

upon the former the burden of proving that the transaction was fairly conducted as if between strangers; that the weaker was not unduly impressed by the influence of the stronger, or the inexperienced overreached by him of more mature intelligence."

In the United States the same opinion is held. The cases there determine that "No relation known to the law affords so great an opportunity for the exercise of undue influence as that existing between husband and wife . . . Under the head of actual undue influence, it may be said that it is always competent to shew the relation of the parties and the surrounding circumstances, and that in case the contracting parties sustain to each other the relation of husband and wife, and the agreement is such as to operate to the advantage of the former, equity will most closely scrutinize the transaction, and will set it aside upon evidence which might be insufficient were the parties in no confidential relation to each other. This principle is independent of any presumption, and is universally recognized. Nearly all courts, however, go further than this, and bring the matter in line with the decisions as to agreements between other parties to fiduciary relationship, viz.: that a presumption of undue influence exerted by the husband arises which is rebuttable by proof of the fairness of the transaction, full understanding and free agency on the part of the wife, and that there was no fraud, concealment, or imposition on the part of the husband" (m).

In *Barron v. Willis* the court based its opinion upon *Nedby v. Nedby* (n), which was the case of an appointment by the wife to the husband, and the onus was held to be on the wife, the decision being founded upon a deduction from the words of Lord Hardwicke in *Grigby v. Cox* (o). In the case last cited Lord Hardwicke, after stating that, where anything is settled to the wife's separate use, she is considered as a feme sole, and may appoint in what manner she pleases, says: "And this will hold though the act done by the wife is *in some degree* a transaction along with the husband." The real contest was between the wife and a stranger, the husband being interested only because of a declaration by the wife that the plaintiff had colluded with her husband. It is quite clear from

(m) Am. and Eng. Ency. of Law, Vol. 27, pp. 480, 481 and 482.

(n) (1852) 5 DeG. & Sm. 377.

(o) (1750) 1 Ves. Sen. 517.