

To His Ex  
Honble William Dawson  
Governor of the  
Province of New Brunswick

The Memorial of Simon McTavish  
Esquire of the City of Montreal, most  
Respectfully sheweth -

That your Mem<sup>or</sup>  
petitioner of the City  
is the District of St.  
Johns the several  
annexed are for

That Your Mem<sup>or</sup>  
humbly Prays, That Your Grace  
will be pleased to admit him to  
fealty Homage for the above Seign<sup>5</sup>  
in the accustomed manner, when  
Your Excellency shall see fit -

And as is duty bound  
He shall ever Pray.

Simon

John 27<sup>th</sup> June 1764



Edmo<sup>r</sup> &  
Hon<sup>ble</sup> William Barron  
Lieut<sup>nt</sup> Governor of the  
Province of New Brunswick

The Memorial of Simon McTavish  
Esquire of the City of Montreal, most  
Respectfully sheweth -

That your Mem<sup>or</sup>  
petitioner of the Seign<sup>or</sup>  
in the District of St.  
Johns the several  
annexed are

That Your Mem<sup>or</sup>  
humbly Prays, That Your Exc<sup>ell</sup>  
will be pleased to admit him to  
fealty Homage for the above Seign<sup>or</sup>  
in the accustomed manner, which  
Your Exc<sup>ell</sup>ency shall see fit -

And as in duty bound  
shall ever Pray.

Simon

Given 27<sup>th</sup> June  
1773 -



examined the deduction <sup>profits</sup> and  
statutory claim and do hereby  
certify that upon discharging the  
feudal profits due to his Majesty  
upon the ~~above~~ Seignory of Tennebonne  
No legal impediments will exist to prevent  
the granting of the Prayer of his Petition.

Quebec July 12 1803.

Jewell Atty General.



N<sup>o</sup> 185  
The Petition of Nunon  
McMurrin Esquire

Quebec 28<sup>th</sup> June 1803

To be permitted to perform  
Fealty and Homage for  
the Siquiory of Terrebonne

at the Petitioner's expence,  
that there are no existing  
legal Impediments to the  
granting of the Petitioner's  
prayer, with due attention  
had by His Majesty's Law  
Servants to the Rights and  
Interests of the Crown

By order of His Excellency  
The Lieut. Governor  
Quebec 30<sup>th</sup> June 1803

H. M. Balfour

The  
net to apply again  
of exhibited to  
Director of the King's Domain  
General, and  
was the  
proofs of his  
requirements  
try, and  
their  
icates,



- 1 I Simon McTavish now of the City of Montreal in the Province of Lower Canada Esquire, do make and declare this to be my last Will and Testament.
- 2 I desire and request that all my just debts may be paid and fully satisfied after which I hereby devise bequeath and dispose of all and singular my Estate, property and effects in manner following, that is to say. -
- 3 Whereas in and by Marriage Contract with my Wife Margaret McTavish bearing date at Montreal aforesaid the first day of October One thousand seven hundred and ninety three it is stipulated and agreed that after my decease she shall receive have hold and enjoy during her natural life an annual rent or annuity out of my Estate of three hundred pounds Current Money of this Province, Now my will is, that over and above the sum of three hundred pounds, my said Wife shall after my decease as aforesaid have and receive out of my said Estate an additional sum of Nine hundred pounds per Annum during her natural life, making to her in all, an annual rent or annuity of Twelve hundred pounds of Current Money aforesaid; And my Executors hereinafter named are requested and charged to secure to my said Wife out of the first assets that shall come to their hands out of my said property and estate a sufficient sum of money to be by them employed either in the purchase of real property, or in some other sufficient manner so as to raise and secure to my said Wife the aforesaid annual sum or annuity of twelve hundred pounds. I



2.  
I likewise give and bequeath to my said wife the free use and occupation of my present Dwelling house in the City of Montreal with its appurtenances free of all charge and incumbrances during her life time, and after her decease the same shall revert and belong to my residuary Legatees herein after named. I further give and bequeath to my said wife all my household furniture and plate, one pair of horses, a four wheeled Carriage and a Calash, also the trinkets cloath and wearing Apparel I possess in the Province.

