

Mathers, J.]

TELLIER v. SCHILEMANS.

[April 3.

*Administrator pendente lite—Appointment of.*

Application for the appointment of an administrator, pendente lite, of the estate of Denny D'Aout, in a suit to set aside his will and also a mortgage and bill of sale of his livery stable property to the defendants, Schilemans and Dujardin, on the ground that the same were executed by deceased when he was in a physically weak state, and under undue influence.

*Held*, following *Harrell v. Witts*, L.R. 1 P. & D. 103, that it is only in case of necessity when it is shewn that the estate is in jeopardy, that such an appointment will be made; and that as to that portion of the estate in the hands of the defendant Dujardin, to which he did not claim title under the will and which he was taking good care of, no such case had been shewn; but that, as to the rest of the estate, the evidence brought the case within the rule laid down in *Bellew v. Bellew*, 34 L.J.P.M. & A. 125, and an administrator pendente lite of that portion of the estate should be appointed.

*O'Connor*, for plaintiff. *Haggart*, K.C., for defendant.

Mathers, J.]

GULLIVAN v. CANTELO.

[April 9.

*Service out of the jurisdiction—Breach of contract to be performed within the jurisdiction.*

The plaintiff, a resident of Manitoba, sued the defendant, a resident of Saskatchewan, for commission on the sale for defendant of lands situated in Saskatchewan. The bargain respecting the agency was closed between the parties at Winnipeg, when defendant agreed to pay a certain commission in case plaintiff could find purchasers. The statement of claim was served out of the jurisdiction without obtaining any order for leave and the referee, on the defendant's application, set aside the service.

*Held*, on appeal, that the service was authorized by sub-s. (e) of Rule 201, of the King's Bench Act, for, if any commission became payable under the contract, it would be the duty of the defendant to pay it to the plaintiff at his residence in Winnipeg, and so there would be, in case of non-payment, a breach within Manitoba of a contract "which according to the terms thereof ought to be performed within Manitoba."

*Reynolds v. Coleman*, 36 ch. D. 453, followed.

Appeal allowed with costs.

*MacNeil*, for plaintiff. *Phillipps*, for defendant.