

tended by one man shall overturn a fair and bona fide contract between two others." This principle I do not find questioned in any case; it is common sense, and, in my judgment, good law. No finding against the good faith of the defendant has been made; and none should be made, notwithstanding the finding of the jury. Good faith being supposed, the contract cannot, in my judgment, be said to be unfair; so that, even if this were a case of fraud, the contract should not be declared void.

In the case of undue influence, which may be defined, after Holland (*Jurisprudence*, p. 239), as consisting of "acts which, though not fraudulent, amount to an abuse of the power which circumstances have given to the will of one individual over that of another," the rule cannot be more stringent than in a case of express fraud.

Pollock on Contracts, 7th ed., p. 638, says: "It appears to be at least doubtful whether a contract can be set aside on the ground of influence exerted on one of the parties by a stranger to the contract, who did not expect to derive any benefit from it;" and, after citing *Bentley v. Mackay*, 31 Beav. 143, 151, he says: "On principle the answer should clearly be in the negative." I agree with the learned author as to principle, and, not finding any case binding me to hold the contrary, adopt his conclusion.

We have here also the absence of the other ingredient necessary to set aside a contract on the ground of undue influence, namely, the knowledge of the defendant or circumstances sufficient to give him notice of such undue influence. See Pollock, p. 637.

It is, moreover, at least doubtful whether the influence exerted in this case is what is in law called "undue influence." "Solicitation, importunity, argument, and persuasion are not undue influence:" Cyc., vol. 9, p. 455.

I am of opinion that this appeal should be allowed; but justice will be done by allowing this appeal without costs here or below. The dismissal of the appeal from the judgment upon the jury trial will also be without costs, the settlement being affirmed, but the grounds urged for a new trial being overruled.

BRITTON, J., for reasons stated in writing, agreed with the opinion of RIDDELL, J., and in the result.