4  
It is my will and desire that until my Children are of an age to be removed to England for their Education they shall remain under the care and management of my said wife to whom a further allowance of fifty Pounds per annum shall be made for the board of each of the said Children, and as to whatever other necessaries may be requisite for the said Children or either of them, the same shall be furnished and supplied out of their respective fortunes and legacies I hereinafter bequeath to them and each of them. That the Majority of my Executors in the Country shall determine when any of my said Children is of a proper age to be removed to England for their Education, with which determination my said wife must acquiesce.

X  
5  
To each of my two daughters Mary and Anne, I give and bequeath the sum of Ten thousand Pounds Sterling money of Great Britain to be by my said Executors vested in the British ~~Trusts~~ or on some other good security



Security as soon as my property and estate can be realized and withdrawn out of the Trade and Commerce in which I am now concerned in this Country. That the Interest arising from the said two last mentioned Legacies so vested and secured as aforesaid shall accumulate for the Benefit and behoof of my said two daughters respectively (except such part thereof as shall be necessary for their Maintenance and education as aforesaid) which said Interest with the aforesaid principal Sums of Ten thousand pounds shall be paid to each of my said daughters on the day of their Marriage (provided such Marriage be made with the Consent of the Majority of my said Executors) or when they shall have ~~obtained~~ respectively attained the age of Majority which ever shall first happen - And in case of the death of any one of my said daughters before she shall be so married or shall have attained the age of Majority, the Legacy hereby given and bequeathed to her shall revert and be paid to the survivor of them -

6

To my son Simon I give and bequeath the Sum of Twenty thousand pounds like Sterling Money to be secured and paid to him in the same manner as the two last mentioned Legacies are directed to be paid and secured to my said two daughters, and in case of the decease of the said Simon before he attains the age of Majority or without lawful issue, then the Legacy hereby made to him shall revert and be paid to my residuary Legatee



4)

legatee hereinafter named - And should my said wife hereafter bear any child or children to me, I give and bequeath to every such child or children the sum of Ten thousand pounds like Sterling money to be secured paid and applied in the same manner as the aforesaid legacies to my other children -

7 To each of the two sons of my deceased brother Alexander by his Wife Marjory now or lately at College at Aberdeen in Scotland I give and bequeath the sum of Two thousand pounds Sterling Money aforesaid to be paid to each of them on his attaining the age of Majority - That the said sum of money shall in the mean time be placed out at Interest which shall be applied towards educating them in a proper manner - And in case either of them shall die before he attains the age of Majority then my will is that the Survivor of them shall have and receive the legacy of the deceased: And I hereby nominate and appoint as Trustees and Trustee to superintend the education of my said Nephews Simon Fraser of Taradim, Esquire, Sheriff of the County of Inverness and the Rev<sup>d</sup> Mr. Peter Grant Minister of the Gospel at Bolestone in the said County and the survivor of them, whom I request to accept of his charge - And I hereby give and bequeath to the said Simon Fraser and Peter Grant the sum of Twenty Pounds Sterling money



money aforesaid each to purchase a ring or other trinket as a mark of my friendship and esteem for them —

I give and bequeath to each of my nephews William Mc Gillivray and Duncan Mc Gillivray a sum of one thousand pounds like sterling money; to their mother Ann and each of their sisters I give and bequeath the sum of five hundred pounds like sterling money —

8 I give and bequeath to each of the surviving children of my late sister Elizabeth Fraser wife of Hugh Fraser of Brightmory Esquire the sum of five hundred pounds like sterling money —

9 I give and bequeath to each and every of ~~my~~ the surviving children of my deceased Uncle Duncan Mc Tavish by his lawful wife the sum of three hundred pounds like sterling money —

