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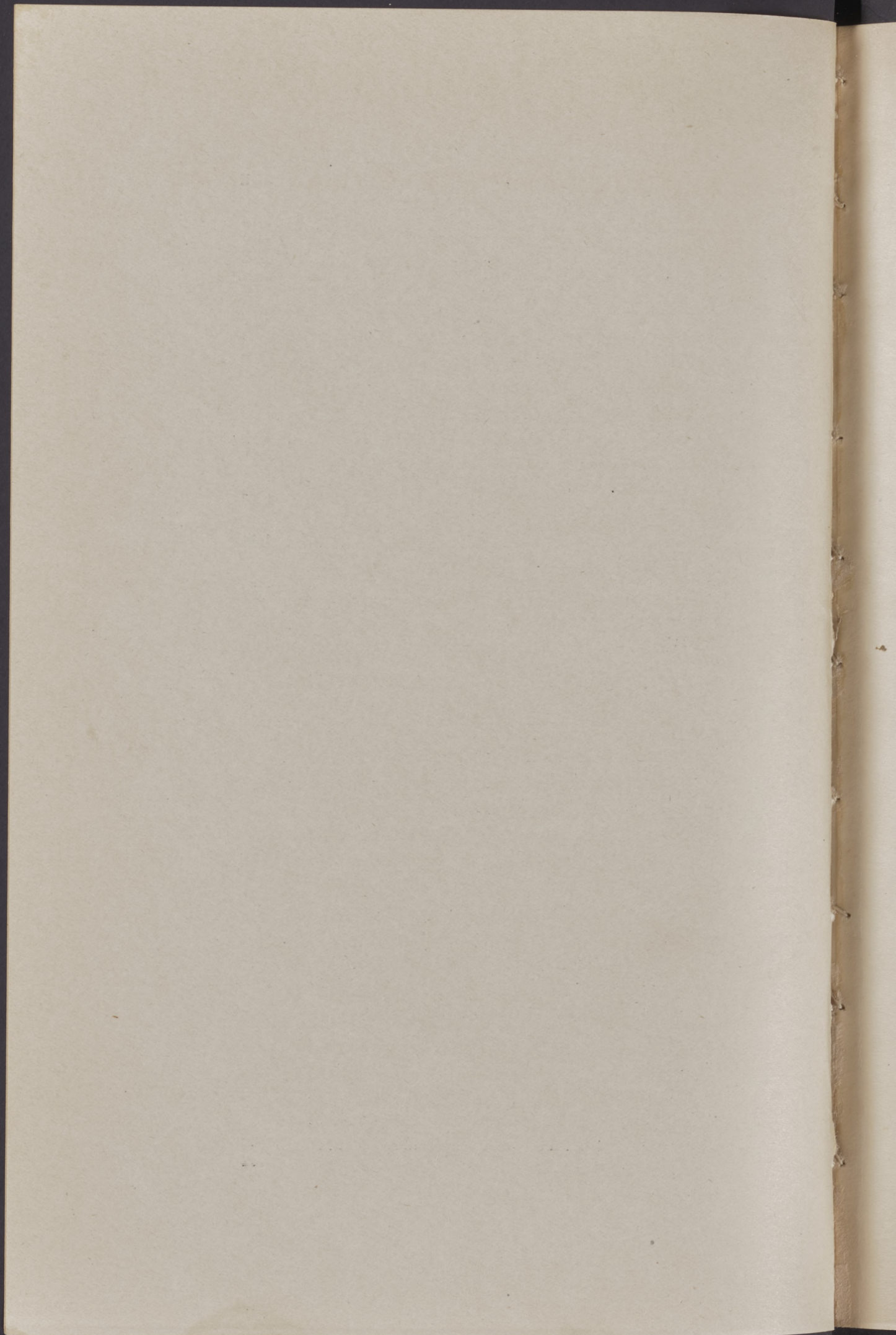
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New Jersey Supreme Court

SYLVESTER MESSENGER,
Plaintiff-Appellee,

vs.

