

client on his solicitor upon the mere proof of the existence of the relationship, unless there be *mala fides*: *Rhodes v. Bates*, 2 Chy. 252. But according to the general current of the authorities to which we have already referred, it would seem that it is impossible to uphold, under any circumstances, a gift of any considerable amount from a client to his solicitor, made during the existence of the relationship; but *In re Holmes, Woodward v. Humpage*, 3 Giff. 345, Stuart, V.C., said: "The principle of influence vitiates the gift, but the presumption of influence may be rebutted by circumstances *short of the total dissolution of the relation of solicitor and client*. The relation is only looked at as creating the influence; and as soon as circumstances of evidence are introduced which remove all effect of the influence, whether the relation subsists or not, if the influence of that relation is removed, there is no incapacity on the part of the solicitor to become the subject of his client's bounty, and to be the recipient from his client of a gift which will be valid at law and in equity." Whether this statement of the law is correct or not, it is certain that very few, if any, cases are to be found in the reports in which, where the relationship has existed, evidence has been given so as to successfully rebut the presumption of influence which arises from the mere fact of the existence of the relationship.

Indeed, wherever a confidential relationship is established, the Court presumes its continuance, unless there is distinct evidence of its determination: *Rhodes v. Bate*, 2 Chy. 252. But it will appear as we proceed that even the severance of the relationship is not enough to validate a gift, unless it is also established that the influence resulting from the relationship theretofore existing has also ceased.

While the Court considers it "highly improper for a solicitor to derive a personal advantage in the shape of gifts from his clients, or in the shape of the liquidation of his bills untaxed and undelivered, still the Court cannot approve of clients entering into transactions with their solicitor, whereby they obtain from him present relief; and at the same time indulge the expectation that the Court will afterwards, at their instance, annul the whole transaction on the ground of the relation subsisting between them;" *per Romilly, M.R., in Gardener v. Ennor*, 35 Beav. 558, in which case, securities taken by the solicitor from the client were ordered to stand as security for what should appear to be actually due on a taxation, but costs were withheld from the client; and see *White v. Lightbourne*; 4 Br. P.C. 181; *Morgan v. Higgins*, 1 Giff. 270; *Newman v. Payne*, 2 Ves. 199 4 Br. C.C. 350.

The same principles which apply to gifts by clients to their solicitors, apply equally to gifts from clients to their counsel, and on this point the well-known case of *Broun v. Kennedy*, 33 Beav. 133, is a leading authority. That case arose out of the remarkable litigation which, some thirty years ago, attracted the attention of all England, in reference to the disputed will of Samuel Swinfen. This gentleman died in 1854, and by his will devised all his estates, worth £60,000, to his daughter-in-law, Patience Swinfen. The will was contested, and at the first trial, Sir Frederic Thesiger, who acted for the devisee, without the