

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
The Bank of Montreal v. Jane Jacques
Stuart and another, from the Supreme Court
of Canada; delivered the 2nd December
1910.*

PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD COLLINS.

LORD SHAW.

SIR ARTHUR WILSON.

[DELIVERED BY LORD MACNAGHTEN.]

The action which has given rise to this Appeal was brought by Mrs. Stuart, a married lady living with her husband the Respondent John Stuart, against the Bank of Montreal with the object of setting aside a series of transactions in connection with a pulp and paper company, known as the Maritime Sulphite Fibre Company, Limited, in which she became involved at the instance of her husband for his accommodation and for the accommodation and benefit of his associates.

The Company and its shareholders, who were only five in number, were at the time under heavy liabilities to the Bank. Mr. Stuart himself had no available means. Everything he had was embarked or sunk in the Company.

The transactions in question began by Mr. Stuart, who was impecunious and strangely sanguine, offering his wife as security to the Bank for some further advances which his associates, more solvent and less hopeful, were unwilling to guarantee. They ended in the

transfer to the Bank of everything Mrs. Stuart possessed, so that in 1904 she was, as the Bank was informed by its solicitor, "absolutely cleaned out."

The trial Judge dismissed the action with costs holding in effect that Mr. Stuart exerted no undue influence over his wife, that she perfectly understood what she was doing and acted on her own uncontrolled judgment, and that no unfair advantage was taken of her. The learned Judge was prepared to hold that Mrs. Stuart received ample consideration for the liability she undertook, though he did not rest his decision on that ground.

In the Court of Appeal for Ontario, which consisted of four members, two learned Judges agreed with the trial Judge. Garrow, J., thought that Mrs. Stuart was entitled to relief having regard to the peculiar facts and circumstances of the case. The learned Chief Justice also thought that Mrs. Stuart was entitled to relief, but he based his judgment on the case of *Cox v. Adams* in the Supreme Court of Canada (35 C.S.C. Rep. 393) which decided or was supposed to have decided that no transaction between husband and wife for the benefit of the husband can be upheld unless the wife is shown to have had independent advice. As the Court was equally divided the judgment of the Court below was affirmed.

On appeal to the Supreme Court of Canada which consisted of five Judges, one was for dismissing the Appeal, the other four learned Judges held that the case was concluded by *Cox v. Adams* and pronounced judgment in favour of the Plaintiff. From that judgment the Bank of Montreal obtained special leave to appeal to His Majesty in Council.

Their Lordships do not think that the doctrine supposed to be laid down in *Cox v. Adams* can be supported, and in fact no attempt

to support it was made by the learned counsel at the Bar who appeared for Mrs. Stuart. On the other hand, their Lordships are compelled to take a view of the facts and circumstances of the case very different from that which commended itself to the trial Judge and the learned Judges who agreed with him.

Mrs. Stuart was the only child of Mr. John Jacques, a wealthy manufacturer in Toronto. In 1856 she married Mr. Stuart, who was the head of a wholesale grocery business in the City of Hamilton and became Vice-President, and afterwards President, of the Bank of Hamilton.

No settlement was made on Mrs. Stuart's marriage. But in 1873 her father bought for her a residence near the City of Hamilton, called Inglewood. It is described by the manager of the Bank of Montreal at Hamilton as "a large house" with "extensive grounds" and stated to be "assessed at \$35,000." It was conveyed to Mr. Stuart in fee simple. In 1875, at the request of Mrs. Stuart's father, Mr. Stuart executed a deed declaring that the property had been bought in trust for his wife, and that he stood seized thereof for her sole and separate use free from his control and engagements.

In 1886 Mrs. Stuart's father died. He left everything to his daughter, and made her executrix with a gentleman who declined to act. Under his will Mrs. Stuart became entitled to property of the value of \$250,000, or thereabouts. The will is not in evidence, but it is common ground that all the property which she derived from her father was her separate estate. From her father's death Mr. Stuart assumed the entire management of his wife's property.

