

hold that the existence of the mere relation of husband and wife gives rise to a presumption that the giving of security by a wife for a husband has been obtained by undue influence, which presumption throws on the party obtaining the security the onus of shewing that the wife had independent advice in connection with the transaction.

It may be interesting to our readers to call their attention to the fact that this very point came before the Court of Appeal in the recent case of *Stuart v. Bank of Montreal*, when the court, consisting of four judges, was equally divided as to whether or not *Cox v. Adams* was a binding authority to the effect above stated. The Chief Justice of Ontario, who is one of the two judges who hold that the earlier is a binding authority in the later case, says with regard to *Stuart v. Bank of Montreal*, that, "As far as disclosed by an examination of cases decided in the English courts, no case has yet arisen similar to the present one: a case free of all the sinister elements of imposition, deception, misrepresentation, pressure by threats, intimidation, or any other sort of duress or undue influence, and where there was knowledge of what was required of the wife and an intention on her part to do it of her own free will, and presenting only the one point of absence of independent advice." In his opinion, however, *Cox v. Adams* is a binding authority to the effect that, even in such a case, the absence of independent advice is fatal, and that in this province, at all events, a married woman "must, it seems, be protected, not only against her husband, but against herself, so that, even in a case where, as in the present one, she would reject the suggestion of the intervention of an independent adviser and refuse absolutely to be guided by any but her own judgment, she is utterly incapacitated, and the position is, that no one can safely deal with her in respect of a transaction in which her husband is personally interested."

Mr. Justice Garrow came to the same conclusion as the Chief Justice, while Mr. Justice Osler, on the other hand, followed by Mr. Justice MacLaren, thought that the trial judge had successfully distinguished *Cox v. Adams* from the case before the court, and that it was still open to the married women of Ontario to