

C. of A.]

NOTES OF CASES.

[C. of A.]

H. the south half at the full age of 21 years, and directed him to pay pecuniary legacies to two of his daughters. The will then proceeded in the following language, "also my two sons, H. and W. above named, give my beloved wife a comfortable support or the sum of ten pounds annually, during her natural life, said support or annuity to commence at the time my said younger son H. shall possess his share of said property. I also will, that my above named sons W. and H. do not sell or transfer the said property without the written consent of my said wife, during her life."

Some years after attaining his majority, H. mortgaged to the defendant McAlpine, without his mother's consent, and having made default in payment the land was advertised for sale. The widow thereupon filed her bill, praying for a declaration that H. had no power to sell, transfer or mortgage without her consent in writing, and for an injunction to restrain McA. from selling or dealing with it to her prejudice.

A decree was made by V. C. declaring that, according to the true construction of the will, H. had no power to sell, transfer or mortgage the land during the plaintiff's life, without her consent in writing.

Held, reversing the decree, without deciding whether such a restraint upon alienation without a gift over was effectual, because the plaintiff had no right to require its determination, and if adverse to her contention such an opinion would not bind the heirs, that she had no indefeasible right to reside upon the land and thereby prevent its alienation, for there was the option of paying her an annuity in money; and the mortgage did not interfere with her right to this payment as a charge upon the land.

As the defendant offered to give the plaintiff a decree for a charge on the land, if that were necessary, she was ordered to pay the costs up to and inclusive of the decree, and the appellant was refused the costs of the appeal, as he did not take the objection which was given effect to in his reasons of appeal.

Boyd, Q. C., for the appeal.

O'Leary, contra.

Appeal allowed.

From C. C. York.]

IMPERIAL BANK V. BEATTY.

Promissory note—Double stamping—Necessity for replication setting up double stamping under 37 Vic. cap. 47.

Action on promissory note—Pleas.—1. Note not properly stamped when made.—2. Stamps not properly cancelled.—Issue on pleas.—*Held*, that under cap. 47 of 37 Vict., evidence as to the innocence of the holders and as to the time when they first acquired knowledge of the defect in stamping, and of double stamping as soon as they acquired knowledge, should have been received without a special replication of double stamping, this being, under the statute, matter to be shown to the satisfaction of the Court or judge, and, therefore, not requiring to appear upon the record and not being for the consideration of the jury.—*Held*, also that though such a replication is not necessary, it would be proper, the pleas constituting only a conditional defence.

R. Martin, Q. C., for respondent.
Shepley, for appellants.

From Chy]

BEATTY V. HALDANE.

Suit against administrator pendente lite.

A bill having been filed in the suit of *Wilson v. Wilson* to set aside the will of J. W., one H. was appointed administrator *pendente lite* after proceedings to rehear a decree setting aside the will. The decree was affirmed, after which a prior valid will was proved by the present plaintiffs J. W. and C. B. as executors, the latter having also been an executor under the former will and one of the plaintiffs in *Wilson v. Wilson*, on the 16th March, 1877. In Oct., 1876, before the order upon rehearing, an order was made that H. should pass his accounts as administrator, and a report was made on the 5th March, which determined the result of his dealings with the estate. Shortly afterward the plaintiffs J. W. and C. B. filed a bill against H. and D. solicitor for the plaintiffs in the former suit, charging that H. employed D. as his legal adviser in all matters connected with the estate; that D. received large sums of