

*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

of all material facts known to the attorney, and that it is not brought about by any undue influence, either actively exerted or arising from the relation between them. The presumption is against its validity. *Nesbit v. Lockman*, 34 N. Y. 167; *Whitehead v. Kennedy*, 69 N. Y. 462; *Cowee v. Cornell*, 75 N. Y. 99; *St. Leger's Appeal*, 34 Conn. 435; *Newman v. Payne*, 2 Ves., Jr., 200; *Gibson v. Jeyes*, 6 Ves., Jr., 278; *Wood v. Downes*, 18 Ves., Jr., 120; *Savery v. King*, 5 H. L. Ca. 627; 1 Sto. Eq. Jur., ss. 310-312. No preponderance of evidence being found in favor of the defendant, the plaintiff prevails.

*Judgment for the plaintiff.*

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

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[Rockingham, December, 1883.]

HANLEY, *Ap't*, v. RUSSELL, *Guard'n*.

CLARK, J. In the appointment of a guardian of a minor, no notice is required. G. L., c. 192, s. 2. It is not necessary to consider whether, as suggested in the arguments, the controversy respecting the appointment of the defendant as guardian arises from a diversity of religious creeds, or whether theology is to be regarded in the appointment of a guardian. There are in this case no facts raising any question of religious education; nor are the alleged reasons of appeal sustained by the facts proved. The finding that there was occasion for the appointment of a guardian, and that the defendant is a suitable person for the trust, does not show that the decree is erroneous, or that the appellant is legally aggrieved by it. *Waldron v. Woodman*, 58 N. H. 15; *Lunt v. Auburns*, 39 Me. 392. It does not appear that there is any person more suitable than the defendant.

*Appeal dismissed.*

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

*J. S. H. Frink*, for the plaintiff.

*C. Page*, for the defendant.

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[Rockingham, June, 1884.]

WHITTEMORE, *Adm'r*, & a., v. MERRILL.

BILL IN EQUITY, for the cancellation of a deed of a farm from N. A. D., now deceased, widow of G. A. D., deceased. A part of