22.12.29

Dear Sir

Mr. John Reiny wrote me by Saturdays Post to be in town to day at 10 a.m. which I was on the business of the Sessions - but one of the Judges being unwell nothing ~~has been~~ was done. I met all the parties ~~and their lawyers~~ and their legal friends but had not the pleasure of meeting you. When my brother Henry Mackenzie went to Tenbury in order to obtain my signature to a power of Atty for you to act for me in that business ~~and which~~ I signed it to Mr and he took it under the impression that I was to run no risk or responsibility whatever; understanding from my brother that the commissioner appointed by the Creditors say Messrs Morson & Mackenzie valuations &c were to pay all expenses costs &c consequently that I should not be troubled in any way but for lending my name on the occasion. This morning I spoke to these gentlemen seriously - but none of them appeared ~~to be aware of any such~~ aware of any such ~~engagement~~ engagement ~~being taken place~~. So that I ~~have~~ assumed the whole charge of this prosecution and became responsible for the consequences ~~of~~ as my present situation does admit ~~of such an~~ so heavy a uncertain charge. I beg of you to adopt such measures as will secure me from ~~any~~ any expense or responsibility whatever in the prosecution of the affair of

the Settle otherwise be withdrawn my name and stop all proceedings so far as I am concerned —

I remain Dear Sir

Montreal 22d Dec 1829 Yours faithfully

Rod McLeroyer

J. R. Rolland Esq

a copy sent to Wm Walker Esq

Dear Sir

Having been informed this morning that no steps had been taken to secure me from consequences for having come forward with my name in the recent prosecution of the settle business I have thought it prudent to write my friend ~~Mr Rolland~~ this a letter that ~~[illegible]~~ of which the enclosed is a copy ~~[illegible]~~ I hope you will find ~~[illegible]~~ approving when you will consider the circumstances of the case and shall feel most happy to accommodate your Gentlemen but I cannot afford to be involved in pecuniary difficulties at this moment ~~[illegible]~~ ~~[illegible]~~ more than I ~~[illegible]~~ for

Yours very truly

R McL

Wm Walker Esq

Tewkesbury 3d Jany 1830

Dear Sir

Conformable to your wish I have written Mr. Rolland - and I hope matters will go on to your liking and to that of the Creditors - if all the Creditors would come forward like men in support of their interest credit and respectability their Trustees would soon change colours and become tame - I wish to know if my interference in this instance can engage subject me to the risk of being ~~proceeded~~ like you troubled with proceedings against me when attending my duty this Winter at Tewkesbury where I wrote ~~you~~ Mr. Rolland on the subject appeared 22 Decr. I wrote you also - but as Mr. Rolland wrote decidedly to you with my letter to him - the one enclosed for you was not ~~sent~~ forwarded until now - and if I ~~send it~~ forward it now it is merely for conveyancy you may deem at the time of the objects I had in view

I am Dear Sir

Yours most truly

Rod McKenzie

Wm Walker Esqr
Tewkesbury

Inverness 3d. Janr. 1830

Dear Sir

My brother is here. He brought me a letter from Mr. Walker which you will receive herewith. As the other Creditors concerned in the Settle business cannot well proceed without my co-operation - and rather than the matter should drop and be attended with evil consequences I wish you to come into Mr Walkers views on the Condition expressed in his letter - ~~but on a future occasion you may think otherwise.~~ When you have the Bar he is to assume my defence in common with that of the other Creditors without troubling me for any pecuniary aid until the result of the proceedings in question shall be ascertained - I am my dear Sir

Yours most faithfully

Roth. McKenzie

J R Rollan Esquire

&c. &c. &c.