Throughout the transactions which are impeached in this action Mr. Alexander Bruce, Q.C., was the solicitor for the Bank of Montreal. He

was also, during the earlier part of the transactions, Mr. Stuart's solicitor. He had been solicitor for a railway company of which Mr. Stuart was president, and was thus, as he says, "brought in contact with him a great deal." He admits that "undoubtedly" he was "the personal solicitor or personal legal adviser" of Mr. Stuart, adding, however, that he thought that he was not so in everything. But it is not suggested that in these transactions until July 1904 Mr. Stuart had any other solicitor or legal adviser.

In 1886 Mr. Stuart, who was then worth some \$250,000 of his own, became interested in the Sulphite Company. At his suggestion Mr. Bruce joined him in the venture. Mr. Stuart became President and Mr. Bruce a Director and Secretary of the Company. Its works were at Chatham, New Brunswick. From the first the Company seems to have been unsuccessful. Never once apparently during its struggle for existence did it pay any dividends on its shares or any interest on its bonds. Its nominal capital originally was \$100,000. In 1891 it owed \$275,000 to the Bank. In that year it obtained a special Act of Parliament authorising the issue of preference shares and bonds. The preference as well as the ordinary or common shares were all shares of \$100 each. The only shareholders in the Company at the time were Mr. Stuart, Mr. Bruce, Mr. A. B. Lee, Mr. Leys, since deceased, and a Mr. Brown. The Company created and issued a thousand preference shares which were all taken by the five shareholders and paid up in full. The proceeds were handed over to the Bank of Montreal. By this payment the debt to the Bank was reduced to \$175,000, which was guaranteed by bonds of the Company and a promissory note for \$100,000 executed by the Company and by Mr. Stuart. Mr. Stuart received a counter guarantee signed by the other

shareholders for different amounts under which Mr. Bruce became liable for \$26,500. The benefit of the counter guarantee was assigned over to the Bank.

At the end of the year 1895 the Company was in great straits. It owed \$100,000 to the Bank of Hamilton, and another sum of \$100,000 to the Bank of Montreal, in addition to the old debt of \$175,000, which in the beginning of 1896 amounted with interest to \$196,052. For each of the two sums of \$100,000 Mr. Lee and Mr. Stuart were jointly and severally liable. It was then proposed by Mr. Stuart that he should pay the \$100,000 owing to the Bank of Hamilton, and that Mr. Lee should pay the \$100,000 owing to the Bank of Montreal, and that the Bank should be asked to find further advances, which it was thought the Bank would be willing to make on the security of materials in the hands of the Company. Mr. Lee fell in with the proposal, and paid the Bank of Montreal \$100,000. Mr. Stuart, whose means were then exhausted, discharged the \$100,000 owing to the Bank of Hamilton by getting his wife to sign a note for \$125,000 as for a loan to her. The Bank of Hamilton discounted the note and Mr. Stuart paid it out of his wife's moneys.

The Bank of Montreal it seems was willing to allow the Sulphite Company to overdraw to the amount of \$50,000, which it was supposed would be sufficient for its immediate needs, But the Bank declined altogether to make any further advances without the personal security of the shareholders in the Company. "It seems to me," said Mr. Macnider, a principal official of the Bank writing for the General Manager to Mr. Stuart, "too absurd that the Bank should be expected to take a risk that the individuals immediately interested hesitate to guarantee." He added "our communications about the working of the account

“ have always been with you and Mr. Bruce, and
“ I shall be glad to hear that you have arranged
“ to complete the guarantee necessary to enable
“ us to establish the credit in Chatham, for
“ judging from the telegrams we receive from
“ our manager there it cannot be arranged too
“ soon for the convenience of your people.”

Thereupon Mr. Bruce prepared a guarantee for \$50,000 limited to future advances. He signed it himself and sent it to Mr. Stuart for his signature and the signature of Mr. Lee. Mr. Lee hesitated and required time to consider his position. Then it occurred to Mr. Stuart, who had just dissipated half his wife's fortune in satisfying the claim of the Bank of Hamilton, to offer his wife as a guarantor to the Bank of Montreal. He did so in the following letter addressed to Mr. Macnider.

