

CLUTE, J.

MARCH 1ST, 1916.

## T. J. MEDLAND LIMITED v. COWAN.

*Husband and Wife—Promissory Note Signed by Wife at Request of Husband—Absence of Independent Advice—Failure to Shew Misrepresentation or Misconduct.*

Action upon a promissory note made by the defendant Margaret Cowan and her husband and co-defendant R. G. Cowan in favour of the plaintiff company. There was also a claim for the price of goods sold, which was abandoned before the hearing. The defendant R. G. Cowan did not defend the claim upon the note.

The action was tried without a jury at Toronto.

G. W. Mason and S. Rogers, for the plaintiff company.

L. F. Heyd, K.C., for the defendant Margaret Cowan, contended that the facts of the case brought it within the decision in *Bank of Montreal v. Stuart*, [1911] A.C. 120.

CLUTE, J., in a written opinion, summarised the evidence of the wife thus: she signed the note because her husband asked her to; he brought the note home for her to sign, and she signed it; he told her that he owed some money and was giving the note; she had no one to advise her, and she signed it at once, as soon as asked; she thought her husband would pay it; she never received any consideration for herself; she believed that the note was given for merchandise; she knew nothing about her husband's affairs; she knew of an incorporated company of which her husband and another had the controlling interest; she attended a meeting, whereat she was appointed secretary of that company, but she did not know of her appointment until she was examined for discovery in this action.

The learned Judge said that it was now settled law that, in a case like the present, the absence of independent advice was not sufficient in itself to make void a transaction of this kind.

It was not argued, nor would the evidence support a contention, that there was any misrepresentation or misconduct—unless the mere asking the defendant Margaret Cowan to go security for her husband could be called misconduct—on the part of the husband to induce her to sign.

The circumstances bore no relation to the facts in the *Stuart* case.