10 I give and bequeath to Magdalen Mc Gillivray wife of William Mc Gillivray the sum of one thousand pounds current money of this Province —

11 I give and bequeath to Angus Shaw Esquire the sum of one thousand pounds like current money of this Province. —

12 I give and bequeath to Donald Mc Tavish now a partner in the North West Company and to each and every of his surviving brethren and sisters, children of the deceased Alexander Mc Tavish my



6  
My Uncle the sum of three hundred pounds Current money aforesaid —

13 I give and bequeath to each and every of the surviving children of my deceased uncle Donald Macintosh the sum of three hundred pounds like Sterling Money —

14 To my Godson Joseph Frobisher, Son of my friend and late partner, Joseph Frobisher of Montreal aforesaid Esquire, I give and bequeath the sum of Five thousand Pounds Current money aforesaid to be secured on Interest by my Executors, the said Interest to accumulate and be paid to my said Godson on his attaining the age of Majority together with the principal. —

15 To my Godson John Fraser son of my Partner John Fraser Esquire, of London, I give and bequeath the sum of one thousand Pounds Current money aforesaid —

To my sister in law Rachel McKensie I give and bequeath the sum of one thousand Pounds Current money aforesaid. —

16 To my sister Marjory now in Scotland I give and bequeath an annuity of Fifty Pounds Sterling Money aforesaid to be paid to her yearly and every year during her natural life — and My desire is, that the legacy be under the particular direction of my brother in law Hugh Fraser of Wight. Money herein before named as a Trustee by me for the



7

thus purpose specially named and appointed.

17 To my father in law Charles Chabotier late of Montreal aforesaid, Esquire, I give and bequeath an annual rent or annuity of one hundred and fifty pounds Current Money aforesaid to be paid by to him yearly and every year by my Executors during his natural life - And I likewise acquit and discharge him of and from all claims or demands whatsoever I may now have against him for monies I have heretofore advanced to him. -

18 I give and bequeath to the said Hugh Fraser of Doughtonwy, Esquire, and to my said Nephews Andrew McGillivray and Duncan McGillivray a sum of one thousand pounds Sterling money to be by them and the survivors and the survivors of them held in trust for the special use purpose and intent of applying the Interest thereof yearly and every year in assisting such of my poor relations in Scotland, as I may have neglected to provide for by this my last Will and Testament. -

19 I give and bequeath to the surviving Children of William Kay late of Montreal aforesaid Merchant, deceased, the sum of one thousand pounds Current Money aforesaid, as I am doubtful whether I was justly entitled to the amount of the Judgment rendered in my favor in the Court of Appeals in the Province against the Estate of the said late William Kay respecting the property of the late David McFrac. -



8)

20 I give and bequeath to my friend D. George Selby the sum of two hundred pounds Current money aforesaid as a mark of my esteem and regard - And to William Selby his Son I give and bequeath the sum of five hundred pounds like Current money -

21 I give and bequeath to each of the two Religious Communities of Nuns in this City, Commonly called the Hobital General, or Grey sisters, and Hobital Dieu the sum of one thousand pounds Current money aforesaid, being convinced that the said Communities are of great public benefit and deserving attention. -

22 I give and bequeath to my Cousin Simon Fraser Esqr. late of Quebec, now in Scotland, the sum of two hundred pounds Sterling money aforesaid to be paid ~~to him~~ yearly and every year out of my estate during his life time. -

23 I give and bequeath to my God daughter Maria Sutherland daughter of Daniel and Margaret Sutherland of this City the sum of five hundred pounds Current money aforesaid to be paid to her on the day of her marriage or when she shall attain the age of Majority, whichever shall first happen, that in the mean time the Interest upon this legacy shall be paid yearly to the said Margaret Sutherland her Mother towards defraying the Expence of her Education - and in case the said Maria shall die before she



Receipt - from Rosini McKeen Esq. The sum of  
Six Hundred & twenty four pounds Carrying being amount  
of Dividend of twelve Shillings & Six Pence on the Bond  
paid to him by the Executors of the late Simon de' Tarrish  
Esq. - for legacy tax amounting to £625 -

Montreal 24<sup>th</sup> May 1886

St Jarvis Mc Gillivray & Co

As the above sum of £625 was placed to my credit on the Account  
of Mr Jarvis Mc Gillivray Esq. instead of being paid to me  
as stated above - so it was included in the bank draft  
allowably - R. McKeen.