“ The Maritime Sulphite Fibre Company (Limited),
“ Chatham, New Brunswick, Canada.

“ A. Macnider, Esq.,

“ Bank of Montreal.

“ Hamilton,

“ Dear Sir,

6th February 1896.

“ I met Mr. Lee yesterday on my way home, but
“ owing to our train being late I had not much time to
“ talk to him. I wrote to him, however, and put the
“ matter before him, fully intending to follow the letter
“ by going to Toronto to see him this afternoon. I have
“ concluded to defer this for a day or two as it seemed to
“ be pressing him too hastily for a decision on a matter
“ somewhat complicated as well as important. He said to
“ me that he must consult with some parties, and required
“ some time for consideration himself after hearing what I
“ proposed. He, however, knows now the \$50,000 men-
“ tioned in the guarantee will not be sufficient to carry us
“ through, and when we meet I expect him to be prepared
“ to discuss terms on which if he prefers it, I shall find a
“ surety to take his place. I explained to him as to you,
“ the pressing necessity for relief in money matters at
“ Chatham during the next few days, and he promised not
“ to delay decision a day longer than can be avoided.

“ Matters therefore stand thus : Mr. Lee will either sign
“ the guarantee in a day or two, or agree with me for a
“ substitute. In the latter case my wife will join me in the
“ guarantee, and I now submit her name to you for that

“ purpose. As I told you her means are ample enough to
 “ secure payment for a much larger sum than we contem-
 “ plate requiring now or in future.

* * * * *

“ I am,

“ Yours respectfully,

JOHN STUART.

In his reply of the 7th of February 1896
 Mr. Macnider observed :—

“ I think it only reasonable to ask that if you offer
 “ Mrs. Stuart’s guarantee you should furnish us with a
 “ statement of her means and ability to make it good.”

Mr. Lee, on consideration, refused to throw
 good money after bad. Mr. Bruce seems to have
 dropped the notion of coming under any further
 obligation himself as soon as Mrs. Stuart was
 offered as surety in substitution for Mr. Lee.
 Then followed the most singular and perhaps the
 most important incident in the history of these
 transactions. It is detailed so fully in the corres-
 pondence which the Bank has put in evidence
 that it is not necessary to give it in the form
 of a narrative or to add anything by way of
 comment. The correspondence consists of a
 letter from Mr. Bruce to Mr. Lee, which was
 shewn to Mr. Stuart, and a letter from Mr. Stuart
 to Mr. Bruce echoing and bettering the
 suggestions contained in that letter.

(*Mr. Bruce to Mr. Lee.*)

“ My dear Mr. Lee,

10th February 1896.

“ I have heard from Mr. Stuart something of his
 “ interview with you since his return from Chatham and as
 “ to the suggestion of new money being brought in by
 “ Mrs. Stuart in the hope that by that means the Maritime
 “ Sulphite Company may be enabled to establish the mill
 “ on a basis where it will be a paying concern. That would
 “ of course mean bringing in a larger sum than the \$50,000
 “ for which it was proposed a guarantee should be given to
 “ the Bank of Montreal.

“ Now on general principles it did seem to me that in
 “ such a case as this if the existing shareholders are unable
 “ or unwilling to provide more money, they should be
 “ willing to contribute something to the person asked to

“bring in new money as an inducement to such person to
 “do so, if they feel satisfied with* such new money is of a
 “sufficient amount and given on such terms that they are
 “likely to derive a benefit from its use in the business.

* (Qy. that.)

“The amount and terms in the present case are to be
 “considered, and if deemed satisfactory it does seem to me
 “that the shareholders can afford to give a portion of their
 “preference stock, and that suggestion occurred to me and
 “I mentioned it to Mr. Stuart saying that he should con-
 “tribute as well as the others, and that Mr. Leys' Estate
 “and Mr. Brown should also contribute, as this would be
 “expected to aid in relieving them from liability on the
 “\$175,000 debt, although they may not think they should
 “contribute in like proportion to others.

“I promised Mr. Stuart to give you my views so that
 “you may think the matter over and perhaps see what
 “Mr. Leys' representatives think of the suggestion, and if
 “you are up on Wednesday at the Bank meeting the matter
 “can be discussed.

