

Wills—Devise and legacy—Description of beneficiaries—When annuitant is a "pecuniary legatee."

A mere annuitant under a will may be a "pecuniary legatee," within the meaning of that term in the residuary clause, where no contrary intention appears in the will, and where in aid of such construction it appears that the will contains other bequests to which the term "pecuniary" could not apply.

Wills—Devise and legacy—What property passes—"To maintain and keep up" a family residence, effect.

The discretion in a will "to maintain and keep up" a family residence will not ordinarily be construed to cover the support of any of the inmates of the residence.

Wills—Devise and legacy—"Discretion" of named trustee—Exercise by others.

While a testator may so express a "discretion" with respect to trust property as to make it exercisable by the named trustee only, yet where the exercise of the discretion has not been clearly limited by the terms of the will, the broader construction may be given.

Re Smith, Eastick v. Smith, [1904] 1 Ch. 139; *Crowford v. Fenshaw*, [1891] 2 Ch. 261; Trustee Act, 1 Geo. V. (Ont.), ch. 26, sec. 4, sub-sec. 6, referred to.

E. D. Armour, K.C., for the appellant. *Bicknell*, K.C., *Russell Snow*, K.C., *F. P. Galt*, K.C., and *W. A. Proudfoot*, for respondents.

Middleton, J.] *SIMMERSON v. GRAND TRUNK R. CO.* [April 9.
(11 D.L.R. 104.)

Master and servant—Liability—Person in charge—Brakeman giving signals.

A brakeman standing on the ground and giving signals to the engineer of a locomotive engaged in transferring cars from one track to another, is a person in charge or control of the engine, within the meaning of s. 3, s.-s. 5, of the Workman's Compensation for Injuries Act, R.S.O. 1897, ch. 160.

Allan v. Grand Trunk R. Co., 8 D.L.R. 697; *Martin v. Grand Trunk R. Co.*, 8 D.L.R. 590, applied; and see Annotation to this case.

W. S. McBrayne, for plaintiff. *D. L. McCarthy*, K.C., for defendants.