

CHANCERY DIVISION.

Ferguson, J.]

[July 6.]

GRAHAME V. BOULTON.

Will, construction of—Conditional gift—Condition becoming impossible—Vesting—Gift over—Time of payment.

A testator bequeathed his chattels and \$1,500 to his widow. His estate he directed to be sold and the \$1,500 to be paid out of the proceeds. After providing for the investment of the estate he proceeded: "The yearly interest accruing from the same to be paid out to my said wife yearly for the term of six years or until my only son shall become twenty-one.

"5. It is my will that the above-mentioned gifts and bequests to my wife shall be given to her in lieu of dower and on the further condition that she will clothe, maintain, and suitably provide for my said son until he shall become twenty-one.

"6. It is further my will that on the coming of age of my said son, my executors shall pay over to him the whole of the principal sum of money remaining in their hands after satisfying the above expenses and legacies.

"7. In case my said son should die before coming of age then the money so remaining as above and to which he would then be entitled shall be paid over to my two eldest brothers."

The son died under twenty-one.

Held, that all the gifts to the widow were upon the condition of maintaining the son; but the condition having become impossible of performance by the son's death the gifts were denuded of the condition.

Held, also that the testator's brothers were not entitled to payment of the capital until the time at which the son would have attained twenty-one, if he had lived; and in the meantime the widow was entitled to the income.

Jeffereys, for the plaintiff.

Meredith, Q.C., and R. M. *Meredith*, for the several defendants.

PRACTICE.

Mr. Dalton.]

Rose, J.]

[March 18.]

[July 4.]

CANADA LIFE ASSURANCE COMPANY V. NUTTALL.

Allowing service out of jurisdiction—Making and breach of contract—Setting aside proceedings—Rule 45 O. 7. A.

The defendant was the agent of the plaintiffs in British Columbia and his duty was to remit the balances of premiums received to the plaintiffs' head office at Hamilton. The action was brought to recover sums of money which should have been but were not so remitted by the defendant.

The contract under which the defendant became the plaintiffs' agent was made by correspondence. On the 5th of November, 1884, the plaintiffs wrote to the defendant, naming the amount of the guarantee bond required and stating what expenses they would pay in addition to the commission allowed. On the 29th of November the defendant answered by letter accepting the agency, and that letter closed the correspondence.

Held, that the final assent to the contract made between the plaintiffs and defendant having been given in British Columbia, the contract was not "made or entered into within Ontario" and service of the writ of summons effected on the defendant in British Columbia could therefore not be allowed under Rule 45 (b.) O. J. A.

The defendant's instructions were to remit to Hamilton all balances by the last day of each month and it was admitted that the defendant had always previously remitted by a bank draft from British Columbia.

Held, that the defendant's breach of duty was in not remitting by post, or in the usual way, which would have discharged him, and therefore that the breach of contract did not arise within Ontario and service could not be allowed under Rule 45 (c.)

Quære, per ROSE, J.—Whether it was necessary or proper to set aside the writ of summons, statement of claim and service, in addition to refusing to allow the service?

J. A. *Culham*, for the plaintiffs.

Mackelcan, Q.C., for the defendant.