Sum or allowance of £50 Currency per Annum, to be given for each of his said Children; and that whatever other necessaries should be requisite for them, the same should be furnished out of their respective Legacies.

He further directs that the Majority of his Executors in this Country should determine when any of his said Children should be of a proper age to be removed to England for their Education,

to which his said Wife should acquiesce. —

He gives and bequeaths to each of his daughters, Mary and Anne, the Sum of £10,000 Sterling to be vested in the British funds, or other good Security, as soon as his property could be realized and withdrawn out of the Trade and Commerce, in which he was engaged in this Country; and he directs that the Interest arising therefrom, so vested, should accumulate (except such part as went to their maintenance) and which said principal with the interest should be paid on the day of their Marriage (to be made with Consent of the Majority of his Executors) or at the age of majority:— or in case of the death of either of them before such Contingencies then with the benefit of Survivorship. Say each £10,000 Sterling in Currency is . . . . . £22,222. 4. 4.

He gave to his son Simon  
£20,000 Sterling to be secured  
and paid as the above men-  
tioned Legacies:— and in  
Case of his death, before  
Majority, or without issue  
with Remainder to his &  
Soleiary legatee . . . . . 22,222. 4. 5.

Amount of Legacies to his  
children . . . . . £44,444. 8. 9.

Amount of Specific Legacies to  
Relations and Friends . . . . . 35,284. 8. 4.

Total Amount of Legacies . . . . . £79,728. 17. 1.

" And the Testator directs, that none of the  
" foregoing Legacies, exceeding 100 Guineas should be paid  
" out of his Estate until Seven years at least after  
" his decease, unless sufficient monies for that purpose  
should

" should have been realized therefrom, without loss or in-  
 " convenience to the Concern or Concerns in which he was  
 " then a partner."

Dwind

And as to his Residuary Estate, Property and  
 Effects, the said Testator gave, divided and bequeathed  
 the same to his Son William and his heirs for  
 ever upon attaining the age of Majority, and in the  
 meantime, to his Executors in trust for him:—

Remainder

To his Son Simon, and his heirs for ever, Subject to  
 the same trust till the age of Majority:—

Remainder

To his Daughters Mary and Anne, and their heirs,  
 to be equally divided between them; and in case of  
 the death of either before attaining the age of Majority,  
 or dying without issue, with the benefit of Survivorship:—

Except

The Estate of Dumardry in Scotland and the Lot  
 of Ground and Appurtenances near the Mountain  
 of Montreal, which, it was the intention of the  
 Testator, should be held in Tail Male, as follows:—

To

His Son William and his heirs male, under Trust of  
 the Executors till the age of Majority:—

Remainder

To his Son Simon, and his heirs male, under the  
 same trust till Majority:—

Remainder

To John M<sup>c</sup> Tavish, the eldest of his Nephews,  
 Son of his late brother Alexander, and his heirs  
 male:—

Remainder

To the younger Son of his brother Alexander aforesaid,  
 whom he believed was named Alexander, and to  
 his heirs male:—

Remainder

To his Nephew William M<sup>c</sup> Gillivray, and his heirs

male  
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male:—

Remainder

To his Nephew, Duncan M. Gillivray, and his heirs male:—

Remainder

To his other Nephew, Simon M. Gillivray, and his heirs for ever.

With the Proviso, that, in the above said limitations, the eldest Son of the male line should always succeed alone to the whole of the said Estate and Lot of ground; and the same should not be liable to any division among younger heirs.

With the proviso also, that the Tenants in Tail male who are not named M<sup>c</sup>. Davish, should take the Name and Arms of M<sup>c</sup>. Davish; and in default of their so doing, that then the next Remainder Man shall enter into possession.

And in Case of the death of all his said Children before they are entitled to receive their legacies, then the Testator gives, devises and bequeaths all the aforesaid Real and Residue of his said Estate, property and effects (save and except the said Estate of Demondry and Lot of ground) to his said Nephew John M<sup>c</sup>. Davish.

And in case of his death before the age of Majority, then to his said other Nephew, Alexander M<sup>c</sup>. Davish (the younger Son of his said late Brother Alexander), and his heirs:—

And in case of his death, before Majority, then to his said Nephews, William M. Gillivray and Simon M. Gillivray, and their heirs in equal portions.

And the Testator Continues the Execution of his Will beyond the year and day limited by law in this Province; With power to Sell and Dispose of his Real Property (Except Demondry and the Lot of ground aforesaid), whenever it should appear for the benefit of his Estate.

All former Wills are Revoked.

Amount of Annuities bequeathed - including the Annuity of £900 to Mrs M<sup>c</sup> Tavish £1550. 15. 6.

To Mrs M<sup>c</sup> Tavish per Marriage

Contract . . . . . 300. " "

Per Annum . . . . . £1850. 15. 6.

