

a perusal of the case that the learned judge was concerned chiefly with the question between the wife and the stranger, but, notwithstanding this, Parker, V.-C., in *Nedby v. Nedby*, extended the decision to the case where the transaction was *entirely* between husband and wife, in *cases of appointment*, and *Barron v. Willis* has swept away the last qualification and lays down the broad proposition that the doctrine of *Huguenin v. Baseley* does not apply to the relation of husband wife. The decision may, therefore, be said to be one of first impression. It is a matter not devoid of importance that considerable doubt is thrown upon the relation of facts in *Grigby v. Cox* by Lord Thurlow, who says the defect in that case is that it does not state the trust (p).

With the well-accepted doctrine of *Huguenin v. Baseley* (q) before it, and the remarks of Sir John Romilly in *Cooke v. Lamothe*, decided only a year before, still in its ears, it is not unreasonable to suppose that the court in *Nedby v. Nedby* must have had before it some element other than those mentioned in the report that made it inequitable in that particular instance to apply the principle of *Huguenin v. Baseley*. *Cooke v. Lamothe* was not cited, and it may be that the court was acting upon a restricted idea of the principle, a restriction which, as appears from *Cooke v. Lamothe*, did not exist. If neither of these suppositions be correct, then it is not too much to say that, as argued by Hughes, Q.C., in *Barron v. Willis* (r), *Nedby v. Nedby* is inconsistent with the other authorities. It may or may not be indicative of the opinion in which it was held that *Nedby v. Nedby* was not cited from 1852 until, by the ingenuity of counsel, it was made to do duty in 1899.

In Ontario the question came up squarely for decision in *McCaffrey v. McCaffrey* (s), and the conclusion would seem to be justified that the decision of the Court of Appeal is more in accordance with the principles of equity, and more in consonance with public policy, than that in *Barron v. Willis*. In *McCaffrey v. McCaffrey* a voluntary conveyance of his property by a husband to his wife, a woman of good business ability and having great influence over him, executed without competent and independent advice,

(p) (1778) *Hulme v. Tenant and wife*, 1 Bro. C. C. 16.

(q) 2 W. & T. L. C., 6th ed., 597.

(r) Page 584.

(s) (1891) 18 A. R. 599.