RECENT ENGLISH DECISIONS.

Court of Appeal.

MITCHELL v. HOMFRAY.

A gift from a lady to her medical adviser, even though the former had no independent advice, is only voidable; and if, after the relationship has ceased, she intentionally abides by what she has done, her executors cannot recover the gift from the medical adviser.

In an action brought by the executors of Mrs. G. to recover a sum of 800*l.* alleged by the defendant to have been given by Mrs. G. to him, it was admitted that at the time the gift was made the defendant was acting as Mrs. G.'s medical adviser, and that she had no independent advice of any kind. The jury found that the advance of 800*l.* was not a loan but a gift; that there was no undue influence on the defendant's part; that the relation of patient and medical man had come to an end more than three years before Mrs. G.'s death, and that after that relationship had come to an end, and any effect produced by it had been removed, she intentionally abode by what she had done. *Held*, that the gift was not void but voidable, and the defendant was entitled to judgment.

APPEAL from the judgment of STEPHEN, J., at the trial.

The action was brought by the executors of the will of Mrs. Geldard to recover the sum of 800*l.* from the defendant. The case was first tried at Durham Summer Assizes 1879, before STEPHEN, J., and a special jury. A verdict was then given for the defendant, and the Exchequer Division subsequently discharged a rule *nisi* for a new trial obtained by the plaintiff. On appeal, the Court of Appeal, at Westminster, set aside the verdict and ordered a new trial, the court suggesting the questions which might be left to the jury on the second trial. The case was tried a second time before STEPHEN, J., and a special jury at the Leeds Summer Assizes of 1880, when the following facts were proved: In the year 1871, Mrs. Geldard, as was alleged by the defendant, gave him two checks for 500*l.* and 300*l.* respectively, to enable him to buy a house. Mrs. Geldard was then living at Gainford, and the defendant was, and had for some time been, her medical man. The gift, according to the defendant's evidence, was made in accordance with the wish of Mrs. Geldard's husband, who had died some time previously, and whom the defendant had also attended for a long period as medical man. The defendant's evidence further was, that he volunteered to pay Mrs. Geldard a life

annuity of 40*l.*, and that he did so from the time of the gift to himself until her decease, Mrs. Geldard, on several occasions, signing receipts drawn up by the defendant in the following form: "Received from Dr. Homfray the sum of 20*l.* for half year's annuity, in consideration of a free gift of 800*l.*" In 1872 Mrs. Geldard left Gainford and went to reside at Barnard Castle, about eight miles distant, and the defendant then ceased to act as her medical man. She lived at Barnard Castle till her death in July 1876. It was admitted at the trial that Mrs. Geldard had no independent advice of any kind when the gift was made, and that at that time defendant was acting as her medical adviser.

The following questions were left to the jury by STEPHEN, J.:

1. Was the advance of 800*l.* a loan, or was it a gift? Ans. "A gift." 2. If there was a gift, was there undue influence in fact? Ans. "No." 3. Did the relation of patient and medical man between Mrs. Geldard and Dr. Homfray come to an end when she went to Barnard Castle in 1872, and did Mrs. Geldard, after that relationship had been ended, and after any effect produced by it had been removed, intentionally abide by what she had done? Ans. "Yes." 4. Was the signature of the receipts obtained from Mrs. Geldard by fraud? Ans. "No."

On these findings STEPHEN, J., directed judgment to be entered for the defendant.

The plaintiffs now appealed.

Digby Seymour, Q. C., and *Chadwyck Healey* (*Forbes*, Q. C., with them), for the plaintiffs.