THE PATERSON SAVINGS INSTITU-
TION, a Corporation, Adminis-
trator of the Estate of Effie J.
Crouch, deceased,
Defendant-Appellant.

Action at Law.

Notice of
Appeal.

To MESSRS. WARD & MCGINNIS, Attorneys for
Plaintiff-Appellee:

Sirs:

Take notice that the Appellant, the Paterson Savings Institution, appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey, from the whole of the judgment entered in this cause on the following grounds:

1. The Supreme Court affirmed the judgment of the Passaic Circuit Court although there was error in so doing.

2. Because the Supreme Court affirmed the refusal of the Passaic Circuit Court to grant a non-suit at the close of the plaintiff's case below, although it was error so to do.

3. Because the Supreme Court affirmed the refusal of the Passaic Circuit Court to direct a verdict for defendant, although it was error so to do.

4. Because the Supreme Court affirmed the judgment of the Passaic Circuit Court although there was no evidence to support said judgment.

5. Because the Passaic Circuit Court admitted evidence over defendant's objection which prejudiced defendant's case. Book page 33. Plaintiff testified as follows: "Q. What did you do

it for? A. She made a promise to me that I was to work for her and she would settle." This Mrs. Crouch, if alive, could have denied and it was evidence of an express contract.

6. Book page 49. "Q. When you gave up this work for \$2.00 a day, did you or not expect to be paid that continually? A. I did." This question assumes that there was a contract for \$2.00 a day which this witness is forbidden to tell.

7. "Q. And was it because of anything that Mrs. Crouch said to you at that time that you gave up your work? A. Yes." This is testimony showing a contract and forbidden.

JOHN H. REYNOLDS,

Attorney of Defendant-Appellant.

Hassair Circuit Court

SYLVESTER MESSENGER,
Plaintiff,

10

vs.

THE PATERSON SAVINGS INSTITU-
TION, a Corporation, Adminis-
trator of the Estate of Effie J.
Crouch, deceased.

Action at Law.
Notice of
Appeal.

To Messrs. WARD & MCGINNIS, Attorneys of Plain- 20
tiff:

Take notice that the Defendant appeals to the
New Jersey Supreme Court on the whole of the
judgment entered in this cause.

Dated, Dec. Seventh, 1916.

JOHN H. REYNOLDS,
Attorney of Defendant. 30

Complaint.

IN THE
PASSAIC COUNTY CIRCUIT COURT.

10	<p style="text-align: center;">SYLVESTER MESSENGER, Plaintiff,</p>	}	Judgment Record.
	<p style="text-align: center;">vs.</p> <p style="text-align: center;">THE PATERSON SAVINGS INSTITU- TION, Administrator of the Es- tate of Effie J. Crouch, de- ceased, Defendant.</p>		

20 The Paterson Savings Institution, Administrator of the estate of Effie J. Crouch, deceased, the defendant in this cause, was summoned to answer unto Sylvester Messenger, the plaintiff therein, in an action at law, upon the following complaint:

The plaintiff, by Ward & McGinnis, his attorneys, complains of the defendant as follows:

30 1. That the plaintiff, Sylvester Messenger, is a resident of the City of Paterson, County of Passaic and State of New Jersey.

40 2. That Effie J. Crouch on or about the 31st of October, 1915, died intestate, and thereafter the defendant, The Paterson Savings Institution, of the City of Paterson, on the sixteenth day of November, 1915, was by the Surrogate of the County of Passaic, appointed administrator of the goods and chattels, rights and credits, moneys and effects of the said Effie J. Crouch, and after such appointment the said Paterson Savings Institution duly qualified

Judgment Record.

and took upon themselves the administration of said estate.

3. In her lifetime and on or about the first of January, 1896, the said Effie J. Crouch entered into a contract with the plaintiff, whereby the plaintiff agreed to perform work for the said Effie J. Crouch, and that for said performance of said work, 10
afore-said mentioned, the said Effie J. Crouch was to pay to the plaintiff the sum of two dollars per day, and the said Effie J. Crouch further agreed to recompense the said plaintiff in full for his services performed for the said Effie J. Crouch in her lifetime.

