

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

tiff should reside in the State at least one year before bringing a suit for divorce.

Held, the divorce did not operate in this Province so as to bar the plaintiff's claim for alimony. The domicile of the husband, both at the time of the marriage and at the time of the divorce, was Canadian. His domicile of origin was Canadian, and it was never changed during his wandering and unsettled life in the States, the original domicile of the defendant continued unless he proved that he settled in that foreign country with the intention of abandoning that domicile, which he had not proved. A *de facto* removal to a home in the new country with an *animus non revertendi* and an *animus remanendi* was necessary to change the domicile. No such settled and fixed intention on the plaintiff's part of adopting the States as his home was shown here. And though his residence in the States might have been sufficient to justify the annulment of the marriage as regards the particular State or the United States, this had no such effect as regards the rights of the wife in Ontario, for with regard to the rights, duties, and obligations arising from marriage, the law of the domicile must be looked to.

J. MacLennan, Q.C., for the plaintiff.

S. H. Blake, Q.C., for the defendant.

Boyd, C.]

[June 6.

BANK OF OTTAWA V. MCMORROW.

Evidence—Onus—Promissory note not duly stamped till after repeal of Stamp Act—31 Vict., c. 1, ss. 3, 7—42 Vict. c. 17, s. 13—45 Vict., c. 1.

Where the defendant, being sued on a promissory note, did not dispute the signing thereof, nor the consideration, but swore that the said note was not duly stamped before the repeal of the Stamp Act, nor until after action brought, although he had communicated the fact of that omission to the plaintiffs before he was sued; and the plaintiffs denied that the defendant had so notified them; and the evidence showed that when the note came to the plaintiffs' hands it appeared to be properly stamped.

Held, the defendant could not be allowed, upon his own unsupported testimony, in such a case, to escape liability. The *onus* was on him to establish that the stamp was not duly affixed, and that the omission to duly stamp was so intelligibly communicated to the plaintiffs that it

could be said they acquired the knowledge of the defect at the time alleged by the defendant before action.

To cure defect in stamping by double stamping forthwith was, under the Stamp Act, 42 Vict., c. 17, sec. 13, an inherent right, existing during the currency of the instrument, and accompanying its possession; and, since under the Interpretation Act, 31 Vict., c. 1, ss. 3, 7, vol. 36, the repeal of an act shall not affect any right existing or accruing before the time of the repeal, therefore the said right still exists notwithstanding the repeal of the Stamp Act.

Christie, for the plaintiff.

Mahon, for the defendants.

Boyd, C.]

[June 6.

CLOW V. CLOW.

Will—Construction—Tenant for life—Waste.

A testator devised certain land as follows:—"I will devise and bequeath unto my wife for and during her natural life all that parcel of land (describing it). . . . I also will and bequeath unto her, my beloved wife, everything real and personal, within and without; and it is hereby understood that the property above described shall be under the control of my said beloved wife. After the demise of my wife it is my will and pleasure that the aforesaid real estate shall descend to my nephew and his heirs."

The testator had no other real estate than the said land, and there was nothing to which his language, importing that his wife was to have control of everything real, as well as personal, could be referable, unless it affected the said land.

Held, the intermediate clause had no effect on the life estate expressly given to the wife, and there was nothing to change or enlarge the usual character of such a life estate, so as to render the tenant for life dispunishable for waste.

White v. Briggs, 15 Sim., 17; s. c. in app. 2 Phil., distinguished.

Deacon, for plaintiff.

Webster, for defendant.

Wilson, C. J. C. P.]

[June 6.

MARTIN V. MILLS.

Right of tenant to redeem—Waiver—Confirmation of lease by mortgagee.

A tenant for years may redeem a mortgage. There is, however, no absolute right of redemp-