

construed into an eviction by form of law, that is, a constructive eviction; but this doctrine is received with doubt by each of the learned Judges in *Delaney v. Fox*. As the Court did not give any written decision, and a very meagre report, if any, will be given officially, I thought it wise, owing to the importance of the decision, to ask you to publish this.

Sydney, N.S.

D.A.H.

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## REPORTS AND NOTES OF CASES

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### Province of Ontario.

#### HIGH COURT OF JUSTICE.

Ferguson, J.]

HIGGINSON v. KERR.

[Dec. 30, 1898.]

*Will—Construction—Legacy—"Cousins"—Indefinite disposition—Trust—Power of appointment—General power.*

The testator died a bachelor, leaving no relations nearer than first cousins. By his will he gave certain specific legacies, one of which was, by clause 7, "to each of my cousins" the sum of \$1, and then proceeded: "(9.) I desire that my executors herein named shall have full power to make such and any disposition of the residue and remainder of my property and estate as they, in their judgment, may deem best, and to make due inquiry into the financial and social standing of my relations in Ireland, and, after an investigation and a proper knowledge is obtained, to make such grants and disposition of a portion of my estate and property as they, in their judgment, consider best, to such relations. (10.) I also give my said executors power, and desire them to dispose of any balance of my estate or property which may be in the bank or in any securities, to the best of their judgment, where they may consider it will do the most good, and deserving. (12.) I also give my executors power to hold property in trust for any of my friends whom they may think proper." By clause 1 he appointed four of his neighbours executors and trustees of his will.

*Held*, 1. The word "cousins" in clause 7 must be taken to mean first cousins only.

2. Clause 9 did not contain a gift of the residue, but a power to make disposition of it. Both the subject and object of this disposition were left undefined and wholly in the discretion of the executors, and the disposition was therefore void, and no trust was created in favour of the relations in Ireland. The power given by clauses 9 and 10 was a general power over the residue, without the creation of a trust. The executors were given an absolute power of appointment in respect of the residue, which they might