Gentlemen

Montreal 14th May 1830

As Trustees of the Estates of Macgillivrays &c. we have to notify that having used every effort but unhappily hitherto without success to bring you to a due consideration of the true interests of the Creditors in general as well as of your own, and having represented the great benefit which would accrue to all in the removal of difficulties by the signature of the dispositions to the Deed of assignment made on the 2d. Feby 1826, if accompanied by harmonious proceedings and withdrawal of litigation; we were disappointed and distressed to find, from the meeting on Thursday the 6th instant that you would continue to withhold co-operation under that instrument. It having been signed and supported by a great majority of the Creditors, it is what may be best for their interests & not the opposition interposed by a minority which ought to govern us, else there would be an inversion of the principle followed by all public bodies, and the minority become the ruling power. — Thus circumstanced, we see the necessity of apprising you that if that Deed be not signed by those of you who have not signed it on or before the 22d instant at Mr. Henry Griffins the notary employed therein, we shall consider that no alternative remains to save the Estate from ruin but to recommend the sale of assets in England upon the best terms that can be procured, from whomsoever may be found disposed to purchase the same. Mr. Ermatinger from the information obtained in London is so convinced of the great injury which must arise to the Creditors from continuing litigation that he has determined to withdraw therefrom and abide by the Deed of assignment. — He had several interviews with Mr. Ellice & Mr. Gerard on the subject of the assets in England which have been prevented from realization by the difficulties created by disputing Creditors but latterly Lady McKenzie & Mr. Rod McKenzie have instituted proceedings to which they cannot succeed.

Mr. Ellice and Mr. Gerard differed in opinion as to the amount which those assets might produce, but including Mr. Clark of Upper Canada & Governor Simpson who are large Creditors they were unanimous in considering that litigation was more pernicious, and that a general signature of the assignment with a withdrawal of Law Suits could alone remove the difficulties

which prevented that negotiation. Mr. Ellice having a half Interest in the H. Bay stock which was vested in trust early in 1824 part whereof for 14 years and part for 21 years after 1822 upon Gilgin Conditions: conferences in consequence were had with him about the purchase of all the assets of the Estate in England, whereupon he finally said that if all the difficulties were removed he would be disposed to give £100000 St. for the whole but that upon condition of retaining £10000 thereof until releases are procured from the persons holding the temporary shares of profit who are indebted to the Estate and £20000 more until the dissentients sign the Deed of Assignment. — The above and what the Debts in Canada may produce might divide about 13/14 ths. We have not a doubt that if the above offer of Mr. Ellice was accepted such would be the case. as also if litigation and dissention be continued there is no saying what or when any thing may be got unless by the adoption as far as the interest of those who agree to the assignment are concerned of some measure regardless of opposition — After deliberate consideration of the whole subject we have come to the Conclusion. that if those of you who have not hitherto signed the Deed of Assignment, do not sign it within the period above limited. or who have signed. but some constituted Suits do not consent to withdraw the same, we shall recommend the adoption of such proceedings in England as may produce the sale of the assets in that Country either to Mr. Ellice or to any other who may be disposed to purchase them, in order that the business may be then

chosen in conformity to the provisions of the agreement, in so far as respects the interests of those who consent to that instrument

We are gentlemen
Your most obt. Servts
John Richardson } Trustees
Geo. Gregory } &c &c

John Mohan
Isaac Valentine } Esqrs.
Moses I. Hayes
Rod. McKenzie

Circular of 14 May
from Treasury to several
Creditors thereon mentd.
1830 —

May 1830

Gentlemen

I feel rather at a loss for an answer (if they require an answer) to your communications of the 14th inst. - A variety of ways offer, which to choose is the difficulty - However I believe the following way is as good as any. "As the Trustees of the Estates of MacGillivrays & Co finding the adoption of some decisive measures forced upon us by the pertinacity of dissenting creditors we have sent to each of those named in the closed notice a copy of it, and you being also a dissentient we send you a copy of the same." It will be proper to observe that I do not know the firm of MacGillivrays & Co. My Judgment is against MacTavish McGillivrays & Co. However if the firm of MacGillivrays & Co is the present ruling firm I can have no objection to receive the amount of my Judgment from its funds - nor can I have any objection after an experience of four years of measures without decision that you should at this protracted period adopt the measures forced upon you for the prompt payment of the creditors - The dissentient creditors cannot stand in your way since the assignment provides a remedy in such cases. "It may be proper to apprise you that measures are pursuing in England and documents sent from hence that will defeat your ill judged attempt to get a preference over the other creditors." The measures pursued by you in England are in consequence I suppose of measures pursued there by me to inform my Judgment so that you may cash those measures measure for measure. In Chancery measures vent measures and the stronger ~~have it carry it~~ as the when carry the day. Now you do not know which is the strongest until the trial is made - so that you have judged prematurely - of course ill judged my attempt to get the preference over the other creditors who if left to the discretion of the ruling power may ~~I apprehend~~ get you that get nothing at all - or come off second best the same as the wounding ~~under~~ approach of Sir Alexander McKenzie Bart to Sir Alexander McKenzie himself who have sans ceremony been placed on the half pay list for their past services - which in such cases appears to be the established tariff on that quarter - perhaps through necessity. "Your proceedings about the Settler can only have been meant for the personal annoyance of the Trustees, for no man of sound mind can believe that locking up the Books & papers of an Estate can promote its adjustment or benefit the Creditors - as such we feel it and deeply regret that you should have acted upon so unjust and ill advised a principle tarying for the moment its Megability out of the question" - The Settler ~~[illegible]~~ by a

