

Moore & Co. reply to that by saying, 'Why, on the 27th of April she told us that she was urged to bring this action, and make this claim, but did not intend to do so, and was determined to abide by what she had done and to adhere to her gift.' I cannot doubt that that defence could not have been supported if she had changed her mind. There was nothing equivalent to release, but only a declaration of intention which could not have been set up as a defence to an action." This case has since been affirmed by the Court of Appeal; see *Law Times Journal*, vol. 86, p. 279.

In *Wright v. Proud*, 13 Ves. 138, Lord Eldon says: "Independent of all fraud an attorney shall not take a gift from his client while the relation subsists; though the transaction may be not only free from fraud but the most moral in its nature." And again in *Wood v. Downes*, 18 Ves. 127, he says: "It is not denied in any case, that if the relation has completely ceased, if the influence can be rationally supposed also to cease, a client may be generous to his attorney, or counsel, as to any other person, but it must go so far." And in *Montesquieu v. Sandys*, 18 Ves. 315, he also says: "The connection must, as in the case of guardian and ward, be *bona fide* dissolved before he can take anything beyond his regular fees." Lord Brougham, L.C., in *Hunter v. Atkyns*, 3 My. & K. 136, states the rule somewhat differently, but practically to the same effect, thus: "Standing in the relation in which he stands to the other party, the proof lies upon him (when in the case of a stranger it would lie on those who opposed him) to show that he has placed himself in the position of a stranger, that he has cut off as it were the connection which bound him to the party giving or contracting, and that nothing has happened, which might not have happened, had no such connection subsisted." The law in these cases is also stated by Bacon, V.C., in *Minet v. Morgan*, 6 Chy. D. 638. The head note of that case seems a little paradoxical, it is as follows: "To prevent the operation of the rule that a solicitor shall not take a gift from his client, *while the relation subsists*, there must not only be a total absence of fraud, misrepresentation, or even suspicion, *but there must be a severance of the confidential relation.*" But Bacon's, V.C., own statement of the law is quite explicit, at p. 645, he says: "The law I take it to be as plainly settled on the subject as any law existing in this country, that while the relation of solicitor and client subsists, the solicitor cannot take any gift from his client. That is the rule of law, a rule which, if it were necessary for me to justify it, I should say was requisite for the safety of society." In that case, after the gift, the donor in the presence of another solicitor who fully explained the matter to him, executed a codicil to his will confirming the transaction. Put as to this, Bacon, V.C., remarks: "Is that what the law requires? The law requires that the relation should be severed in the first place. It requires that in consequence of that severance some independent advice should be obtained by the donor," p. 648: and he set aside the gift notwithstanding the codicil. See also *Waters v. Thorn*, 22 Beav. 549.

It is somewhat singular, however, that in *Minet v. Morgan* the earlier decision of Lord St. Leonards, L.C., in *Stump v. Gaby*, 2 D.G. M. & G., 623, was not referred to either by counsel or the Court. There a conveyance by a client to his