

Mass. 189, 191; Page, Wills (3d ed.), s. 165; Rood, Wills, s. 165; Wig. Ev. (3d ed.), s. 2421; Warren, "Fraud, Undue Influence, and Mistake in Wills," 41 Harv. Law Rev. 309, 330. See also, *Jones v. Bennett*, 78 N. H. 224; *White v. Weed*, 87 N. H. 153, 155, 156; *Morrison v. Johnson*, 92 N. H. 219, 221.

There is here no evidence that Mr. Leonard did not act in absolute good faith.

Nor is the will invalid by reason of the fact that Mr. Leonard was one of the subscribing witnesses. The executor named in a will is a competent attesting witness. *Stewart v. Harriman*, 56 N. H. 25; *Hodgman v. Kittredge*, 67 N. H. 254, 255; *Cochran v. Brown*, 76 N. H. 9. And the same is true of one who is named therein as a trustee. "A trustee acquires no beneficial interest and if any commissions are to be paid to him, they are given as compensation for services and are fixed by law or by the order of the court. For these reasons, it is held by the weight of authority, that a trustee is a competent attesting witness to a will in which a devise is made to him in trust for others." Page, Wills (3 ed.), s. 327.

*Exception overruled.*

All concurred.

Hillsborough, }  
Feb. 1, 1944. } No. 3460.

ARMAND CHOUINARD v. UNION-LEADER PUBLISHING Co.

*William G. McCarthy* (by brief and orally), for the plaintiff.

*McLane, Davis & Carleton* and *Robert P. Bingham* (Mr. Bingham orally), for the defendant.

BURQUE, J. The evidence fails utterly to prove one of two indispensable requisites to maintain an action of assumpsit, to wit: that the defendant received any of the money plaintiff paid to Zyla, or that the money was paid to Zyla as the defendant's agent, duly authorized to hire the plaintiff for the company and to receive for the company any of the profits derived from the conduct of the newsstand. Without such proof, the action cannot be maintained. 4 Am. Jur. s. 20 p. 510; *Alexander v. Coyne*, 143 Ga. 696; *Agawam National Bank v. South Hadley*, 128 Mass. 503, 507.

*Judgment for defendant.*

All concurred.