

eration was greatly inadequate; or where the weak man had conveyed all his property, leaving himself to be fed and clothed at the pleasure of the grantee. (*f*)

(*f*) Approved in *Highberger v. Stiffler*, 21 Md. 354. Deeds or contracts made by a party upon whom undue influence has been exerted will be vacated in equity because in such cases there was no real or free consent. Undue influence consists: 1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him. 2. In taking an unfair advantage of another's weakness of mind. 3. In taking a grossly oppressive and unfair advantage of another's necessities or distress. *Proposed N. Y. Civil Code*, Art. 760.

In the case of persons standing in confidential relations, the exercise of undue influence by the beneficiary is presumed, in gifts, &c., *inter vivos* and the burden of proof is upon the grantee to establish the validity of the transaction. *Todd v. Grove*, 33 Md. 188; *Williams v. Williams*, Court of Appeals, 1885. In the case of wills, however, it is otherwise, and the natural influence of the parent or guardian over the child, or the husband over the wife, or the attorney over the client may lawfully be exerted to obtain a will or legacy, so long as the testator thoroughly understands what he is doing and is a free agent. *Davis v. Calvert*, 5 G. & J. 270, note (*c*).

Gifts procured by agents, and purchases made by them from their principals should be scrutinized with close suspicion. *Brooke v. Berry*, 2 Gill, 83. As to purchases by trustees of the trust property, see *Williams v. Marshall*, 4 G. & J. 376, note. As to settlements between guardian and ward, see *Forbes v. Forbes*, 5 Gill, 30; *Smith v. Davis*, 49 Md. 470.

If a disposition of property be fairly made by a competent person, though entirely voluntary and without consideration, it is perfectly valid, and cannot be rescinded merely because the Court may think it absurd or improvident that such a disposition should have been made. *Goodwin v. White*, 59 Md. 504. The affection of a grantor for her brother, (the grantee,) and the belief of witnesses that she would do anything he asked of her, is not of itself sufficient ground for declaring that the deed has been obtained by undue influence. *Wise v. Swartzwelder*, 54 Md. 292. As to deeds, &c., made by intoxicated persons, see *Reinicker v. Smith*, 2 H. & J. 423; *Johns v. Fritchey*, 39 Md. 258; *Hewitt's Appeal*, 55 Md. 514. Feebleness of mind alone, in the absence of fraud or deception practised on the party in consequence of such infirmity, does not invalidate a contract. *Cain v. Warford*, 33 Md. 23. Cf. *Watkins v. Stockett*, 6 H. & J. 435. As to what is competent evidence of capacity or incapacity, see *Townshend v. Townshend*, 7 Gill, 10, notes. As to evidence of the declarations of a testator under issues of fraud and undue influence, see *Griffith v. Diffenderffer*, 50 Md. 466; as to such evidence in case of a deed, see *Kerby v. Kerby*, 57 Md. 345.

In the following cases the deeds, &c. have been vacated for undue influence, &c. *Brogden v. Walker*, 2 H. & J. 285; *Long v. Long*, 9 Md. 348; *Bank v. Copeland*, 18 Md. 305; *Highberger v. Stiffler*, 21 Md. 338; *Todd v. Grove*, 33 Md. 188; *Snyder v. Jones*, 38 Md. 542; *Whitridge v. Barry*, 42 Md. 140; *Clark v. Stansbury*, 49 Md. 306; *Turner v. Rusk*, 53 Md. 65; *Cherbonnier v. Evitts*, 56 Md. 276, (an instructive case;); *Merryman v. Euler*, 59 Md. 588; *Williams v. Williams*, Court of Appeals, 1885.

In the following cases the Court refused to vacate the deeds, &c. because the evidence of undue influence was insufficient: *Jennings v. Pendergast*, 10 Md. 346; *Wise v. Swartzwelder*, 54 Md. 292; *Eakle v. Reynolds*, 54 Md. 305;