A. Wills, Q. C. (*Canby* with him), for the defendant.

The LORD CHANCELLOR.—This cause has been argued very fully; but I myself should have been better satisfied to have dealt with both facts and law upon this hearing. It seems to me that a case of this nature, to be dealt with in a satisfactory manner, ought to present the whole of the facts for the court to form their opinion upon. But, unfortunately, this case was tried by a jury, and it comes before us in the only form in which a case that has been tried by a jury can come before us; that is to say, we can not look behind the findings of that tribunal. That is a very

embarrassing state of things, when we have to decide as to the application of an important principle of equity. I understand that when this case was before the Court of Appeals on a former occasion, BRAMWELL, L. J., strongly advised the parties not to go before a jury. However, the course that he recommended has not been taken. The case has been twice tried, and it would be a misfortune if we had to send the case to another jury. Before determining what the findings of the jury amount to, it is important to remember how the case came before the jury. This court, when the case came before it on a former occasion, had directed a new trial, and thrown out that the questions for the jury were: [Reads the questions put at the trial with the addition of one as to independent advice at the time of the gift.] Now, what took place at the trial was this. The point as to the independent advice was covered by the admission that Mrs. Geldard had no independent advice of any kind when the gift was made. That admission seems to have been intended to cover both the time of the gift and afterwards. The other questions were left substantially as had been suggested by the court; and at the trial neither side asked that any other question should be left. We have been pressed now with the argument that another question should have been left, namely, whether this lady was aware that the gift was impeachable? Now, it seems to me, that if it was going to be contended that the findings of the jury were useless unless that question was asked, the question ought to have been suggested to the judge at the trial. As it was not, we must consider that the parties intended to give the go-by to that question. So interpreted, the finding of the jury as to Mrs. Geldard intentionally abiding by what she had done, after the relationship of medical man and patient had ended, becomes of vital importance. I should have preferred an answer of the jury to the question as to her knowledge that the gift was impeachable. But I assume that there was no evidence of absence of knowledge on her part. The finding of the jury is that the relationship of patient and medical man between Mrs. Geldard and Dr. Homfray came to an end when she went to Barnard Castle in 1872, and that, after that and after any effect produced by that relationship had been removed, she intentionally abode by what she had done. I think that that must be taken to mean that, even if she had known that the gift was impeachable, she would still have adhered to it. There is not here a case of express

confirmation of the gift nor of simple acquiescence in it. But the gift being voidable and not void, and this lady being the person to determine whether it should be avoided or not, she determined not to avoid it. Now, although it is true that she had no independent advice when the gift was made, I think that no authority goes the length of saying that another person after her death may do that which she determined not to do. The case of *Rhodes* v. *Bate*, Law Rep., 1 Ch. Ap. 252, though it goes further than any other, laying down that wherever there is a confidential relationship the beneficiary must show not only that there was no impropriety in the gift, but that the donor had independent advice, does not go on to say that that is necessary if there is a deliberate intention to abide by the transaction after the influence has ceased, and any effect produced by the relationship has been entirely removed. There is not much authority to assist us in arriving at our decision, which is in favor of not disturbing this judgment; but there is some. The case of *Dent* v. *Bennett*, 4 Myl. & Cr. 269, was a case where the gift was set aside; but I find this passage in the judgment of the Lord Chancellor (COTTENHAM), at page 275: "There is an absence of all evidence of the testator having at any time recognised, or in any manner given any proof of approval of the agreement, or of any consciousness of its existence." That does not go far to show what the effects of such evidence would be; but at least it shows that it would have been a very material element in arriving at a decision in that case. In the case of *Wright* v. *Vanderplank*, 8 De G., M. & G. 183, TURNER, L. J., who delivered the judgment in *Rhodes* v. *Bate*, *supra*, says, at page 146: "A child is presumed to be under the exercise of parental influence as long as the dominion of the parent lasts. Whilst that dominion lasts, it lies on the parent maintaining the gift to disprove the exercise of parental influence, by showing that the child had independent advice, or in some other way." I do not lay much stress on that; but I know of no reason for supposing that the law on this point, as between doctor and patient, differs from that as between parent and child. The lord justice continues: "When the parental influence is disproved, or that influence has ceased, a gift from a child stands on the same footing as any other gift; and the question to be determined is, whether there was a deliberate, unbiased intention on the part of the child to give it to the parent. Applying these considerations

