

UNDUE INFLUENCE.

"The relation of husband and wife is not one of those relations to which the doctrine of *Huguenin v. Baseley* applies." (a)

In view of the fact that a different doctrine has been adopted in Ontario a short review of the state of the law in England will, perhaps, demonstrate that the judgment in *Barron v. Willis* lays down a proposition that is not borne out by the cases, and is quite at variance with the trend of judicial opinion not only in England, but in the United States and Canada.

The doctrine of *Huguenin v. Baseley*, shortly stated, is, that, in the case of peculiar, confidential, or fiduciary relations between the parties, where influence is acquired and abused or confidence is reposed and betrayed, equity will give relief by taking away any advantage which has been acquired by such undue influence. The principle is independent of any admixture of imposition, being based upon a motive of general public policy. It is asserted in *Barron v. Willis* that the doctrine does not apply to the relation of husband and wife.

As early as *Milnes v. Busk* (b) Lord Chancellor Loughborough stated that the relation between husband and wife was well compared to the case of parent and child, and he points, as an evidence of the court's solicitude for the protection of the wife, to the fact that, when it was sought to establish a deed between husband and wife upon her separate estate it was necessary to produce the wife in court, the reason being, no doubt, that the court might satisfy itself by enquiry as to whether undue influence had been exercised by the husband over the wife. And it was laid down that the rule that a feme covert is to be considered as feme sole, as to her separate property, did not extend to transactions with her husband.

The principle upon which the court acts is lucidly stated by Sir John Romilly, M. R., in *Cooke v. Lamothe* (c) (decided a year before the decision in *Nedby v. Nedby* which forms the basis for *Barron v. Willis*), as follows:

(a) Per Cozens-Hardy, J., in *Baron v. Willis*, (1899) 2 Ch. 578; reversed on a question of fact (1900) 2 Ch. 121.

(b) (1794) 2 Ves. Jun. 488-498.

(c) (1851) 15 Beav. at p. 240. See, also, *Hoghton v. Hoghton*, 15 Beav. 298.