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MARRIED WOMEN—INDEPENDENT ADVICE.

STUART V. BANK OF MONTREAL.

The decision in *Stuart v. Bank of Montreal*, 41 S.C.R. 516, following *Cox v. Adams*, 35 S.C.R. 393, was one that did not entirely commend itself to the profession, and it has been rudely shaken by a recent judgment of the Court of Appeal in England, which discusses the cases on the authority of which *Cox v. Adams* was decided. The question, it will be remembered, is whether a wife, who voluntarily signs an instrument for the benefit of her husband, without pressure or undue influence and with full knowledge of what she is doing, can afterwards avoid the transaction because she signed it without independent advice?

In the *Stuart* case the wife signed a guarantee to the bank for a large amount to secure advances to her husband. She was a woman of intelligence and was the sole executrix and devisee under her father's will. She admitted that she acted in no way under the control or influence of her husband, but exercised her own free will and was sanguine, if the bank made the advances, of the success of the business in which her husband had invested all his means and of which their only son was manager. She further said that she consulted no one about the wisdom of entering into the guarantee and that she would have scorned to consult any one about the transaction and regarded it solely as a matter between herself and her husband, and said that if her husband had told her not to enter into the guarantee without some advice she would have refused to consult any other person.

The rule upon which the liability of the wife was denied on these facts is succinctly stated in judgment of Davies, J., in the *Cox* case, at p. 415: "I rest my decision upon the principle that both the wife and the daughter at the time they signed the notes sued on, stood towards the husband in the position of parties