to the present case, it is difficult to say that the present action could have been maintained if the case had rested upon the mere circumstances which attended the original gift. I think it could not. I am satisfied that the court would be departing from established principles in upholding it. The transaction had its inception at a period when the minority had just terminated. It was completed while the parental influence and authority was in full force, and there was no independent advice given to the daughter. The transaction, therefore, was impeachable at and after its completion; and the only question is, whether it has become unimpeachable by reason of what has subsequently occurred. It has been argued at the bar that it has not; for that some positive act was required to make it so, and here no such act has been done. I am not of opinion that a positive act is necessary to render the transaction unimpeachable. All that is required is proof of a fixed, deliberate and unbiased determination that the transaction should not be impeached. This may be proved either by the lapse of time during which the transaction has been allowed to stand, or by other circumstances. Here I have no doubt that there was a fixed, deliberate and unbiased determination on the part of the lady that the transaction should not be impeached." No doubt the fact of the subsequent marriage of the lady who was the donor in that case, and, indeed, the whole of her life, was consistent with that judgment. The lord justice continues: "It is stated on the face of the bill that the daughter had been informed by some of her friends before her marriage that a fraud had been practiced on her by the defendant. Now she was plainly a woman of strong understanding, and capable of transacting business, and it is impossible to suppose that she, having been told that a fraud had been practiced on her, should not have been aware that the courts could relieve her. And if it were possible to suppose this, the facts of the case exclude the supposition." Therefore, it must be taken in that case the donor knew as a fact that the transaction was impeachable. At the same time, that case is very near this one, if we may treat this case as if there had been a finding of the jury that the donor was indifferent whether she could set aside the gift or not, so that whether she knew or not would be immaterial: *In re Holmes's Estate, Woodward* v. *Humpage, Bevans's Case*, 3 Giff. Ch. Rep. 345–6, Sir JOHN STUART, V. C., says: "The law of this court as to gifts by a client to his solicitor, I think, is perfectly

established. The principle is, that the relation of solicitor and client is one of such high confidence on the part of the client, that the solicitor is considered to have an amount of influence over the mind and action of his client, which, in the eye of this court, while that influence remains, makes it almost impossible that the gift can prevail. The principle of influence vitiates the gift; but the presumption of influence may be rebutted by circumstances short of the total dissolution of the relationship of solicitor and client. That relation is only looked at as creating the influence; and, as soon as circumstances of evidence are introduced which remove all effect of the influence, whether the relation subsists or not, if the influence of that relation is removed, there is no incapacity on the part of the solicitor to become the object of his client's bounty, and to be the recipient from his client of a gift which will be valid at law and in equity." There the vice-chancellor supposes the relationship of solicitor and client to be still subsisting, but the influence of that relationship to be at an end. Here not only have the jury found that after the influence of the relationship of doctor and patient had come to an end the patient intentionally abode by her gift, but that she did so after the relationship itself had, in fact, ceased. I think that the principles laid down in the cases that I have cited justify us in affirming this judgment.

BAGGALLAY, L. J., and BRAMWELL, L. J., concurred.

Appeal dismissed.

The principal case brings up the subject of gifts between persons standing in confidential relations to each other. The subject thus presented is such that it may be interesting and useful to examine some of the fundamental principles which have been established in this connection.

At common law, a gift from the husband to the wife was void, but in equity such gifts were valid. If the gift was not prejudicial to the rights of creditors, it became her separate estate in equity, and was supported as such even against the husband, and without the intervention of a trustee. See *Slanning* v *Style*, 3 P. Wms. 338 (1734); *Lucas* v. *Lucas*, 1 Atk. 270 (1738); *McLean* v. *Longlands*, 5 Ves. 79 (1799); *Wallingsford* v. *Allen*, 10 Peters 583 (1836); *Adams* v. *Brackett*, 5 Met. 285 (1842); *Savage* v. *O'Neil*, 44 N. Y. 298 (1871); *Gill* v. *Woods, Admr.*, 81 Ill. 64 (1876); *Davis* v. *Zimmerman*, 40 Mich. 24 (1879); *Richardson* v. *Lowry*, 67 Mo. 411 (1878); *Conley* v. *Bentley*, 87 Penn. St. 40 (1878); *Presch* v. *Wirtz*, 34 N. J. Eq. 124 (1881); *Wheeler* v. *Wheeler*, 43 Conn. 507 (1876); *Davidson* v. *Lanier*, 51 Ala. 318 (1874).