“Truly yours,

“A. B. Lee, Esq.,
 “Toronto.”

“A. BRUCE.”

(Mr. Stuart to Mr. Bruce.)

“The Maritime Sulphite Fibre Company (Limited).

“Chatham, New Brunswick, Canada.

“Alex. Bruce, Esq., Q.C.

“City.

“Hamilton,

“Dear Sir,

12th February 1896.

“I have to thank you for a reading of your letter to
 “Mr. Lee and of his reply in reference to procuring the
 “means required for providing working capital and new
 “digesters and other things necessary to enable this com-
 “pany so to increase the output and reduce the cost of
 “production as to give hope of returns from the business
 “adequate to meet the interest on the capital invested. It
 “is clear that without these things being accomplished, the
 “property will be almost if not entirely lost. Mr. Lee and
 “I have advanced the money to pay off the borrowings of
 “the past, except that on the bonds now lying overdue in
 “the Bank of Montreal, which may be said to be practically
 “all the Company's debt, except to us and the share-
 “holders.

“Our advances amount in round numbers to \$275,000.
 “and I estimate that \$100,000 more will be required—\$25,000
 “being for the additional plant, and \$75,000 for working

“ capital. The Bank appears to be willing to furnish the
 “ working capital—at all events to the extent of \$50,000,
 “ but whether they will go beyond that, especially for the
 “ plant expenditure, I very much doubt.

“ For the \$50,000 they require a lien on the raw
 “ material and stock of fibre on hand, and the proceeds of
 “ sales, backed by an unconditional guarantee from Mr.
 “ Lee and myself. Mr. Lee objects to be involved person-
 “ ally to any greater extent than he now is, and we must
 “ get some one to take his place in the new guarantee, or
 “ suffer the entire loss of the share capital, as well as,
 “ most likely the greater part, if not all of the lent money.
 “ The question at once presents itself: What inducement
 “ can be offered to anyone to assume the responsibility of
 “ guaranteeing the necessary advances, and how can the
 “ matter be arranged ?

“ There are three classes of shareholders interested.
 “ Mr. Richard Brown, the owner of 91 shares of the
 “ preference stock and guarantor for \$15,900 of the money
 “ due to the Bank of Montreal against the bonds. The late
 “ Mr. John Leys’ estate holding 182 shares of the pre-
 “ ference and 50 shares of the common, with a liability
 “ to the Bank for \$31,800 of the bond advance. Mr. Alex.
 “ Bruce holding 151 preference and 132 common stock,
 “ with a liability for \$26,500 to the Bank. Mr. A. B. Lee
 “ holding 182 preference and 205 common, with a liability
 “ in the first place for \$175,000 and interest on the bond
 “ note and cash advances to the amount of \$125,000 in
 “ round numbers; and finally myself holding 394 shares of
 “ preference and 613 shares of common and cash advances
 “ of about \$150,000.

“ By an arrangement with Mr. Brown and the Leys’
 “ estate I undertook to indemnify them against their
 “ liability to contribute on the bond advance by the
 “ Bank of Montreal.

“ There was a further liability of the Leys’ estate to
 “ contribute a proportion of the amount the company
 “ owed the Bank of Hamilton at Mr. Leys’ death, but
 “ that has been paid out of the moneys advanced by
 “ me.

“ I believe I can procure the guarantor required by the
 “ Bank for the new advances on the security of a lien on
 “ material, &c., to the Bank, and the postponement by
 “ Mr. Lee and myself of our cash advances, together with
 “ a reasonable bonus in the way of stock, which may, under
 “ existing circumstances, be considered of only nominal
 “ value.

“ It is, of course, most vital to me to save this property
 “ in which my all is invested, and it is of no small conse-
 “ quence to all concerned, for all have not merely an interest
 “ in the value that is expected to be given to the stock, but
 “ also perhaps a more serious responsibility contingent on
 “ the unpaid debt to the Bank of Montreal.

