

. . . Mulock, C.J., . . . held that the case fell within the principle laid down in *Cox v. Adams*, 35 S.C.R. 393, followed in *Stuart v. Bank of Montreal*, 41 S.C.R. 516, that "the wife having become surety for her husband without having independent advice, the transaction is assumed to have been brought about by the husband's undue influence, and is, therefore, void." . . .

It is contended on behalf of the plaintiffs that the above cases are now overruled by the decision of the Privy Council in *Bank of Montreal v. Stuart*, 103 L.T.R. 641. . . .

This case is governed, so far as the main question is concerned, by *Bank of Montreal v. Stuart*, 103 L.T.R. 641. The effect of that decision is to overrule . . . *Cox v. Adams*. . . .

[Reference to *Nedby v. Nedby*, 5 DeG. & Sm. 377; *Boyse v. Rossborough*, 6 H.L.C. 2, 48; *Willis v. Barron*, 86 L.T.R. 805, [1902] A.C. 271.]

Applying these cases to the question of undue influence, I am unable to reach the conclusion that the defendant Agnes E. Hohs has succeeded in proving it. The lack of independent advice is not sufficient. The onus is upon her to establish the charge of undue influence.

After a careful review of the evidence, I do not think that she has succeeded in doing so. . . .

There was not here any "overpowering influence," nor was the transaction "immoderate and irrational," nor do I think it established that any unfair advantage was taken of Mrs. Hohs's confidence so as to bring the facts within *Bank of Montreal v. Stuart*. . . .

[Reference to *Chaplin & Co. v. Brammall*, [1908] 1 K.B. 233; *Bischoff's Trustee v. Frank*, 89 L.T.R. 188; *Turnbull v. Duval*, [1902] A.C. 429.]

A further point was taken, namely, that the plaintiffs were a banking corporation, and were not authorised to take security beyond the State, and the mortgage taken was, therefore, void. . . .

[Reference to *Case v. Kelly*, 133 U.S. 21; 10 Cyc. 1133, 1135.]

It will be observed that in the present case the plaintiffs do not ask to have their title perfected . . . what they ask is possession. . . .

[Reference to *McDiarmid v. Hughes*, 16 O.R. 570; *Ayers v. South Australian Banking Co.*, L.R. 3 P.C. 548; *Halsbury's Laws of England*, vol. 8, sec. 817.]

This objection, I think, fails.

A further point was raised under 63 Vict. ch. 24, secs. 6