is a process in law with which I am ~~unacquainted~~ very little acquainted but professional gentlemen of first rate abilities resorted to it ~~on~~ that instance as a necessary measure - which the Court must have considered as legal since the judges acted under it. The truth is I did not like the proceeding merely as an amount of a friendly feeling towards one of the opposite party - but there is no friendship in business & I could not interfere without injuring the cause in which I happened to be engaged - Then Books and papers must have been adjusted previous to the meeting of Creditors and declaration of Bankruptcy in Dec. 1825 and therefore could not require the constant Superintendence of two Book Keepers at £500 a year in 1829 four years after - Looking upon the Books must also have been of advantage to the Trustees personally as that measure would have served them as a good excuse for not advancing any money to Creditors on account or otherwise.

"Mr Ermenberger after obtaining in England every information has determined to withdraw from litigation and abide by the Deed of Assignment. We recommend to you the like course and for your own sake shall be ~~happy~~ sorry if you do not ~~do~~ follow it - If you persist you may at a future day be called to report that you did not act upon our advice" On my way to Montreal and to Lachine on the 29th April I called on Mr. Ermenberger and was very sorry to find him dangerously ill. He however assured me as did Mr. Simon Macgillivray on the 17th Dec. 1825 - that there was plenty of means in England to meet all demands - that he collected plenty of information and procured statements from different quarters which would prove very satisfactory and useful to the Creditors - ~~that~~ But that unfortunately his own ill health obliged him to retire from any further proceedings in order to recuperate great on his retirement.

Having not corresponded Mr. Ermenberger at his departure for England to represent me in any shape or even troubled a line by him to my agents he did not enquire into my affairs there - but he heard that a Bill had been filed in Chancery for me which was waiting for further orders to go on operation - These orders should be now given - For the legal opinions in my case both here and in England appear to be the very reverse of

of your opinion - Therefore you can not expect that I shall at ~~present~~ the present advanced stage of my proceedings think of changing my position - particularly on the faith of statements of so precarious a nature as those you are in the habit of laying annually before the Creditors of the assignment - meant to suppose to gain time - for the sake of convenience

Draught of ans.r to the
Circular and a letter to me
by Trustees May 1830

Photographic prints

1831

Abstract of the Instrument sent out from London to be Signed by the Creditors of MacTavish M'G'p & Co. MacGillivrays Thain & Co the Late Wm. MacGillivray & Simon MacGillivray.

The whole until the last page is recitals of the arrangements entered into between William MacGillivray Simon MacGillivray & Edward Ellice of the one part & the H.B. Company in 1821 of the Several North West Agreements or articles of Copartnership and of the junction therewith of the Firm of Sir Alexander MacKenzie & Co. of other agreements with the H.B. Company and between Simon MacGillivray for himself and his Late brother William MacGillivray & Edward Ellice of the Deed of Trust Executed by Simon MacGillivray on the 2d ~~Sept~~ July 1826 to John Richardson Samuel Gerrard & George Gregory. & the agreements made in London on the 29th Sept. 1832 for the Sale to Edward Ellice of the ~~effects~~ Stock & effects in England belonging to Simon MacGillivray & others &c. &c.

The concluding or material conventional part is as follows viz.

"Now these presents witness that the Several Persons Creditors respectively of the Said "Simon MacGillivray & William MacGillivray deceased and also of the Said Late Firms of "MacTavish MacGillivrays & Co & MacGillivrays Thain & Co who by themselves their agents, partners "or attorneys have Subscribed their names and affixed their Seals to these presents, and in consi- "deration of the Several dividends or Sums of money which are respectively paid to them "respectively at the time of their respectively executing these presents by and out of the Said fun- "dhas monies or Sums of Eighty thousand pounds & thirty thousand pounds or one of them "and what Said dividends or Sums of money so Said are respectively mentioned opposite to their "respective names at the Execution of these presents by them respectively (the receipt of which Said "Dividends and Sums of money so respectively paid to them as aforesaid they do hereby respective- "ly acknowledge) and of and from the Same and every Part thereof they do hereby respectively "acquit release and forever discharge the Said Edward Ellice & the Said John Richardson "Samuel Gerrard & George Gregory and every of them their and every of their heirs Executors "Administrators and assigns Have and Each and every of them hath remised release and "quitted Claim and by these presents do and each and every of them doth remise "release and quite claim unto the Said Edward Ellice his Executors administrators "and assigns all and Singular the Several Sums of ~~st~~ stock and funds or Share "parts or shares of Stock dividends bonuses, monies debts and other the premises which

