

has been said was the *fons et origo* of the *Stuart* case, the difficulties of which seem to have resulted from a failure to distinguish between what was really *held* from what was merely *obiter*. The disturbing findings in *Cox v. Adams* have now happily been relegated by a tribunal from which there is no appeal—the vast and dreary limbo of overruled cases.

On this point we quote Lord Macnaghten, who says that *Cox v. Adams* “decided, or was supposed to have decided, that no transaction between husband and wife for the benefit of the husband can be upheld unless the wife is shewn to have had independent advice,” and proceeds to say that, “Their Lordships do not think that the doctrine supposed to be laid down in *Cox v. Adams* can be supported, and in fact no attempt to support it was made by the learned counsel at the Bar who appeared for Mrs. Stuart.”

Another quotation from the judgment is worthy of consideration in this connection: “Their Lordships are of opinion that the order of the Supreme Court of Canada is right, though they are unable to concur in the reasons on which that order is founded.”

It appears, then, that in the opinion of their Lordships of the Privy Council, the Judges of the Supreme Court of Canada while right in their judgment are wrong in their reasons. It becomes, therefore, a matter of some importance to the Canadian lawyer to know the grounds on which the final judgment is based, and to what extent they modify or illustrate the existing law. It seems to us that, so far as at present appears, the court of final resort has simply found, as a jury might do, that a certain state of facts existed, and applied to these facts principles of law which have for a long course of years been well known and fully recognized. If this view be correct it would seem that this cause célèbre turns out in the last resort to be one of the innumerable multitude of cases, feared of appellants but by reporters blessed, which turn upon questions of fact and should never have got into the reports at all. This statement may possibly surprise some of our readers, but it can we think be supported by another