James M. Smith  
Esq. Guardian of  
Legacy to Rachel  
McKenzie 1816

Inventory & Cote'EE  
John Fraser  
J.P.

Evanesce 1 Octobre 1844



she become entitled to receive this legacy, my will then is, that the same shall go and be paid to the said Margaret Sutherland her Mother -

24 I give and bequeath to Joseph Froisher, Esquire, the sum of one hundred Guineas as a mark of my friendship and regard -

25 I give and bequeath to my friend and pastor John Gregory one hundred pounds and to William Hollowell a like sum of one hundred pounds Current money aforesaid -

26 I give and bequeath to James Reid of Montreal aforesaid Esquire the sum of one hundred pounds Current money aforesaid -

27 I give and bequeath to Henry McKeuzie now at Terrebonne one hundred pounds current money aforesaid

28 I give and bequeath to Alexander Grant son of Commodore Grant and now at school at Quebec the sum of one thousand pounds Current money aforesaid, to be secured paid and applied in such manner as my Executors shall see fit -

29 I give and bequeath to Madame Doy an annual rent or allowance of twelve pounds to be paid to her yearly during her life time -

30 I give and bequeath to Miss Charlotte Chaboussier my sister in law the sum an annual Rent or allowance of Twenty Pounds to be paid to her yearly during her life time -

31 I give and bequeath to my Nephew James McPherson besides the sum heretofore mentioned, the additional sum of four thousand pounds Current money aforesaid -

32 To my servants Joseph Church and Pierre Fournier I give and bequeath ten Guineas each -



33 I give and bequeath to John M. Fawcett now at the Kings Posts the sum of five hundred pounds Current money aforesaid.

34 And it is my will and desire that none of the foregoing legacies exceeding one hundred Guineas be paid out of my Estate until seven years at least after my decease, unless sufficient monies for that purpose shall have been realized therefrom without loss or inconvenience to the Concern or Concerns in which I am now a partner.

35 And as to all the rest and residue of my Estate property and Effects whatsoever and wheresoever, or of what nature or kind soever wherof or wherein I shall be in anywise possessed or interested at the time of my decease, I give, devise and bequeath the same and every part thereof to my son William and to his heirs forever, to be by him held and enjoyed as soon as he shall have attained the age of Majority and in the mean time that the same be held and enjoyed by my Executors in trust for him - And in case of the death of the said William before he attain the age of Majority, I then give, devise and bequeath all the aforesaid rest and residue of my said Estate property and effects to my said son Simon and to his heirs forever subject to be held by my



(H)

my said Executors in Trust for him until he shall attain the age of Majority - And in case of the death of my said Son Simon before he attains the age of Majority, I then give devise and bequeath all the aforesaid best and residuar of my said Estate property and effects to my said daughters Mary and Anne and to their heirs to be equally divided between them share and share alike, and in case of the death of either before she attains the age of Majority or without issue of her body lawfully begotten, that the whole shall go to the survivor and to her heirs forever - Save and except as to the Estate of Dunardary in the Shire of Argyll in Scotland which I purchased some time ago from Neil Malcolm, Esquire, and also the lot of Ground and appurtenances which I lately purchased near the Mountain at Montreal aforesaid, it being my will and intention, that the said Estate & lot of Ground and appurtenances shall be lawfully held and enjoyed by the male line of my family in manner as herein after limited, that is to say - I give devise and bequeath the said Estate of Dunardary and all and singular its rights and appurtenances and also the lot or parcel of Ground belonging to me near the said Mountain with all the Improvements thereon and appurtenances therunto belonging, to my said Son William and to his heirs Male forever, but



