

advertising and selling these cards as "Bicycle Cards." As to para. 4, the declaration should be confined to trade mark 46/11091.

The respondent company had not lost its right to enforce its trade marks through non-interference with infringers.

Judgment below varied accordingly, and otherwise affirmed. No costs of appeal.

FIRST DIVISIONAL COURT.

APRIL 3RD, 1917.

*MACDONALD v. FOX.

Husband and Wife—Promissory Note Signed by Wife—Consideration—Lack of Independent Advice—Failure to Shew Undue Influence of Husband or Solicitor—Failure to Establish Fraud or Duress—Release of Judgment against Husband—Surety—Evidence.

Appeal by the plaintiff from the judgment of SPOTTON, Co.C.J., acting by request as a Judge of the County Court of the County of Halton, dismissing, as against the defendant Rosella Fox, an action, brought in that Court, against Thomas W. Fox and Rosella Fox, his wife, to recover the amount of a promissory note made by both defendants, on the ground that the signature of the defendant Rosella Fox had been obtained by undue influence, within the principle of *Bank of Montreal v. Stuart*, [1911] A.C. 120.

The appeal was heard by MEREDITH, C.J.O., MAGEE, HODGINS, and FERGUSON, J.J.A.

Gordon Waldron, for the appellant.

William Laidlaw, K.C., for the defendant Rosella Fox, respondent.

The judgment of the Court was read by FERGUSON, J.A., who said that the note was made in April, 1907, and did not fall due till April, 1913; the action was begun on the 15th February, 1915.

The appellant had recovered judgment against the husband, the defendant Thomas W. Fox.

After stating the facts, the learned Judge said that, according to the decisions in *Bank of Montreal v. Stuart*, *supra*, *Euclid Avenue Trusts Co. v. Hohs* (1911), 24 O.L.R. 447, 450, and *Howes v. Bishop*, [1909] 2 K.B. 390, 402, the fact that the respondent had not advice independent of her husband was not, without more, sufficient to entitle her to relief.