

between husband and wife, I should require him to prove all the requisites I have pointed out in those cases as necessary to give validity to the transaction."

Where a widower married the sister of his deceased wife it was held that the relation thus constituted imposed upon the widower, claiming the benefit of a settlement made on him by his wife's sister, the onus of shewing that, at the time of entering into the transaction she was fully, fairly and truly informed of its character and of her legal status (*h*).

If the rule is enforced in the case of a purely tentative arrangement, such as an engagement, it would seem to apply, a fortiori, where the parties have entered into an indissoluble union, such as marriage. The common law was so fully alive to the influence of the husband over the wife that, where she committed a felony in the presence of her husband, she was presumed to act under his coercion, and the onus was on the Crown to prove that she acted independently (*i*). This presumption was so strong, that, in Canada, it required a statutory enactment to dispose of it (*j*). There seems no good reason to dispute that motives and opportunities for the exercise of undue influence are as available between husband and wife as between guardian and ward or any of the other fiduciary relationships known to the law.

The learned judge who delivered the judgment in *Barron v. Willis*, says (*k*) that the text-writers are opposed to his view; but the opposition is not confined to them. In *Parfit v. Lawless* (*l*), Lord Penzance expressly includes the relation of husband and wife in the same category as guardian and ward, etc. His words are: "In equity persons standing in certain relations to one another—such as parent and child, *man and wife*, doctor and patient, attorney and client, confessor and penitent, guardian and ward—are subject to certain presumptions when transactions between them are brought in question; and if a gift or contract made in favour of him who holds the position of influence is impeached by him who is subject to the influence, the courts of equity cast

(*h*) (1860) *Coulson v. Allison*, 2 DeG. F. & J. 521.

(*i*) *Queen v. Torpy*, 12 Cox C. C. 45.

(*j*) Criminal Code, s. 13.

(*k*) At p. 585.

(*l*) (1872) L. R. 2 P. & D. 462, at p. 468.