but until my said son William shall attain the  
 age of Majority, my Will is, that my said  
 Executors do hold and possess the same in  
 Trust for him. — And in case of the death of  
 my said son William without heirs Male of his  
 body lawfully begotten, I then give devise and bequeath  
 the said Estate of Dunrobdy and lot of Ground  
 aforesaid to my said son Simon, and to heirs Male  
 forever, Subject however to be held and enjoyed by my  
 said Executors in Trust for my said Son Simon until  
 he shall attain the Age of Majority — And in case  
 of the death of my said son Simon without heirs  
 Male of his body lawfully begotten, I then give  
 devise and bequeath the said Estate and lot of  
 Ground and all and every the appurtenances  
 aforesaid to John McTavish the eldest of my  
 Nephews, son of my late brother Alexander, and  
 to the heirs Male of his body lawfully begotten. &  
 for want or in default of such heirs of the said John  
 McTavish, then I give devise and bequeath the  
 said Estate and lot of Ground to the younger  
 son of my said late brother Alexander, who I believe  
 is named Alexander, or by whatever other name  
 he is called or known, and to the heirs Male of his  
 body lawfully begotten — and for want or in



in default of such heirs of the said Alexander, then I give devise and bequeath the said Estate of Dunardary and the lot of ground aforesaid to my said Nephew Mr. Gillivray and to the heirs male of his body lawfully begotten - And for want or in default of such heirs of the said William McGillivray, then I give devise and bequeath the said Estate and lot of ground aforesaid to my Nephew Duncan McGillivray and to the heirs male of his body lawfully begotten. and for want or in default of such heirs of the said Duncan McGillivray, then I give devise and bequeath the said Estate and lot of ground to my said other Nephew Simon McGillivray and to his heirs forever - Provided always that in the aforesaid limitations to the succession and right of claiming and holding the said Estate of Dunardary and lot of ground aforesaid the eldest of the Male line shall always succeed alone to the whole of the said Estate and lot of ground, and that the same shall not be liable to any division among younger heirs; and provided also that such of the persons herebefore named or their heirs or any or either of them as shall or may under the limitations herein before contained be entitled to claim hold and enjoy the said Estate and lot of ground, who are not named



named, Mr. Jarvis, shall be held and bound in order to entitle him or them to claim hold or enjoy the same, to assume take and bear the name of Mr. Jarvis and also my Arms, and in default of any of the said persons complying herewith, the said Estate and lot of Ground shall thereupon be transferred to and vested in the next heir to the person so refusing according to the limitations aforesaid, who shall be thereupon entitled to claim have hold and enjoy the said Estate and lot of Ground in the same manner as if the person or heir so refusing as aforesaid had never existed or had deceased, upon such next succeeding heir bearing my name and Arms as aforesaid —

36 And in case all my said children ~~might~~ should die before they are entitled to receive and have the several legacies herein before given devised and bequeathed to them and each of them I then give devise and bequeath all the aforesaid rest and residue of my said Estate property and Effects (save and except as to the said Estate of Downbury and lot of Ground aforesaid, which shall be held and taken agreeable to the limitations herein before contained and not otherwise) to my said Nephew John Mr. Jarvis, and in case of his death before he attain the age of Majority then to my other Nephew Alexander Mr. Jarvis and



and to his heirs, or by whatever other name he may be called or known - being the younger son of my said late brother Alexander - And in case of the death of my said Nephew Alexander McTavish or younger son of my said late brother Alexander before he attain the age of Majority, then to my said Nephews William McGilivray and Duncan McGilivray and Simon McGilivray equally among them and their respective heirs, share and share alike -