" which by the Said last in part recited Indentures were so Signed or intended to be
" assigned to him the Said Edward Ellice and every part thereof. and all the
" right title and Interest possessory claim and demand whatsoever of them
" the Said parties to these presents of in to or out the Same principal sums of Stock
" and part or Share, parts or Shares of Stock dividends & bonuses, moneys
" debts and others the premises so assigned or intended to be assigned unto and
" by the Said last in part recited Indentures to the Said Edward Ellice - and
" these presents further witness that the Said parties to these presents being the persons
" herein before referred to and who have so Sealed and delivered the Same as aforesaid
" have and each have and every of them hath exonerated released and discharged
" and by these presents do and each and every of them doth exonerate and release
" and discharge the Said John Richardson, Samuel Gerrard & George Gregory
" and every of them their and Every of their Executors administrators and
" assigns of and from all further claims and demands whatsoever which
" the Said parties to these presents respectively who have or can or shall and
" may or but for these presents might have claim or make claim upon
" the Said John Richardson Samuel Gerrard and George Gregory
" or any or either of them as Said Trustees as aforesaid for or
" in respect or on account of the Said principal Sums of
" Stock and part or Share or parts or Shares of Stock Dividends
" Bonuses, Moneys debts & premises so assigned to the Said
" Edward Ellice as aforesaid and whether as regards
" the Said recited Contract made and entered into by them
" with the Said Edward Ellice as aforesaid or the
" Completion thereof or from or in respect or on account
" of any other Matter Cause or thing relating to the
" Said Contract or to the subject matter thereof, and herein
" mentioned or referred to "

In Witness whereof &c. &c. &c.

to this the Trustees to avoid all mere apprehension by reason of apparently
two general wording of the above and the following proviso added.

" Provided nevertheless that neither the said releases and
" quittances and discharges by these presents made and granted to
" and in favour of the said Edward Ellison and to and in
" favour of the said late William McGillivray, the said Simon
" MacGillivray and the said Firms of Messrs Daniel McGillivrays & Co
" & MacGillivrays Thain & Co and to and in favour of the said
" John Richardson, Samuel Gerrard and George Gregory respectively
" nor any other matter or thing in the premises contained shall
" prejudice affect or diminish or be construed to prejudice affect
" or diminish the rights of the said Separate Creditors who have
" signed and sealed these presents which rights they
" do hereby expressly reserve to themselves and each of them
" respectively their and each of their heirs administrators and
" assigns to have and receive such Dividend or Dividends
" Sum or Sums of money over and above the dividend or Sum
" of money paid to each of them respectively as aforesaid before
" signed and sealed these presents which may arise or be payable out of
" and from the said funds sum or Sums of Eighty thousand pounds
" sterling and thirty thousand pounds sterling by rateable distribution
" or division of the same among the said persons who have signed
" and sealed these presents and other the Creditors of the said late William
" McGillivray, Simon MacGillivray & of the said late Firms of Messrs Daniel
" McGillivrays & Co & McGillivrays Thain & Co according to the amount
" of their respective debts " — In Witness whereof &c. &c.

so the original of which the foregoing is a Copy was in Mr. Richardsons hand writing and the object and intention thereof was to condense the substance of the Deed for the satisfaction of those Creditors who might not feel disposed to perusal five leaves of Parchment in folio which the Deed from England occupies in Clay hand. The first signature to which was Chief Justice, 2d. C.O. Ermatinger, 3d the agent for the Hon Hbay Gentlemen who signed for ——— as follows Rcd £822 14 4 Sr. being 6 per cent from of Exchange, balance of Dividend of 10/. on the £ due on — — by his Attly ——— Substitution ——— £914 2 0 "

Document from Mr. Ellis 1839