1967 *Present :* H. N. G. Fernando, C.J., and Sirimane, J.

M. V. G. FERNANDO, Appellant, *and* MEL MENDIS LTD., Respondent

S. C. 400/63—D. C. Hatton, 6635

Contract—Presumption of undue influence—Applicability as between employer and employee.

The presumption of undue influence does not apply in the case of a strictly contractual relationship of employer and employee, which is not of a fiduciary character. Accordingly, where an employee, having freely admitted his liability to pay a sum of money to his employer, enters into a contract voluntarily to pay that amount, no presumption of undue influence attaches to such contract, even though the motive for the contract on the part of the employee may be to avoid a criminal prosecution.

APPEAL from a judgment of the District Court, Hatton.

H. W. Jayewardene, Q.C., with *T. S. P. Senanayake* and *S. S. Basnayake*, for the defendant-appellant.

C. Ranganathan, Q.C., with *E. Gooneratne*, for the plaintiff-respondent.

Cur. adv. vult.

June 8, 1967. H. N. G. FERNANDO, C.J.—

Counsel for the appellant in this case did not request us to review the findings of fact which the learned trial Judge reached—that the defendant had voluntarily admitted his liability to pay to the plaintiff company the amount of about Rs. 26,000 representing the value of kerosene oil found short on a verification of stocks, and had agreed by his letter P1 to pay that amount, and that the defendant executed the conveyance P2 and the promissory note P3 voluntarily, and not in consequence of undue influence or in consideration of any agreement by the Managing Director of the company to desist from instituting criminal proceedings against the defendant.

The argument pressed in appeal was one of law : that because of the relationship of employer and employee subsisting between the company and the defendant, there is a presumption that undue influence was exercised, and that the presumption is either not rebuttable, or else was not rebutted by the evidence in this case. We do not agree that such a presumption is applicable merely because of the existence of the relationship of employer and employee—Chitty on Contracts (21st Ed. 573) and Wille's Principles of South African Law (p. 322—5th Ed.) refer to the presumption as being applicable in the case of an

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attorney and his client, a doctor and patient, a parent and child, a guardian and ward, a spiritual adviser and his disciple. In all these cases, the one party occupies a position of a fiduciary nature to the other, and the other party reposes a trust or confidence in him. The presumption arises because of this special relationship, and does not attach in the case of the strictly contractual relationship of employer and employee, which is not of a fiduciary character. Even the cases in which the presumption has been held to apply are easily distinguishable from the present case. Here there was an admitted antecedent liability to pay to the plaintiff company a specific sum of money. The liability was discharged by the conveyance P2 and the promissory note P3. Thus the facts establish that the *causa* for the conveyance was the discharge of the defendant's liability (in part) to pay the sum of money to the company. The case then is no different from one in which an employee, having freely admitted his liability to pay a sum of money to his employer, makes a cash payment to discharge the liability. Even though the defendant may have entertained a hope that he might avoid a criminal prosecution, that was only a motive for his executing the conveyance ; the *causa* or consideration was the discharge of the admitted liability.

For these reasons, I would affirm the judgment and decree, and dismiss the appeal with costs.

SIRIMANE, J.—I agree.

Appeal dismissed.