37 And for the Execution of the my last Will and Testament and the due performance of all and singular the matters and things herein before mention'd and contained I hereby nominate and appoint my said Nephews William McGilivray and Duncan McGilivray the said Joseph Trobriker Esquire, My pastor John Trasn of London, Esquire, my brother in law Hugh Fraser Esquire of Bright money Esquire, My friend Isaac Todd of Montreal Esquire, and the said James Reid Esq. and the survivors and survivor of them my Executors and Executor, hereby giving power to them and every of them to remain vested and seized of all and singular of the Estate property and effects by me now bequeathed and devised for the purposes



purposes contained in this my last will and  
 Testament and to hold and exercise the trust now  
 hereby reposed in them and each of them over and  
 beyond the year and day limited by the laws of this  
 Province, willing and intending that their power under  
 the present last Will and Testament and their trust  
 aforesaid shall not not cease or determine until all  
 and every the dispositions provisions and appointments herebefore  
 mentioned and contained shall have been fully paid  
 satisfied and Complied with - And will also is that  
 whenever it shall appear useful and necessary for the  
 benefit of my Estate, the said Executors and the  
 Survivors and survivor of them shall and may  
 sell and dispose of such parts and parcels of  
 my real property (save and except the said  
 Estate of Dunardary and lot of Ground aforesaid)  
 as to the Majority of my said Executors shall  
 seem meet and Circumstances may require. -

X

38 I hereby revoke and annul all  
 other Wills and Testaments and Codicils  
 thereto by me at any time heretofore made

39

In Witness whereof I have to  
 this my last Will and Testament contained



contained on this and the twelve preceding pages of paper set my hand and seal at Montreal aforesaid this second day of July one thousand eight hundred and four

(Signed) Simon McTavish (L.S.)

Signed sealed published and declared by the said Simon McTavish the Testator for and as his last Will and Testament in the presence of us who at his request in his presence and in the presence of each other have hereunto set our names as witnesses

(witnesses) { Anna Fraser Port de l'Isle Montreal  
William Gilmore  
Lewis Charles



Ms. of M. W. S.



28 Dec 1804

The following points respecting the last Will and Testament of the late Anne McTavish are submitted to the opinion of Counsel.

- 1 - Whether the Legacies which are made payable at the age of Majority of certain of the Legatees can be considered Subject to the latter Clause of the Will whereby it is directed that none of the Legacies shall be paid till seven years after the Testator's death.
- 2 - Whether the Legatees are entitled to demand Interest upon each of the Legacies where Interest has not been expressly given.
- 3 - It is necessary that an Inventory should be made of the Household furniture and effects to which the Widow will be entitled and now in the dwelling house of which she has the enjoyment during life as well as of the other property left by the Testator.
- 4 - Previous to the Testator's decease he had entered into contracts with workmen to build a House upon his property near the Mountain. Considerable Sums of money were paid in advance, a great part of the materials provided and about a fourth part of the building erected during his life time under these contracts - as nothing is said in the Will respecting this building, which must now be carried on at the expence of the residuary Legatee, who has but a limited Estate thereon, is it necessary that the Executors should be authorized under an assemblée des Parents of the said residuary Legatee



5 - now a minor, to carry on the said building agreeable to the said  
Contracts, or can they do so by Law without the authority of  
Such assembly - From what Fund ought the Maintenance  
of the Children and the Expense of their Education to be taken  
until the Expiration of the Seven Years if they are not entitled  
to their Legacies sooner -

