

been for such negligence. These findings preclude a recovery in this case.

By intrusting his team to the servant for the purpose of driving it home, the plaintiff put it in the servant's power to manage the team negligently, and must be deemed to have assumed the risk of the servant's negligence in the execution of the trust so committed to him. And, moreover, as in contemplation of the law he who does a thing by the agency of another person does it himself, the case further stands, in respect of the servant's negligent act in leaving the team unhitched and unattended in the public highway, precisely as it would if that act had been done by the plaintiff himself. This being so, it is immaterial that the conduct of the defendant may have contributed to the injury. A party cannot be heard to complain because others have failed to exercise a higher degree of care than he himself has exercised. Between two wrong-doers, the law will leave the consequences where they have chanced to fall.

Divested of extraneous matter, the case is this: The plaintiff intrusted his property to a servant, who failed to discharge his duty in protecting it, whereby the plaintiff has sustained an injury. The servant would seem to be liable to respond in damages, but if not, the plaintiff is plainly remediless. Exceptions sustained.

*Judgment for the defendant on the report.*

CARPENTER, J., did not sit: the others concurred.

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HARDY v. NYE, *Ap't.*

A declaration upon Gen. Laws, c. 144, s. 10, to recover twice the value of stray beasts found and taken up by the defendant, whereof no notice has been given, must allege that the owner was unknown.

Amendments are not allowed when the facts show that justice does not require it.

DEBT, upon Gen. Laws, c. 144, s. 10, to recover twice the value of two sheep and two lambs of the plaintiff, alleged to have been found by the defendant and taken into his possession, whereof he neglected to give notice to the town-clerk of Roxbury, as required by law. Facts found by a referee, upon an appeal from the judgment of a justice of the peace. The declaration contained no allegation that the owner of the animals was unknown; and the defendant, at the hearing before the referee, filed a general demurrer.

*Leonard Wellington*, for the plaintiff.

*Don H. Woodward*, for the defendant.

BLODGETT, J. Chapter 144 of the Gen. Laws, relative to strays and lost goods, does not require the taker-up or finder to give notice in the manner there specified, if the owner is known (*Jones v. Smyth*, 18 N. H. 119); and as the plaintiff's declaration does not allege that the owner of the animals in question was not known to the defendant, it consequently states no cause of action entitling the plaintiff to the recovery of the statutory penalty for the neglect to give such notice. Nor will an amendment of the declaration in this respect be permitted, because amendments are allowed solely for the prevention of injustice; and upon the facts reported in this case, justice does not require its allowance. *Redding v. Dodge*, 59 N. H. 98; *Stebbins v. Ins. Co.*, 59 N. H. 143. Exceptions sustained.

*Judgment for the defendant.*

ALLEN, J., did not sit: the others concurred.

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SULLIVAN.

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WHIPPLE *v.* BARTON.

To sustain a gift from a client to his attorney, the burden is upon the latter to show not only that it is voluntary, but also that it is made with full knowledge of all material facts known to him, and without undue influence.

ASSUMPSIT, to recover the excess over ten dollars paid by the plaintiff out of his pension money to the defendant for his services as an attorney in procuring a pension. Facts found by the court. Upon the question whether the payment was exacted by the defendant, or was a voluntary gift, there was no preponderance of evidence in favor of the defendant.

*G. R. Brown*, for the plaintiff.

*L. W. Barton*, for the defendant.

CARPENTER, J. It is unnecessary to consider the effect of U. S. Rev. St., s. 5485. To establish a gift from a client to his attorney, in whatever form the question may arise, it is incumbent upon the latter to show affirmatively not only that it is voluntary, but also that it is made with full knowledge on the part of the client