“ Mr. Lee suggests discussing the subject with you and
 “ all the others interested, but I would rather not myself
 “ now. If you will kindly confer with the parties I will
 “ be obliged. You have here, as well as in your own
 “ knowledge, all the information that seems necessary for
 “ you to come to a decision; and I would refer you also to
 “ my letter to Mr. Lee of the 5th instant.

“ Yours truly,

“ JOHN STUART.”

Mr. Stuart's letter to Mr. Lee referred to in the above letters of the 5th and the 12th of February is not in evidence. On receipt of Mr. Stuart's letter to him of the 12th of February Mr. Bruce continued his negotiations with the other shareholders with the view of supplying a consideration as an “ inducement ” to be put before Mrs. Stuart to “ induce ” her to bring in “ fresh money.” On 18th of February 1896 Mr. Stuart wrote to Mr. Macnider asking for a few days more time to complete the proposed guarantee, saying by way of explanation “ Mr. Bruce will tell you that he has been “ negotiating with the other stockholders as “ to the terms on which my wife will join me “ in the guarantee.” For some reason or other Mr. Stuart did not contribute any shares himself. The other shareholders agreed to sign a contract prepared by Mr. Bruce by which they mutually undertook to transfer to Mrs. Stuart the shares set opposite their respective names, amounting in the aggregate to 134 preference shares and 100 ordinary shares, towards which Mr. Bruce contributed 34 preference shares. The intended transfer was expressed to be “ in consideration “ of Mrs. Jane J. Stuart giving a guarantee to “ the Bank of Montreal for advances made and

“ to be made to the said Company to the extent “ of \$100,000.” The extension of the guarantee so as to cover past advances appears for the first time in this agreement. To Mr. Stuart of course the alteration was absolutely immaterial. He had nothing to lose. To Mrs. Stuart it was an important extension of liability though in the actual guarantee liability was limited to past advances by the Chatham Branch of the Bank. To Mr. Bruce it was certainly not wholly immaterial. Mr. Bruce seems to have made the alteration in the interest of the Bank and the shareholders in the Company without even bringing it to the attention of Mr. Stuart. Asked whether in preparing the guarantee he was acting as solicitor for both the Bank and Mr. Stuart he replied :—

“ Well I think I was acting as solicitor for the Bank of Montreal in drawing the guarantee and I don't think Mr. Stuart had any other independent advice. I think both parties were quite willing to take the guarantee as prepared by me.”

It is admitted that Mr. Bruce had no communication of any sort with Mrs. Stuart until she appeared in his office with her husband and signed the guarantee which covered future advances and past advances from the Chatham agency. The advances through that agency at the close of 1895 after Mr. Lee had discharged the debt of \$100,000, amounted to the sum of \$11,100, and that sum remained due when the guarantee was signed.

In the meantime Mr. Stuart had written to Mr. Macnider in reply to his request for information as to Mrs. Stuart's means, stating that “ she owned Bank and other stocks of the value “ of about \$100,000, mortgages \$70,000, and “ real estate from \$50,000 to \$70,000.” He did not in his letter tell Mr. Macnider that that amount had been diminished by the \$125,000

for which Mrs. Stuart had bound her separate estate by her note for \$125,000 in favour of the Bank of Hamilton.

On receipt of Mr. Stuart's letter Mr. Macnider at once wrote to Mr. Bruce repeating the information Mr. Stuart had given to him about his wife's means, adding:—

“ I should like to have your professional opinion of her
“ legal ability and right to bind all the estate by endorse-
“ ment or guarantee and your opinion also as to its value
“ and if unencumbered.”

On the 21st of February Mr. Bruce sent Mr. Macnider his “opinion as to Mrs. Stuart's power of contracting and means.” The Bank represented by Mr. Bruce in this action claimed privilege for that document, and it has not been produced. Now, the only person to whom Mr. Bruce could apply for information as to Mrs. Stuart's means was Mr. Stuart, and it was obviously Mr. Bruce's duty to make such an application. If Mr. Stuart disclosed the transaction with the Bank of Hamilton the Bank of Montreal must have known that Mrs. Stuart had already parted with half her fortune. If he did not do so, he was acting unfairly both to the Bank of Montreal and to his wife.

