

Horatio McCulloch SC70/4/113 [p.375] [In margin] Horatio MacCulloch Vide Record of Inventories Vol.138 p.173 [main text] At Edinburgh the Seventeenth day of July in the year One thousand eight hundred and sixty seven, In presence of the Lords of Council and Session Compeared George Monro Esquire Advocate Procurator for Horatio MacCulloch after designed and gave in the Trust Disposition and Settlement underwritten desiring the same might be registered in their Lordship's Books conform to Law; which desire the said Lords found reasonable and ordained the same to be done accordingly whereof the tenor follows:- I Horatio MacCulloch Esquire, Member of the Royal Scottish Academy of Painting, Sculpture, and Architecture, residing at Trinity near Edinburgh, in order to settle my worldly affairs in the event of my death, do hereby dispone and assign the whole Estates Estate heritable and moveable real and personal, now belonging to me, or which shall belong to me at the time of my death, with the title deeds, writs and instructions thereof to and in favor of William Donaldson Clark Esquire, late of Derbyshire presently residing in Mayfield Loan, Edinburgh, Alexander Smith Esquire, Secretary to the University of Edinburgh and John Cairns Esquire, Artist, residing in Edinburgh, and the survivors and survivor of them who shall accept, as Trustees and Trustee for executing the trusts of these presents, and their and his assignees; And I bind and oblige myself, and my hers and successors whomsoever, to execute and deliver all deeds and writings in favor of my said Trustees which may be necessary or proper [p.377] proper for implementing and fulfilling the above general Disposition and Conveyance of my estates foresaid, and that always at the expense of my said Estates; And I do hereby nominate and appoint my said Trustees and the survivors and survivor of them who shall accept, to be my sole Executor and Administrator, with all the usual powers: But declaring always that these presents are granted by me in trust only, for the ends uses and purposes, and with the powers and immunities aftermentioned, videlicet; First, My said Trustees shall, from the first and readiest of the proceeds of my said estates, pay all my just and lawful debts, without the necessity of constitution, and also my deathbed and funeral expenses, and the expenses to be incurred by them in executing the trusts of these presents, and which expenses may be paid wither from the capital or income of my said trust estates, as they may decide or resolve upon; Second, My said Trustees shall pay to Mrs Marcella Maclellan or MacCulloch my wife in the event of her surviving me the sum of Two hundred pounds sterling for her aliment and until the provision herein after made in her favor shall become payable and for mournings, with interest on said sum at the rate of Five pounds per centum per annum form the date of my death till paid. Third, My said Trustees shall in the event foresaid deliver over to [p.379] to my said wife the whole ordinary household furniture and plenishing, silver plate, books, bed and table linen, and fungibles, which may be within my dwelling house at the period of my death for her own absolute use and I hereby leave and bequeath the same to her – But the whole of my paintings, sketches, portraits, engravings, prints, busts, casts models, antique furniture, antique silver plate, armour, jewels and all my curiosities and articles of virtu[e], shall be considered as my residuary Trust Estate, and shall be sold and disposed of by my said Trustees as such residue in virtue of the powers herein after conferred upon them, and they shall be the sole judges as to the nature and extent of the foresaid provision provision of furniture and other moveables bequeathed to my said wife, and of all the other articles or effects hereby declared to compose my said residuary

