

DIVISIONAL COURT.

MARCH 18TH, 1910.

*RE JONES TRUSTS.

Trusts and Trustees—Settled Estate—Appointment of New Trustee—Selection of Person—Discretion—Wishes of Settlor—Independent Trustee—Person out of the Jurisdiction—Relationship to Cestuis que Trust—Appointment by Foreign Court—Appeal from Order Appointing New Trustee—Jurisdiction of Divisional Court.

Appeal by Kathleen Alice Jones from the order of FALCONBRIDGE, C.J.K.B., ante 418, directing that one Herbert W. Sangster should be appointed a trustee of a settled estate in place of Arthur P. Nagle, who had become insane.

The appeal was heard by CLUTE, LATCHFORD, and SUTHERLAND, JJ.

N. F. Davidson, K.C., for the appellant.

Eric N. Armour, for the petitioners.

F. W. Harcourt, K.C., for the infants.

The judgment of the Court was delivered by CLUTE, J., who, after setting out the facts, said, in reference to the preliminary objection that no appeal lies to a Divisional Court, that sec. 74 of the Judicature Act expressly provides for such an appeal. . . .

The principal points outstanding are, that the appellant is the settlor, who, owing to family estrangements, conveyed a large estate, amounting to somewhere between \$60,000 and \$120,000, to her children, reserving a modest, if not scanty, income for herself. The lands are in Ontario. The proposed trustee does not reside in this province. The family estrangement has separated the appellant from her husband, her sister, her mother, and her nephews and nieces. Mr. Sangster is her sister's husband, with whom her sister and her mother reside. Her mother has a power of appointment which may be exercised in favour of any of her children, including the appellant.

It is further charged that the proposed trustee is solicitor to the mother, who has this power of appointment, and who may appoint in his wife's favour. He denies that he is solicitor for the mother, although he has acted for her in some trifling mat-

* This case will be reported in the Ontario Law Reports.