

BRITTON, J.

NOVEMBER 21ST, 1904.

CHAMBERS.

RE HALL.

Will—Legacy—Uncertainty as to Legatee Intended—Legacy Paid into Court—Motion for Payment out—Decision on Affidavits instead of Issue Directed—Costs.

Motion by Maria Baxter for payment out of Court to her of a sum of money paid in by the executors of Martha Hall, deceased, being the amount of a legacy claimed by the applicant and also by one Margaret Baxter.

M. R. Gooderham, for Maria Baxter.

R. U. McPherson, for Margaret Baxter.

BRITTON, J.—Both claimants are nieces of Martha Hall, late of the city of Stratford, in this Province.

One clause in the will is as follows: "I give, devise, and bequeath unto my niece Maria Baxter, of Cronyn Cross, county of Farmanagh, Ireland, the sum of \$500."

It is not, as a rule, satisfactory to decide between rival claims, upon affidavit evidence, but the circumstances in this case, I think, warrant my disposing of the matter. No useful purpose will be served by my directing an issue between the claimants.

Maria Baxter practically in every respect answers the description of the legatee named in the will.

It, no doubt, is a strong point in favour of Margaret that she was during the lifetime of the liberal testatrix the recipient of gifts from her.

Maria corresponded with her aunt, but she does not say that any money or gift of any kind was received by her from her aunt. The aunt knew Maria, knew where Maria resided. Both claimants are related to the aunt in the same degree. The will explicitly names Maria, and not Margaret. It describes Maria as of "Cronyn Cross." There is no such place, but there is Cooneen Cross, the proper description of Maria's residence when the will was made, and not the place of residence of Margaret at that time. Margaret left Cooneen Cross in 1891.

It is just possible that by the payment out to Maria the money will go to the person not intended by the testatrix, but, if so, it will be by an accident that cannot be prevented. The letter produced by Margaret is dated 9th February, 1887. Many things may have occurred to call Maria to the remembrance of her aunt between that date and 9th December, 1901, the date of the will.