

(12) "Who are entitled beneficially to receive the balance or remainder of the estate . . . ?" There is no residuary clause; and apparently there will be a residue of the estate undisposed of by the will. The expression, "The whole of my estate must be used for God only," is too broad, indefinite, and open to controversy, to be intelligible or capable of being carried out.

There was, strictly speaking, no proper proof that "The Mother Church" was capable of taking the bequests: see *Rex v. Maguib*, [1916] W.N. 427. "The Mother Church" should have leave to supplement the material filed by such expert testimony as might be necessary. The like leave should also be granted to the United Charities.

Order declaring accordingly; costs of all parties out of the residuary estate—those of the executors as between solicitor and client.

MASTEN, J., IN CHAMBERS.

MAY 16TH, 1917.

*REX v. GULEX.

Ontario Temperance Act—Magistrate's Conviction for Having Intoxicating Liquor in Railway Car—Use of Car by Railway Servants as Place to Eat and Sleep—"Private Dwelling-house"—6 Geo. V. ch. 50, secs. 2 (i), 41—Motion to Quash—Costs.

Motion to quash the conviction of the defendant by a magistrate, for that, on the 20th March, 1917, the defendant had "intoxicating liquor in a car in the Canadian Pacific Railway yard in the town of Smith's Falls . . . the said car not being his private dwelling-house, without having first obtained a license authorising him to do so."

The magistrate found that the car was not a dwelling-house.

Four men, of whom the defendant was one, employed by the Canadian Pacific Railway Company, were accustomed to live in an ordinary box-car, in the switching-yard at Smith's Falls. The car was supplied for their use by the railway company; it was furnished with a stove, bunks and mattresses, and a table.

The car was in a sense their permanent dwelling; they had no other dwelling-house; they were at liberty to live elsewhere if they chose.