The gift is her equitable separate estate, and is not within the influence and operation of the statutory or constitutional provisions creating a statutory

separate estate: *Helmetag* v. *Frank*, 61 Ala. 69 (1878); *McMillan* v. *Teacock*, 57 Id. 127 (1876), and cases there cited. And, though a conveyance from a stranger to a *feme covert*, in order to vest in her a sole and separate estate, must contain words indicating such an intention, such words are unnecessary in a transfer from husband to wife: *Deming* v. *Williams*, 26 Conn. 226 (1857).

In *Greenfield's Estate*, 24 Penn. St. 232, 240 (1854), the Supreme Court of Pennsylvania says: "We know of no rule of law or morals which will prevent clergymen from receiving gifts, great or small, even from their parishioners." And in the recent case of *Audenreid's Appeal*, 89 Id. 114 (1879), the same court declares that, "There is nothing in the confidential relation of a medical adviser to a patient that *per se* forbids the acceptance of a gift from his patient." As between an attorney and his client, however, the rule seems to have been different. As early as the year 1784, in *Welles* v. *Middleton*, 1 Cox's Ch. 112, 124, we find the lord chancellor declaring: "In the case of attorneys, it is perfectly well known that an attorney cannot take a gift while the client is in his hands, nor instead of his bill. And there would be no bounds to the crushing influence of the power of an attorney who has the affairs of a man in his hands if it was not so; but once extricate him, and it may be otherwise." And in *Montesquieu* v. *Sandys*, 18 Ves. 312 (1811), Lord ELDON said: "An attorney shall not take from his client a gift or reward while standing in that relation, the connection between them subsisting with the influence attending it, though the transaction may be as righteous as ever was carried on; the connection must, as in the instance of guardian and ward, be *bona fide* dissolved before he can take anything beyond his regular fees." See, too, *Proof* v. *Hines*, Ca. temp. Talbot 111, 116 (1735); *Bellew* v. *Russel*, 1 Ball & B. 96 (1809); *Falkner* v. *O'Brien*, 2 Id. 214 (1812); *Lady Ormond* v. *Hutchinson*, 13 Ves. 47, 51, 52 (1806); *Hylton* v. *Hylton*, 2 Id. 548, 549 (1754). Hence, we find the Supreme Court of Tennessee declaring that, "It is a settled rule, therefore, that, while the relation of attorney and client exists, the attorney stands in such a situation of confidence that he will not be permitted to take from his client beyond a fair professional demand:" *Rose* v. *Mynatt*, 23 Tenn. 36 (1834). In *Starr* v. *Vanderheyden*, 9 Johns. (N. Y.) 253 (1812), the court ruled that a confession of judgment, made by a client in behalf of his attorney, could not be permitted to stand, except as a security for fees actually due for services rendered. See, also, *Bibb* v. *Smith*, 1 Dana (Ky.) 580 (1833), and *Kirby* v. *Taylor*, 6 Johns. Ch. (N. Y.) 248 (1822). It is to be observed, however, that in the later cases it seems to be conceded that the attorney may receive a gift from his client, while the relation continues to subsist, which, under certain circumstances, will be valid both at law and in equity. Such a concession is made in *Bevan's Case*, 3 Gifford Ch. 345, 346 (1861), and cited in the principal case, although the concession is accompanied with the statement "that it is almost impossible that the gift can prevail." Similar concessions will be found elsewhere: *Jennings* v. *McConnel*, 17 Ill. 148 (1855).