On the 24th of February 1896, at Mr. Bruce's office, Mrs. Stuart executed the guarantee for \$100,000 in favour of the bank. On the same day, and as parts of one and the same transaction, two other instruments were executed. One was the shareholders' agreement already mentioned for the transfer to Mrs. Stuart of certain shares in the Company, which were at the time, as Mr. Stuart reminded Mr. Bruce “of only nominal value.” The other was an indenture made between Mr. Stuart of the first part, Mr. Lee of the second part, and Mrs. Stuart of the third part, whereby, after stating that Mr. Lee and

Mr. Stuart had paid for the Company the sums of \$125,000 and \$150,000 respectively (the same sums it will be observed as the "cash advances" mentioned in Mr. Stuart's letter of the 12th of February), those advances were postponed to Mrs. Stuart's claims in respect of advances under her guarantee. In this deed it was among other things witnessed that "for the consideration aforesaid," that is in consideration of Mrs. Stuart giving her guarantee, Mr. Stuart agreed with Mrs. Stuart that if she paid any money for the Company under her guarantee she should be paid by the Company all sums so paid before Mr. Stuart received any part of "the Company's said indebtedness to him." Now the Company's indebtedness to Mr. Stuart and Mr. Stuart's so-called "cash advances" to the Company included the \$125,000 paid by him out of his wife's moneys. So that the postponement of Mrs. Stuart's advances through the Bank of Hamilton to her advances through the Bank of Montreal is actually treated as part of the consideration moving to her. It is impossible to suppose that when Mr. Bruce prepared this document and allowed Mr. Stuart to execute it and put it before Mrs. Stuart for her execution he could have been aware of the real transaction with the Bank of Hamilton.

The rest of the story may be told very shortly.

On the 14th of July 1896 Mr. Stuart procured his wife to assign to trustees for the Bank mortgages for sums amounting to \$27,000 or thereabouts to secure advances for the purchase of fixed machinery.

On the 11th of April 1898 Mr. Stuart procured his wife to sign another guarantee to the Bank for \$125,000 which included the former guarantee for \$100,000. The giving of this guarantee was arranged at an interview between Mr. Macnider, Mr. Stuart, and Mr. Bruce,

of which Mr. Macnider gives an account in a letter of the 1st April 1898 to the manager at Chatham, saying, among other things, "Mrs. Stuart is to increase her guarantee to \$125,000 to be prepared by Mr. Bruce."

In 1901 the Company went into liquidation.

On the 2nd of October 1903 Mrs. Stuart and her husband gave the Bank a mortgage upon all her real estate.

The result of these transactions was that Mrs. Stuart surrendered to the Bank all her estate, real and personal, including Inglewood, and was left without any means of her own. Mr. Stuart had nothing but a life annuity or retiring pension from the Bank of Hamilton, which the Bank of Montreal claims in the event of Mrs. Stuart succeeding on this Appeal.

The evidence is clear that in all these transactions Mrs. Stuart, who was a confirmed invalid, acted in passive obedience to her husband's directions. She had no will of her own. Nor had she any means of forming an independent judgment even if she had desired to do so. She was ready to sign anything that her husband asked her to sign and do anything he told her to do. At the same time it is right to say that in her evidence in this action she repudiates the notion that any influence was exerted or any pressure put upon her, or that her husband made any misrepresentation to her. She says she acted of her own free will to relieve her husband in his distress and that she would have scorned to consult anyone. She certainly knew that she was incurring liability in order to help her husband and the Company in which he was interested. Her declarations in the course of her cross-examination that she acted of her own free will and not under her husband's influence, merely show how deeprooted and how lasting the influence of her husband was.

Such being the facts of the case, can these transactions stand?