Trust Estate: Fourth, After my said residuary Trust Estate has been realized and converted into money my said Trustees shall pay the free annual income arising therefrom to my said wife at such times or terms as it may be convenient for them to do so, during all the days of her life after my death; And in the event of my said wife surviving me and entering into another marriage, they shall pay the said free income to her exclusive of the jus mariti and right of administration of any husband whom she may marry; And I hereby [p.381] hereby declare that the said liferent provision in favor of my said wife shall be purely alimentary, and shall not be liable for her debts or deeds, or for the debts or deeds of any future husband whom she may marry, nor be subject to the diligence of her or his creditors, the jus mariti and right of administration of such husband being hereby expressly excluded; And further declaring that the said liferent provision in favor of my said wife shall be in full satisfaction to her of her terce and jus relicta, and of every other claim which she might have on or make against my said estates in the event of her surviving me: And Fifth, Upon the death of my my said wife, in the event of her surviving me, or as soon after my death as convenient, in the event of her predeceasing me, my said Trustees shall pay or convey the fee of my said residuary Trust Estate to the lawful children of my old friend Daniel Macnee Esquire Member of the said Royal Scottish Academy, residing in Glasgow, and the lawful children of the said Alexander Smith, who shall be in existence at the death of the survivor of my said wife, and me, equally among them per sterpes; But declaring that in the event of any of said children predeceasing the survivor of my said wife and me, leaving lawful issue, my said Trustees shall pay or convey [p.383] convey to such issue, and if more than one child in equal shares, the share of the said residue to which his, her or their parent would have been entitled had he or she survived the foresaid period of payment thereof; And in executing the trusts of these presents, my said Trustees shall have and enjoy all the powers and immunities conferred on gratuitous Trustees by the Act Twenty fourth and Twenty fifth Victoria Chapter Eighty four entitled "An Act to amend the Law in Scotland relative to the resignation, powers and liabilities of gratuitous Trustees", and the Act Twenty sixth and Twenty seventh Victoria Chapter One hundred and fifteen, entitled "An Act to explain the Act for the amendment amendment of the Law relative to gratuitous Trustees in Scotland", and in addition thereto the following powers and immunities, videlicet;- Full power to call in and realize, and convert into money my whole Trust Estates; To uplift, assign, and discharge all debts heritable and moveable which may belong to me; To sell my said residuary Trust Estate heritable and moveable which may belong to me at the period of my death, by public roup or private bargain, as they shall think fit; To grant all Dispositions, Assignations, Transfers and other Deeds and Writings in favor of all or any parties transacting with them, whether as debtors to my said Trust Estates or as purchasers thereof, or otherways; And [p.385] And I hereby declare that no person or persons paying money to my said Trustees shall be concerned with the application or misapplication thereof or with any of the conditions herein contained: And my said Trustees shall have full power to sue and defend all actions, suits and legal proceedings which they may find it necessary to sue, or to oppose or defend, in the course of their administration; To compound and compromise all claims due to or by my Trust Estates, and to take part for the whole of such (legal) claims as may be due thereto; To enter into Submissions or References of such claims; To appoint a Factor and Law Agent to aid them in the execution of the Trusts of of these presents, and to pay to such Factor and Law Agent the usual charges and professional remuneration for their or his trouble and services; Further, I empower my said Trustees to lend out,

invest, call up, and reinvest, as often as they please, the funds or proceeds of my said Trust Estates in the purchase of Government Securities, Stock of the Bank of England, Lands, Houses, Feuduties, Ground Annuals, or Preference Shares in any Railway Company paying at the time of investment dividends of at least Three pounds per centum per annum on its ordinary capital; or to lend out the said funds or proceeds on heritable or personal securities, or on Railway Debentures or other Securities of which my said Trustees may [p.387] may approve; And my said Trustees shall not be liable for the sufficiency of any investments or securities which they may make or take in the course of their administration, nor for any Banker, Broker, Factor, or Law Agent, to whom they may entrust the monies of my said Trust Estates, nor for signing, receipts, dispositions, assignments, or transfers, or other deeds or documents, in the course of their management, And I reserve my liferent right of my said Trust Estates; And I revoke all Latter Wills, Testamentary Writings, and Dispositions and Deeds of Settlement mortis causa executed by me at any time prior to the date hereof; And I reserve full power to revoke these presents in in whole or in part at my pleasure; And I dispense with the delivery hereof, and declare that the same shall have the full effect of a delivered deed, wherever found after my decease; And I consent to registration hereof fir preservation; In Witness Whereof these presents written on this and the four preceding pages, by Thomas Smyth, Clerk to Thomas Ranken, Solicitor Supreme Courts, Edinburgh, are subscribed by me at Trinity aforesaid, on the twenty eighth day of November in the year Eighteen hundred and sixty six, before these Witnesses the said Thomas Smyth and James McIntosh also Clerk to the said Thomas Ranken.- (Signed) Horatio McCulloch, Jas McIntosh Witness, Thomas Smyth Witness,- Edinburgh sixteenth July Eighteen Hundred [p.389] Hundred & sixty seven. I, as the only survivor of the Trustees & Executors appointed by the foregoing Trust Disposition & Settlement do hereby accept of the said office of Trustee & Executor thereby conferred on me. – (Signed) W.D. Clark.- Extracted furth of the Books of Council and Session upon these fifteen pages of stamped paper by me Alexander Forbes Assistant Keeper of the Register of Deeds Probative Writs & c[etera] conform to Act of Parliament and holding Commission to that effect form the Lord Clerk Register of Scotland.- (Signed) Alex. Forbes.- Edinburgh 28th February 1868.- This is the Extract Registered Trust Disposition and Settlement referred to in my Affidavit of this date annexed to the Inventory of the Personal Estate of the late Horatio MacCulloch Esquire (Signed) W.D. Clark (..) Tho. Ranken J.P.-