### Opinion

1<sup>st</sup> The intention is the rule of Construction in every Will and that is  
to be collected as well from the Tenor of the whole as from the par-  
ticular parts. The whole Will of Mr. M<sup>r</sup>. Tawish (which I have  
attentively perused) as well as the particular Clause referred to  
in this question I think clearly shew that he intends to vest in  
his Executors the discretionary power of paying his Legacies and  
withdrawing his Capital from the Commercial Company in which  
he was interested as they (his Executors) shall see fit, but with  
as little loss and inconvenience to their Concerns as possible; that  
Capital being the bulk of his Estate and the Fund from <sup>whence</sup> which  
the different Legacies are chiefly to be paid - He evidently believes  
that the whole will at all events be withdrawn in seven years  
and at the same time he as evidently expects that large Sums  
will in the mean time be received by his Executors, but as he  
cannot ascertain the amount of those Sums (which must  
depend on circumstances) to prevent Embarrassment to  
his Executors on one hand, and injury to his partners on the  
other;



he provides by the Clause referred to as follows and it is my will and  
"desire that none of the foregoing Legacies exceeding one hundred  
"guineas be paid out of my estate until seven years at least after  
"my decease, unless sufficient moneys shall have been realised there  
"from without loss or inconvenience to the concern in which I am  
"now a partner. — This he thus expressly declares to be his will, having  
previously provided by particular direction for the application of such  
moneys as may be received, but being insufficient for the discharge  
of all the Legacies may remain in the hands of the Executors after  
paying that part of them which are directed to be paid immediate-  
ly —

I have thus particularly stated the Testator's intentions  
(as it appears to me) because it is the ground upon which I hold the Clause  
particularly in question to be more than the Common Clause  
of prorogation, as it is called in the law of this province, I consider  
it in fact not as a clause intended by the Testator to be a favor to his  
heirs by enabling them to hold an estate already realised and  
to receive the profits during a certain period before the Legacies  
are paid which is the object of the Clause of prorogation, but  
as an especial proviso intended by the Testator to secure peculiar  
objects, which he had in view for the mutual benefit of his  
Copartners and of his Legatees, which would not otherwise  
be attained and intending to every previous pecuniary  
Legacy above one hundred guineas with which it is compatible —



- These previous pecuniary legacies are of three Classes
- 1<sup>st</sup> Legacies of Specific Sums not declared to be payable at any particular period.
  - 2<sup>d</sup> Legacies of Specific Sums payable at the age of Majority or on the day of marriage of the Legatee.
  - 3<sup>d</sup> Legacies of annuities.

I am of opinion that the Legacies of the first and second Class are equally Subject to the proviso in question and cannot be demanded in less than seven years from the death of the Testator, unless at some time before the expiration of that period Monies sufficient for the payment of all the Legacies shall have been realised from the Estate of the late Mr. Mr. Fawcett without loss or inconvenience to the Concern or Concerns in which he was a partner, at his decease. - at which time, if it should so happen, those who depend upon a Contingency which has then taken place, will be payable as well as those which do not depend upon any <sup>contingency</sup> with respect to the Legacies of annuities; from a consideration of the persons to whom they are granted and from the direction contained in each of them - viz, that they are to be paid "yearly and every year during the natural life of the Legatee". It is I think evident that the Testator bequeathed them by way of Support and maintenance - intending, upon this principle, that they should be paid from the day of his decease and I am therefore



therefore of opinion that the former not being compatible with this intent the Legacies of annuities must be considered as exceptions to the General rule which it prescribes, and consequently that they are payable yearly and every year from the death of the Testator until the death of the Legatee.

2<sup>nd</sup> Legacies which are payable at a fixed period determined by the Will or upon the event of a Contingency; carry no interest until that contingency has happened or the time fixed by the will for payment has arrived, for until then they are not due nor demandable.

This is a general rule in the Law of Canada; but to this as to all other general rules, there are some exceptions, among which are Legacies by Parents to their Children upon which whenever payable interest is allowed "de plein droit" from the day of the death of the Testator by way of maintenance; and as the necessary consequence of that natural obligation by which every man is bound to provide for his offspring and also because such a Legacy is considered in law to be but a gift in lieu of the Inheritance, to which the Legatee would have succeeded upon the death of his parents had he died Intestate and upon which therefore he would from that period have realized Interest — But at the same time it must be observed that Interest is payable upon so much only of the Legacy as is equal to the "portion heritaire," of the Legatee, that is, that distributive



distributive share of the Testator's Estate to which the Legatee would have succeeded, if the Testator had died Antitact - upon the Surplus, interest is payable from the date of the demand of the Legacy, made after the day fixed by the Will for the payment of it, and not before - In like manner all Legacies upon the Testator's intention to give Interest is expressed in his will or thence clearly are exceptions to the general rule, and carry interest from the day ordered by the Testator or so implied from his Will.