A well-defined distinction exists between the validity of gifts *inter vivos* and legacies. The influence which avoids gifts *inter vivos* between persons having confidential relations will not of necessity avoid legacies between such persons. In *Parfitt* v. *Lawless*, 2 Prob. & Div. 462, 469 (1872), Lord PENZANCE says: "In the case of gifts or other transactions *inter vivos*, it is considered by the courts of equity that the natural influence which such relations as those in question involve, exerted by those

who possess it to obtain a benefit for themselves, is an undue influence. Gifts or contracts brought about by it are, therefore, set aside unless the party benefited by it can show affirmatively that the other party to the transaction was placed in such a position as would enable him to form an absolutely free and unfettered judgment. The law regarding wills is very different from this. The natural influence of the parent or guardian over the child, or the husband over the wife, or the attorney over the client, may lawfully be exerted to obtain a will or legacy, so long as the testator thoroughly understands what he is doing, and is a free agent. There is nothing illegal in the parent or husband pressing his claims on a child or wife, and obtaining a recognition of those claims in a legacy, provided that the persuasion stop short of coercion, and that the volition of the testator, though biased and impressed by the relation in which he stands to the legatee, is not overborne and subjected to the domination of another." And the existence of this distinction has been recognised in two recent cases in this country: *Griffith* v. *Diffenderffer*, 50 Md. 468, 484 (1878), and *Haydock* v. *Haydock*, 34 N. J. Eq. 570, 575 (1881). But this distinction is itself conditioned; and if it is made to appear that the testator was of weak mind, and that a bequest was made to a person standing in a position which enabled the beneficiary to influence the act, the burden shifts, and the will cannot be admitted to probate unless the court is satisfied that the paper presented actually expresses the true will of the testator: *Haydock* v. *Haydock*, *supra*. And where a will has been made by a ward in favor of the guardian, it has been held that the burden of proof was on the guardian: *Garvin's Admr.* v. *Williams*, 44 Mo. 465 (1869); *Meek* v. *Perry*, 36 Miss. 190; *Morris* v. *Stokes*, 21 Ga. 552 (1857).

In relation to gifts *inter vivos*, a distinction is taken between persons occupying confidential relations and those who do not occupy such relations. In the latter class of cases it has been said that the donee must, if the transaction is questioned, show that the donor knew and understood what he was doing: *Hoghton* v. *Hoghton*, 15 Beav. 278, 299 (1852). But in the case of persons standing in confidential relations to each other, it is presumed that an undue influence has been exerted by the donee over the donor. And it must be made to affirmatively appear not only that the donor knew and understood what he was doing, but that no advantage was taken of the relation of the parties to unduly influence the donor. According to *Rhodes* v. *Bate*, L. R., 1 Ch. App. 252 (1865), cited in the principal case, it was "a settled general principle" that "persons standing in a confidential relation towards others cannot entitle themselves to hold benefits which those others may have conferred upon them, unless they can show to the satisfaction of the court that the persons by whom the benefits have been conferred had competent and independent advice in conferring them." The principal case now comes in to determine that it is not absolutely essential that there should have been independent advice, but that the gift may be sustained if, after the confidential relation has terminated, the donor intentionally abides by what he has done for a sufficient period of time to show a fixed, deliberate and unbiased determination that the gift should not be impeached. In settling this principle, an important question is determined, and the principal case is accordingly valuable, and will hereafter be regarded as a leading case on this subject. The principle referred to in *Rhodes* v. *Bates*, *supra*, as being "settled" that it was essential that there should have been independent advice in order to sustain the gift, was announced at least as early as 1818 in *Griffiths* v. *Robins*, 3 Madd. 191. In

that case the donor was eighty-four years old, and nearly blind, so as to be altogether dependent on the kindness and assistance of others, and especially upon the kindness of the donees, a niece and her husband. The court declared the intervention of a third person necessary, and, as there had been no such intervention, the deed of gift was ordered to be delivered up. In *Pratt* v. *Barker*, 1 Sim. 1 (1826), a deed of gift from a patient to his medical adviser was sustained, a third party having intervened.

