

citor her sole executor. The will was attested by two clerks of the solicitor. Shortly afterwards the testatrix made a voluntary gift of £500 of East India stock, which was transferred into his name on the 18th September, and on the 28th of September she gave Mr. Smith a power of attorney to receive the dividends under the three per cents, which he received. She died on the 29th October, 1857. The transactions were kept secret, and no other independent solicitor was employed in them. The family asked a declaration that that the gifts and bequests had been improperly obtained and were void.

The Master of the Rolls in laying down the principle to be applied to cases of that kind, states that one of the questions to be considered is whether the influence of the donee or recipient of the bounty was improperly exercised on the donor, "the burden of proof of the first always lies upon the recipient of the bounty to shew that the gift was intended to be given, and I fully concur in the argument and observation that a solicitor does not stand in any different situation from any other person, and that there is nothing *ipso facto* in the relation of solicitor and client which makes it impossible for the solicitor to receive a gift from his client, but when the gift has been fully established the question then arises whether undue influence has been exercised, and then the question of the relation of solicitor and client is an ingredient in estimating the extent of the actual or probable influence exercised over the donor."

In that case he did not find any undue influence, and held that in all these cases you must not take into account the evidence of the recipient himself. The gift must be established by separate and independent evidence, and he observes that "if there were separate and independent evidence here I should uphold the gift." He found that as to the will, there was not in evidence any proof of undue influence and upheld the will. He set aside the gift, however, of the £500 East India stock, saying that that stood upon a totally different footing: "Undoubtedly if she had called in a third person who had no interest in the matter, and said, I have deliberately given this £500 to Mr. Smith for the benefit of himself or his children, or for his own benefit exclusively, then I should have upheld the gift, but I look in vain for such a thing in this case. I go through the whole of the evidence but, as I have stated, I am compelled to throw out of consideration the evidence of Mr. Smith himself. Unfortunately, the whole matter was kept secret and the evidence shews that she wished it to be concealed. Unfortunately, the effect of this is to destroy that which alone could support the gift, viz., evidence that the gift was really made." The