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Amount of Annuities Lapsed . . . . £ 604. 4. 5.

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Amount of Payments made by the Executors on account of the Requests in the Testator's Will . . . . . £27529. 13. 4.

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Sums of Money in the Hands of the Executors

To Discharge Legacies &c.

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Value of Real Estates £42196. 8. 11.

Personal Property . . 56846. 18. 2½

Total . . . . £99043. 7. 1½.

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Amount of Incumbrances and Debts chargeable upon Real Property . . . £3009. 9. 11.

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Amount remaining unpaid on Legacies and Annuities . . . . £80011. 1. 7.

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The Reporter Concludes by Stating, that -  
 "It appears from the foregoing Statement, that all  
 the property under the Control of the Executors,  
 whether in Real Estate, or in Personal Property, are:-

"The Real Estate Valued at £42,196. 8. 1.

"Less Value of the house in  
 town. . . . . 2597. 18. 9.

"Less the Mortgage with In-  
 terest to 1. Octr. 1815. . . 2644. 11. "

£36,953. 19. 2.

"Less Principal sum to insure  
 the payment of the Mar-  
 riage Contract of £300  
 per Annum £ 5000. " - "

"And less a principal  
 sum to insure pay-  
 ment of the Annuity  
 of Mrs. M<sup>rs</sup>. Tavish  
 of £900. p. Annum  
 left to her by Will  
 and mortgaged by  
 Executors to her he-  
 fore J. G. Beck Esq.  
 18 July 1805. . . . 15000. " - "

"And less a principal  
 sum of £1000 Str. to  
 insure payment of £50  
 Str. Annuity to Marjory  
 M<sup>rs</sup>. Tavish . . . . . 1111. 2. 2 2111. 2. 2.  
£15842. 17. "

"So Amount of Personal Property due  
 1st. of October 1815 per State-  
 ment . . . . . 56846. 18. 2½.

£42,689. 15. 2½

Amount of Requests  
 to be paid as above £80011. 1. 7.  $\frac{1}{2}$  — £72,589. 15. 2  $\frac{1}{2}$   
 Less Paid on account  
 of Principal on  
 Interest ————— 12059. 7. 7  $\frac{1}{2}$       67941. 13. 11  $\frac{1}{2}$   
 £ 4748. 1. 3. "

After the parties were heard by their Counsel  
 on the Report of the Commissioner, they respectively  
 consented and agreed that Judgment, in the said  
 Cause be rendered in the next Vacation and  
 entered on Record, as of the last day of this term.

### Judgments

Friday, 20<sup>th</sup> October, 1815.

The Court having heard the several parties  
 in this cause upon all and every, their respective  
 claims and demands, and having examined the  
 evidence and proceedings of Record, and particularly  
 the Report of the Examiner or Commissioner made  
 under the Interlocutory orders of this Court of the  
 18<sup>th</sup> of June, 1814, and 20<sup>th</sup> of February, respecting the  
 Estate and Effects of the late Simon M<sup>c</sup>. Davish, Esq.  
 and it appearing by the said Report — to which  
 no objections have been made or taken by any  
 of the parties — and by the last Will and Testa-  
 ment of the said Simon M<sup>c</sup>. Davish that the  
 principal part of his Estate and Effects was  
 vested in a certain Copartnership in trade in  
 which

which he was concerned with several other persons; and, that, by his said last Will and Testament the said Simon M. Davis, amongst other things, directed that none of the legacies therein and thereby given and bequeathed, should be paid out of his Estate until seven years, at least, after his decease, unless sufficient monies for that purpose should have been realized therefrom without loss or inconvenience to the Concern or Concerns in which he was a partner: And it appearing also by the said Report, and by the demands made by the said Executors on the said Copartnership, as stated in the Inventory of the said Estate, also filed of Record, that sufficient Assets had not at any time during the said seven years come to the hands or power of the Defendants, as Executors, or Trustees named and Appointed by the said last Will and Testament to enable them to invest any sum or sums of money upon security, according to the directions of the said Testator in regard of several legacies and Annuities therein and thereby given and bequeathed, in as much as the said monies could not be realized from the trade in which the said Testator was concerned, and by means whereof the effect and operation of the said last Will and Testament became suspended until the expiration of the said seven years; and it also appearing that the said seven years, elapsed and expired on the 6<sup>th</sup> day of July 1861, when the said Defendants became possessed of the Assets now reported to be in their hands.