The cases are very numerous in which equity has set aside gifts between persons occupying confidential relations. In *Norton* v. *Relly*, 2 Eden 286 (1764), Lord NORTHINGTON, on grounds of public policy, set aside a deed of gift from a parishioner to his spiritual adviser, declaring that it was the first case of the kind which had been decided "in any court of judicature in this kingdom." In *Nottidge* v. *Prince*, 2 Giff. 246 (1860), we have another illustration of the same principle. In that case the vice-chancellor took occasion to say: "No person who stands in a relation of spiritual confidence to another, so as to acquire a habitual influence over his mind, can accept any gift or benefit from the person who is under the dominion of that influence, without the danger of having the gift set aside. If it can be shown that a sufficient protection has been interposed against the exercise of the influence, there may be a case to sustain the gift. But the principle prevails where there exists a relation which naturally creates influence over the mind. Therefore, the doctrine extends to the relation of attorney and client, of guardian and ward, of parent and child. But there does not arise from any of these relations an influence so strong as that of a minister of religion over a person under his direct spiritual charge." See, also, *Huguenin* v. *Baseley*, 14 Ves. 273 (1807).

In *Kirwan* v. *Cullen*, 4 Irish Ch. 322 (1854), the High Court of Chancery in Ireland sustained a deed of trust made by a Roman Catholic lady to a Roman Catholic archbishop. But the archbishop had never seen her, and denied that she was under his spiritual influence. Neither had the gift been obtained at the suggestion of her spiritual adviser.

As between parent and child, the cases are numerous, and among them reference may be had to the following: *Archer* v. *Hudson*, 7 Beav. 560 (1844); *Carpenter* v. *Heriot*, 1 Eden 338 (1758); *Young* v. *Peachy*, 2 Atk. 254 (1741); *Heron* v. *Heron*, Id. 160 (1741); *Cocking* v. *Pratt*, 1 Ves. 401 (1749); *Baker* v. *Bradley*, 2 Sm. & G. 531 (1854); *Potts* v. *Surr*, 34 Beav. 543, 555 (1865); *Whelan* v. *Whelan*, 3 Cow. 587 (1824); *Bergen* v. *Udall*, 31 Barb. 9 (1858); *Highberger* v. *Stiffler*, 21 Md. 339 (1863).

A deed of gift from the parent to the child stands on a different footing, and will not be subjected to the same jealous scrutiny as a similar deed from the child to the parent. See *Howe* v. *Howe*, 99 Mass. 88 (1868); *Greer* v. *Greer*, 9 Gratt. (Va.) 332 (1852); *Moore* v. *Moore*, 67 Mo. 192 (1877). But where the relation of parent and child is reversed by reason of age, or for some other cause, and the parent has become dependent on the child, the rule will be applied in all its strictness: *Mulock* v. *Mulock*, 31 N. J. Eq. 594, 602 (1879).

For cases in which gifts between guardian and ward, made by the latter, shortly after the relation has been terminated, have been set aside in equity on grounds of public policy, reference may be had to the following authorities: *Hatch* v. *Hatch*, 9 Ves. 292 (1804); *Hylton* v. *Hylton*, 2 Ves. Sr. 547 (1754); *Duke of Hamilton* v. *Lord Mohun*, 1 P. Wm. 118 (1701); *Dawson* v. *Massey*, 1 Ball & B. 219 (1809); *Aylward* v. *Kearney*, 2 Id. 463 (1814); *Everitt* v. *Everitt*, L. R., 10 Eq. 405 (1870); Say v. *Barnes*, 4 S. & R. (Penn.) 112 (1818); *Elliot* v. *Elliot*, 5 Binn.

