

having confidential relationship with him; that the law, on grounds of public policy, presumes that the transaction was the effect of influence induced by these relations and that the burden lay upon the endorsee of the notes, who took them with notice and full knowledge of the relationship, of shewing that the makers had independent advice." In other words, that the relation of husband and wife raises a presumption of undue influence in the transaction which can only be rebutted by shewing that she had independent advice. Authorities binding on the court do not support this conclusion. The relation of husband and wife is not one of the confidential relationships from which in the absence of direct proof, undue influence is presumed, within the rule enunciated in *Hugenin v. Basely*, 14 Vesey 273, upon which all the latter cases depend.

The Court of Appeal in England in *Howes v. Bishop* (1909) 2 K.B. 390 (ante, p. 605), adopts and approves the statement of the law of Cozens-Hardy, J., in *Barron v. Willis* (1899) 2 Chy., p. 585: "It is also settled by authority which binds me, although text-writers seem to have adopted the opposite view, that the relation of husband and wife is not one of those to which the doctrine of *Hugenin v. Basely* applies. In other words there is no presumption that a voluntary deed executed by a wife in favour of her husband and prepared by the husband's solicitor is invalid. The onus probandi lies on the party who impugns the instrument and not on the party who supports it. This was clearly decided by Sir James Parker in 1852 in *Nedby v. Nedby*, 5 DeG. & Sm. 377, and it accords with what Lord Hardwicke said in *Grigsby v. Cox* (1750) 1 Ves. Sen. 517."

The decision of Wright, J., in *Bischoff's Trustees v. Frank*, 89 L.J. 188, referred to by Anglin, J., in the *Stuart* case, as to the question of the presumption in the case of husband and wife, is shewn not to have been adopted by Collins, M.R., and Romer, L.J., in their unreported decision on the appeal from Wright, J. *Turnbull v. Duval* (1902) A.C. 434, is also cited where a security was obtained by a trustee from his cestui que trust by pressure and concealment and without independent advice, and in