It is therefore Considered, that neither the Plaintiff, nor any of the intervening parties in this Cause claiming legacies under the said last Will and Testament (Serving and accepting

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William Smith Penderleath, and Margaret his  
 Wife, Widow of the said Testator, Hugh Trader, as  
 Trustee for Marjory M<sup>c</sup> Tavish, Sister of the said Tes-  
 tator, and Maria Sutherland, were, or are entitled  
 to the payment of any of their said legacies, or to  
 any of the benefit arising therefrom, until the expira-  
 tion of the said Seven years. And Whereas, it  
 appears, by the said Report, that there are Certain  
 debts still remaining due by the Estate of the  
 said Testator, which, according to the directions of the  
 said last Will and Testament, ought to be first paid  
 and Satisfied, it is therefore ordered, that, before distri-  
 bution, of any of the Effects now in the hands of  
 the said Defendants, all the said debts be first  
 paid and discharged; And as to the legacies made,  
 and bequeathed in and by the said last Will and  
 Testament to Margaret M<sup>c</sup> Tavish, now Wife of the  
 said William Smith Penderleath, and to Marjory  
 M<sup>c</sup> Tavish, Sister to the said Testator, of Certain  
 Annuity to be paid to each of them during their  
 respective lives, it is Considered, that the said An-  
 nuities are, and they are hereby Declared to be,  
 a burden and Charge upon the whole Estate  
 of the said Testator; And it is, therefore, Ordered,  
 that the said Annuities be Secured to the said An-  
 nuityents out of the proceeds of the Sale to be made  
 of the Real Estates of the said Testator, as herein,  
 after mentioned, and that the arrears of the said  
 Annuities, be paid to the said Annuityents without  
 abatement or diminution. Having also Considered the  
 legacy made and bequeathed to the said Maria Su-  
 therland - it is ordered, that there be paid to her  
 out of the Effects now in the hands of the said  
 Defendants, her Share and proportion thereof upon  
 her said legacy, and Interest thereon, or such ar-  
 rears thereof as may be due to her from the  
 day


day of the Death of the said Testator. And having also Examined the Interdicts made by John M<sup>c</sup> Tavish, as tutor to Mary and Anne M<sup>c</sup> Tavish, and also, as tutor to Simon Mac-tavish, Minor Children of the said Testator, Claiming their respective legacies bequeathed to them and each of them by the said last Will and Testament with Interest thereon from the 6<sup>th</sup>. day of July, 1804, the day of the decease of the said Testator; and taking into Consideration the intentions and particular directions of the said Testator in regard to these legacies, and it appearing that the said legacies could not be realized and withdrawn from the trade and Commerce in which the said testator was concerned, and he vested an interest, as directed, before the expiration of the seven years above mentioned: Considering also what was requisite during that period for the education and maintenance of the said Children beyond the sum of £50 limited by the said Testator, as a provision for each of them in the meantime, has been furnished and provided out of his Estate, as appears from the said Report; it is therefore adjudged, that the said John M<sup>c</sup> Tavish, as Tutor, as aforesaid, is entitled to recover and receive out of the Estate of the said Testator, the respective legacies by him made and bequeathed to each of the said Minor Children, and with Interest thereon, only from the said 6<sup>th</sup>. day of July 1811; and that whatever Sums shall have been paid or advanced for the Education and maintenance of the said Children, or either of them since the said 6<sup>th</sup>. day of July, 1811, or which shall or may hereafter be paid or advanced for them out of the growing Interest arising from their respective legacies aforesaid. And

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it is ordered, that out of the Assets now in the hands of the Defendants, there be paid to the said John M<sup>c</sup> Tavish, as Executor as aforesaid, a proportionate Share thereof in deduction and part payment of the said several legacies to the said Minor Children, with the interest thereon as above limited; and the said John M<sup>c</sup> Tavish is hereby directed, in Conformity to the said last Will and Testaments, that in Six months from this date, he shall vest in the British Funds, or on some other good Security, to be approved of by this Court, for the benefit and behoof of the said Minor Children, all and every such Sum and Sums of Money as shall come to his hands by Virtue of the present Judgement, on account of their said respective legacies; first deducting therefrom what shall be due on account of their maintenance and Education, from the said 6th day of July 1811 above stated. Having also seen and examined the Intervention of John M<sup>c</sup> Tavish, Son of the late Alexander M<sup>c</sup> Tavish, brother of the said Testator, claiming the legacy made and bequeathed to his late Brother, Alexander, by benefit of Survivorship, as mentioned in the said last Will and Testaments. Also the Intervention of Joseph Frobisher, Son of the late Joseph Frobisher, of Montreal, Esquire, deceased, claiming the legacy bequeathed to him by the said last Will and Testaments, with Interest thereon, as aforesaid; it is considered, that, as by reason of the before mentioned Clause contained in the said last Will and Testaments, suspending the payment of legacies until Seven years after the decease of the said Testator, sufficient Assets had not been realized out of the Estate, nor had come to