(Penn.) 1 (1812); *Wills's Appeal*, 22 Penn. St. 325, 332 (1853); *Eberts* v. *Eberts*, 55 Id. 110 (1867); *Gale* v. *Wells*, 12 Barb. (N. Y.) 84; *Garvin* v. *Williams*, 44 Mo. 465 (1869); *Sullivan* v. *Blackwell*, 28 Miss. 737 (1855). And for relief from gifts bestowed by a patient upon his medical adviser, reference may be had to the following: *Dent* v. *Bennett*, 7 Sim. 539 (1835); *Popham* v. *Brooke*, 5 Rus. 8 (1828); *Gibson* v. *Russell*, 2 Y. & C. 104 (1843); *Billage* v. *Southee*, 9 Hare 534 (1852); *Cadwallader* v. *West*, 48 Mo. 483 (1871). As to cases where gifts between an attorney and his client have been set aside, a reference may be had to the cases already cited upon that subject.

But the relation of parent and child, of guardian and ward, of spiritual adviser and parishioner, of physician and patient, of attorney and client, are not the only relations in which undue influence will be presumed. As Lord COTTENHAM declared in *Dent* v. *Bennett*, 4 My. & Cr. 277 (1839), the relief which equity affords in such cases "stands upon a general principle, applying to all the variety of relations in which dominion may be exercised by one person over another." See too *Lyon* v. *Home*, L. R., 6 Eq. 655 (1868); *Haydock* v. *Haydock*, 34 N. Y. Eq. 570, 574. The principle has been applied as between brother and brother: *Todd* v. *Grove*, 33 Md. 188 (1870); and sister and sister: *Harvey* v. *Mount*, 8 Beav. 439 (1845); and brother and sister: *Boney* v. *Hollingsworth*, 23 Ala. 690, 698 (1853).

A court of equity never lends its aid at the instance of a donee to reform a voluntary deed: *Turner* v. *Collins*, L. R., 7 Ch. App. 342 (1871); *Groves* v. *Groves*, 3 You. & Jer. 163 (1829); *Lister* v. *Hodgson*, L. R., 4 Eq. Cas. 30 (1867); *Mulock* v. *Mulock*, 31 N. J. Eq. 594 (1879). It will not enforce specific performance of a voluntary contract: Fry Specif. Perf. 70, 71; *Wadhams* v. *Gay*, 73 Ill. 415 (1874); *Hoig* v. *Adrain College*, 83 Id. 267 (1876). But a mere gift or voluntary agreement, when once executed, cannot be revoked: *Welsch* v. *Belleville Savings Bank*, 94 Ill. 191 (1879). And the principle was determined as early as 1682, in *Villers* v. *Beaumont*, 1 Vern. 100, that where the donee does not stand in a fiduciary or confidential relation towards the donor, equity will not set aside a voluntary deed at the suit of the grantor, however improvident it may have been, if it was free from the imputation of fraud, surprise or undue influence. In that case the lord chancellor declared that, "If a man will improvidently bind himself up by a voluntary deed, and not reserve a liberty to himself by a power of revocation, this court will not loose the fetters he hath put upon himself, but he must lie down under his own folly." See also the recent case of *Wilemin* v. *Dunn*, 93 Ill. 511 (1879).

In concluding this note attention is called to the principle that in order to make a gift voidable, or such as equity will set aside, it is not necessary that the donee should have exerted the undue influence. It is enough that such influence was improperly exercised by a third person. Lord Chief Justice WILMOT declared in 1757 in *Bridgeman* v. *Green*, Wilmot's Opinions 58, 64, 65, that "whoever receives it (the gift) must take it tainted and infected with the undue influence and imposition of the person procuring the gift; his partitioning and cantoning it out amongst his relations and friends, will not purify the gift and protect it against the equity of the person imposed upon. Let the hand receiving it be ever so chaste, yet if it comes through a corrupt polluted channel, the obligation of restitution will follow it." See also *Huguenin* v. *Baseley*, 14 Ves. 273, 288 (1807); *Whelan* v. *Whelan*, 3 Cow. 587 (1824).

HENRY WADE ROGERS.