Upon those principles I am of opinion that the Legacies to William McTavish Simon McTavish Mary McTavish and Anne McTavish the Children of the Testator severally carry Interest from the day of the Testator's death upon so much of their respective amounts as is equal to the portion heretofore of each of them severally and respectively.

I am further of opinion that the Legacy to Maria Sutherland bears interest from the day of the death of the Testator, such being the intention of the Testator as I conceive from the expressions used in the bequest of this Legacy - I am also of opinion that the Legacies to the two Sons of Alexander McTavish the Testator's brother, and to his Godson Joseph Frobisher will also carry interest, from the time at which they shall respectively be placed out at Interest, and secured in Interest as the Will directs.



I am also of opinion that none of the other Legacies of specific sums above one hundred guineas, including the Legacies to the General Hospital and Hotel Dieu will carry interest until demanded after the expiration of seven years limited by the proviso or after the time in which Monies sufficient for the discharge of the whole shall have been realized from the Estate of the late Mr Mr Tavish without loss or inconvenience to the Concern or Concerns in which he was partner at his decease, if that should sooner happen - That those under one hundred Guineas will bear interest as soon as demanded and that any instalment of the annuities being due and not paid will also bear interest from the date of the first demand thereof after it has become payable.

3<sup>d</sup> There can be no doubt on the third question - An Inventory of the House hold furniture and effects to which the Widow is entitled and of which she has the use during Life as well as of any other property left by the Testator must be made - The law of the Country, the interest of the widow and Legacies and the safety of the Executors alike require it, and render it indispensable -

4<sup>th</sup> I am of opinion that the Contracts made by Mr Mr Tavish during his life time are binding upon his representatives - and that his Executors may complete such Contracts without an assemblee de parents -



5<sup>th</sup> In my answer to the second question I have stated  
my opinion, that interest is payable upon the Legacies to the  
Children - I am therefore of opinion that the Expence of the Main-  
tenance and education must be taken from the Interest  
 accruing to each Child respectively - Quebec 28<sup>th</sup> Dec<sup>r</sup>  
1804

50  
S. Powell

Opinions  
of Messrs R. Richards  
Saml<sup>r</sup>. Romilly  
John Well

dated London Line Inn 27<sup>th</sup> February 1805

We think the Legacies of the two Nephews (sons of Alexander & Margory  
McTavish), and to Maria Sutherland carry interest from the death of  
the Testator as he gives such interest for the Expence of their Education,  
and thus puts himself in Loco parentis, but we think that <sup>of the</sup> other Legacies  
carry interest till the end of seven years after the testators death, or till money  
is realized to pay them and that no distinction can be made in favour  
of those Legacies whose Legacies are indeed to be paid at their Majority

The Legatee may any of them file a Bill for their Legacies and compel the execu-  
tors to call in the money and apply it according to the directions of the will  
and if in answer to such Bill the Executor stated the Clause in the will as to the Lega-  
cies not being paid for seven years and that the property could not yet be realized  
without loss and inconvenience, we conceived that it would be referred to the  
Master and determine on that point.



we think the Legacies should be paid ratably - If it be necessary to resort  
to equity - we conceive it would be most advisable to <sup>insist</sup> ~~insist~~ the  
suit here and that the Will should be filed by the Residuary Legatee  
against the Executors and other Children for an account & dis-  
tribution of the Testator's personal property

Signed } R. Richards  
          } Law. Romuley  
          } John Bell



Inventorie & Cote Z.

John Fraser

*[Decorative flourish]*

Terrebonne 9 Octobre 1844