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the hands of the said Defendants to enable them  
 to Carry into effect the intentions of the said Testa-  
 tor, in regard to the said two last mentioned  
 legacies, by placing out and securing on interest  
 the monies so bequeathed to the said legacies,  
 that therefore the said John M<sup>c</sup> Tavish and  
 Joseph Frobisher, are and shall be severally  
 entitled to Claim and demand out of the  
 Estate of the said Testator, their respective le-  
 gacies as aforesaid; but with interest thereon only  
 from the 6th. day of July 1811; And it is  
 thereupon adjudged, that out of the Assets  
 now in the hands of the said Defendants,  
 there be paid to the said John M<sup>c</sup> Tavish  
 and Joseph Frobisher their share and pro-  
 portion thereof in deduction and part payment  
 of their respective legacies as aforesaid (after  
 deducting the advances which have been made  
 to them) with interest thereon as above limited.  
 And it is also adjudged, that interest be al-  
 lowed, from the 6th. day of July 1811 upon  
 the Claim of Hugh Fraser, Esquire of Bright-  
 money, and William M. Gillmore, Esquire, of  
 Montreal, Surviving trustees named and appoint-  
 ed in and by the said last Will and Testa-  
 ment, to hold in Trust a certain Sum of  
 £1000 for the special purpose and intent of ap-  
 plying the Interest thereof yearly and every year,  
 in assisting certain poor relations of the said  
 Testator; And also, upon the Claim of Alexander  
 Grant, son of the late Commodore Grant, the  
 legacy to him appearing to be made for the pur-  
 poses of his Education, and that out of the  
 Assets in the hands of the said Defendants,

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there be paid a Share and proportion thereof to the said two last named Claimants upon their respective Claims aforesaid, and Interest as hereby directed after deducting the several advances that have been made to them, and the interest thereon.

And as to all the other demands made by the said Plaintiff, and the several intervening parties in this Cause claiming the several and respective legacies made and bequeathed to them in and by the aforesaid last Will and Testament, it is ordered and directed that there be paid to them, and to each and every of them upon their respective legacies aforesaid their Share and proportion of the Assets now in the hands of the said Defendants—(Here the parties are all named)—as stated in their several and respective Claims, and Interventions, as aforesaid, but without Interest thereon. The Court hereby dismissing the Claim of Alexander Fraser, as administrator of the goods and Chattels of Catharine McTavish, one of the Children of the late Donald McTavish, uncle of the said Testator.

And Whereas it appears by the said Report that there still remains unsold certain real Estates belonging to the said Testator, not devised by him, and which, by the said last Will and Testament the said Defendants as Executors as aforesaid, are authorized, in case of necessity, to sell and Dispose of; it is therefore ordered that the said Defendants do proceed forthwith to Cause the said Real Estates (or so much thereof as shall be sufficient to pay and satisfy such balances as may remain due on the several Claims and legacies herein before mentioned, after distribution and payment of the Assets now in their hands)—

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to be sold and disposed of in the best and most advantageous manner, and the proceeds thereof to bring before this Court for the payment and distribution thereof in such manner as to law and justice shall appear.

And it is also ordered that in causing the said real Estates to be sold and disposed of, the said Defendants shall use means to secure to the said Margaret MacTavish, Widow of the Testator now, Wife of the said William Smith Plecker both, and to Marjory MacTavish, Sister of the said Testator, the aforesaid Annuities severally given and bequeathed to them, the said Margaret M<sup>c</sup>Tavish and Marjory M<sup>c</sup>Tavish by the said Testator, to be paid to them and each of them, agreeable to the said last Will and Testament; with permission however to the Residuary Legatee and Legatees of the said Testator, to assume the payment of the said Annuities, on giving the necessary Security in this behalf. And lastly, it is ordered that the said Defendants shall be held and bound from time to time, and at all times, when thereunto required by any Rule or order of this Court, to produce and file in the said Court, an Account and Testament of all such Assets as shall at any time come to their hands power or possession as Executors as aforesaid, that further may be done thereon as by law required. — Each party to pay his own Costs, &c. &c. —

Abstract

Distribution of the Assets in the hands of the Defendants, in Conformity  
to the Interlocutory Judgment of the 20th of

October, 1815.

Original Requests	Amount from 6 July 1811 to 1. October, 1815. (i.e. 14 months, and 2 1/2 years)	Legacies and Interest to be paid according to Judgment of 20th October 1815.	Dividend of 12 1/2% in the pound on present Assets.	Advances to be deducted, as directed by Judgment of the several Divisions.	Amount	Net Amount paid, after deducting Advances.
Total £78,144. 8. 2.	£14,350.	y. 11. £57,809.	12. 5.	£12,688. 14. 10.	£1384. 2. 4.	£46504. 19. 11.