

The trial Judge, however, says he does not find any intimation throughout the conversation that in providing a home for his wife he did not intend to provide a home for himself also—that he intended after the death of his wife and himself that the property should be subject to her disposition, that its destination should be controlled by her rather than himself. I should have been much astonished had it appeared that any such intimation was given; but if the trial Judge intended to find that plaintiff did not understand the effect of what was being done, I most respectfully dissent from that view. He was a man capable “in a dispute of taking his own part,” “yet hale and vigorous for a man of his years;” and there is nothing to indicate that he was a man of inferior powers of mind.

There was no pretence that any undue influence had been used; none can be presumed in such a case as this: *McConnell v. McConnell*, 15 Gr. 20; even if, as was not the case here, there was the existence of confidence: *Wallis v. Andrews*, 16 Gr. 637; *McEwan v. Milne*, 5 O. R. 100; and compare *Irwin v. Young*, 28 Gr. 511; *Lavin v. Lavin*, 7 A. R. 197.

There is no rule requiring a defendant such as this, in no position of confidence, to prove the absence of undue influence, nor that the grantor had independent advice. . . .

[Reference to *Luton v. Sanders*, 14 Gr. 537, 538; *Armstrong v. Armstrong*, 14 Gr. 528, 536; *Corrigan v. Corrigan*, 15 Gr. 341, 343. *McCaffrey v. McCaffrey*, 18 A. R. 599, and *Hopkins v. Hopkins*, 27 A. R. 658, distinguished.]

I do not consider that it is necessarily, in the circumstances of this case, an improvident transaction for a farmer worth \$2,400 or so, to expend \$1,150 in buying a house for his wife and to give it to her.

If there were any doubt about the intent of plaintiff, his full understanding of the transaction, and his capacity, I think what followed the making of the deed would resolve that doubt in favour of defendant. I do not go into these matters, as, in the view I take, it is not necessary to consider them.

I think the appeal should be allowed and the action dismissed. Substantial justice will be done, however, by directing that no costs be given here or below.