

PROBATE COURT OF NOVA SCOTIA

Citation: Pictou County Genealogy & Heritage Society v. Darby Estate, 2011 NSSC 271

Date: 20110615
Docket: Hfx No. 337157
Probate No. 56651
Registry: Halifax

IN THE ESTATE OF JOHN DARBY, deceased

Between:

Pictou County Genealogy & Heritage Society

Applicant

v.

Ross E. Hallett, in his capacity as Personal Representative
and Trustee of the Estate of John Darby, Deceased

Respondent

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Judge: The Honourable Justice C. Richard Coughlan

Heard: June 15, 2011 (in Chambers), in Halifax, Nova Scotia

Decision: June 15, 2011 (Orally)

**Written Release
of Decision:** July 14, 2011

Subject: Wills - Construction - Misdescription of Residual Beneficiary

Summary: John Darby left one fourth of the residue of his estate to:

... Heritage Society for Pictou County, Nova Scotia, to be acknowledged by said Society as a gift made in the names of my parents, Marion Louise Fraser Darby and Joseph Edwin Darby, to be used for the preservation of Scottish heritage in said County.

There was no such entity. There had been a Pictou Heritage Society which was struck by the Registrar of Joint Stock Companies prior to the execution of Mr. Darby's will. The object of the Pictou Heritage Society was to deal with the local history and culture in the Town of Pictou.

The Pictou County Genealogy & Heritage Society was in existence at the time of the execution of Mr. Darby's will. The object of the Pictou County Genealogy & Heritage Society is to be a centre for the pride, traditions and achievements of Pictou County people, past, present and future.

The Pictou County Genealogy & Heritage Society applies for a motion declaring it to be a residual beneficiary of Mr. Darby.

Issue: Was the gift to Heritage Society of Pictou County, Nova Scotia a misdescription of the Pictou County Genealogy & Heritage Society?

Alternatively, if the bequest is not a misdescription, does the *cy-près* doctrine apply?

Result:

The words “Heritage Society of Pictou County, Nova Scotia” is a misdescription of the Pictou County Genealogy & Heritage Society. It was the Society existing at the time Mr. Darby executed his will, whose objects dealt with the heritage of Pictou County, Nova Scotia.

If the gift was not a misdescription, the *cy-prés* doctrine applies.

It is impossible to carry out the gift as the Heritage Society of Pictou County, Nova Scotia does not exist, nor did it exist at the time Mr. Darby executed his will. The gift expressed Mr. Darby had a general or overriding charitable intent, in that, the gift was for the preservation of Scottish heritage in Pictou County.

The preservation of Scottish heritage in Pictou County is a charitable intent or purpose, in that, it is an activity beneficial to the community and the advancement of education.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
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