Their Lordships accept the law as laid down by Parker, V.C., in *Nedby v. Nedby*, 5 De. and Sm. 377, to the effect that in the case of husband and wife the burden of proving undue influence lies upon those who allege it. It is difficult to determine in any case the point at which the influence of one mind upon another amounts to undue influence. It is specially so in the case of husband and wife, for as Lord Cranworth observed:—

“The relation constituted by marriage is of a nature which makes it as difficult to enquire, as it would be impolitic to permit inquiry, into all which may have passed in the intimate union of affections and interests which it is the paramount purpose of that connection to cherish.” (*Boyse v. Rossborough*, 6 H.L., C. 48.)

It may well be argued that when there is evidence of overpowering influence and the transaction brought about is immoderate and irrational as it was in the present case proof of undue influence is complete. However that may be, it seems to their Lordships that in this case there is enough, according to the recognised doctrine of Courts of Equity, to entitle Mrs. Stuart to relief. Unfair advantage of Mrs. Stuart's confidence in her husband was taken by Mr. Stuart, and also it must be added by Mr. Bruce. Their Lordships do not attribute to Mr. Bruce intentional unfairness, but Mr. Bruce was in a position in which it would have been almost impossible for any man to act fairly. He was solicitor for the Bank. He was the legal adviser of Mr. Stuart. He took upon himself to enter into negotiations with his fellow shareholders on behalf of Mrs. Stuart. Above all, he had, as the managers of the Bank well knew, a strong personal interest in procuring Mrs. Stuart to give the guarantee. He knew that all Mr. Stuart's means were embarked in the Company, and no one knew

better than he that unless someone came forward and guaranteed the Bank in respect of further advances his own interest and the interest of his associates as shareholders were worth nothing and his claim as a creditor in all probability equally valueless. He and his associates other than Mr. Stuart were unwilling to risk their own moneys. Mr. Stuart had no money to risk. The game Mr. Stuart was playing was desperate. It was the throw of a gambler with money not his own. No man in his senses with any regard to the interest of Mrs. Stuart or the interest of Mr. Stuart could have advised Mrs. Stuart to act as her husband told her to do. The Bank left everything to Mr. Bruce and the Bank must be answerable for what he did. Without communicating with Mrs. Stuart Mr. Bruce of his own motion extended the guarantee to past advances from the Chatham Branch. More than that he took upon himself to act on behalf of Mrs. Stuart in procuring the transfer of shares to her by way of consideration for undertaking a risk which neither he nor any of his solvent associates were willing to accept. And the consideration as he must have known if he had considered the matter was absolutely illusory. It was worse than illusory for it fixed Mrs. Stuart with a common interest in the fortunes of the Company and no doubt relieved her husband from any feeling of compunction in getting his wife to make so great a sacrifice for the benefit of the shareholders and afterwards dragging her deeper into the mire. Now it has been laid down in the House of Lords that the husband's solicitor owes a duty to the wife in transactions between the husband and wife where her interests are concerned. "I think" said Lord Davey in *Willis v. Barron*, 1902 A.C. 283—

"It is a sound observation that a wife usually has no solicitor of her own apart from her husband, and I think

“ she is *primâ facie* entitled to look to her husband's
“ solicitor—the solicitor of her husband's family—for advice
“ and assistance until that solicitor repudiates the obligation
“ to give such advice, and requires her to consult another
“ gentleman.”

That observation seems to apply with peculiar force to a case like this where the solicitor takes upon himself to intervene on behalf of the wife. Mr. Bruce undertook a duty towards Mrs. Stuart but he left her in a worse position than she would have been if he had not interfered at all. His course was plain. He ought to have endeavoured to advise the wife and to place her position and the consequences of what she was doing fully and plainly before her. Probably if not certainly she would have rejected his intervention. And then he ought to have gone to the husband and insisted on the wife being separately advised and if that was an impossibility owing to the implicit confidence which Mrs. Stuart reposed in her husband he ought to have retired from the business altogether and told the Bank why he did so.

Their Lordships are of opinion that the Order of the Supreme Court of Canada is right though they are unable to concur in the reasons on which that Order is founded, and they will humbly advise His Majesty that the Appeal should be dismissed with costs.

In the Privy Council.

THE BANK OF MONTREAL

v.

JANE JACQUES STUART AND
ANOTHER.

LONDON:

PRINTED BY EYRE AND SPOTTISWOODE, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1910.