4. Plaintiff avers that in accordance with said contract, he thereupon performed the work as afore-said for said Effie J. Crouch from the first of January, 1896, to December 31, 1902, and from the first day of May, 1903, to the first day of May, 1911, in all seven hundred and eighty weeks, at \$14.00 each week, amounting to the sum of \$10,950.00. That the sum of \$23.60 was paid on account of said sum. 20

Plaintiff avers that he will claim judgment for the sum of \$10,926.40, with interest from the 31st of October, 1915, the date of the death of the said Effie J. Crouch.

SECOND COUNT. 30

1. All the statements contained in the first and second paragraphs of the first count are made part of this count.

2. In her lifetime and on or about the first of January, 1896, the said Effie J. Crouch entered into a contract with the plaintiff, whereby the plaintiff agreed to perform certain services for the said Effie J. Crouch whenever she should request same. The 40

Judgment Record.

said Effie J. Crouch agreeing to pay the said plaintiff for the said services as much as the same would be reasonably worth, said payment to be made at the time of her decease.

10 3. Plaintiff avers that in accordance with said contract, he thereupon performed certain services from the first of January, 1896, to December 31, 1902, and from the first of May, 1903, to May 1, 1911, in all seven hundred and eighty weeks; which the plaintiff avers was reasonably worth the sum of \$14 each week, amounting in all to the sum of \$10,950.00. That on account of said sum was paid the sum of \$23.60, leaving a balance of \$10,926.40.

20 Plaintiff avers that he will claim judgment for the amount of \$10,926.40, with interest from the 31st of October, 1915, the date of the death of the said Effie J. Crouch.

WARD & MCGINNIS,
Attorneys of Plaintiff.

The defendant, The Paterson Savings Institution, Administrator of the Estate of Effie J. Crouch, deceased, answered as follows:

30 The defendant, The Paterson Savings Institution, a Corporation located in the City of Paterson, in the County of Passaic, and State of New Jersey, appointed by the Surrogate of Passaic County as Administrator of the Estate of Effie J. Crouch, deceased, by John H. Reynolds, its Attorney, says:

DEFENSE TO FIRST COUNT:

40 FIRST: As to the statements in the first paragraph of the plaintiff's complaint, the defendant has no knowledge or information thereof sufficient to form a belief.

Judgment Record.

SECOND: The defendant admits the second paragraph of this Count.

THIRD: Defendant denies the third paragraph of this count.

FOURTH: The defendant denies the fourth paragraph of this Count. 10

DEFENSE TO SECOND COUNT:

Defendant denies the second and third paragraphs of this count.

JOHN H. REYNOLDS,
Attorney of Defendant.

This action was tried before Judge George S. Silzer, with a jury, in the presence of the counsel of the respective parties, at the Passaic County Circuit Court, on December 4th and 5th, A. D. 1916. 20

The cause having been heard and submitted to the jury, they returned their verdict as follows: Eighty-one Hundred and Ninety Dollars (\$8,190.00), in favor of the plaintiff.

WHEREUPON, it is adjudged that the plaintiff, Sylvester Messenger, recover of the defendant, The Paterson Savings Institution, Administrator of the Estate of Effie J. Crouch, deceased, the sum of Eighty-one Hundred and Ninety Dollars (\$8,190.00), and his costs which are taxed at the sum of Sixty-four Dollars and Twenty-six Cents (\$64.26), making in the whole the sum of Eighty-two Hundred and Fifty-four Dollars and Twenty-six Cents (\$8,254.26). 30

Judgment entered and signed December 7th, A. D. 1916, at 1.30 P. M.

GEO. S. SILZER, 40
Judge.

Judgment Record.

STATE OF NEW JERSEY, }
 COUNTY OF PASSAIC, } SS.:

10 I, JOHN J. SLATER, Clerk of said County, and Clerk of the County Courts thereof, DO HEREBY CERTIFY, That the foregoing is a transcript of the Judgment Record, in re: Sylvester Messenger, Plaintiff, vs. The Paterson Savings Institution, Administrator of the Estate of Effie J. Crouch, deceased, Defendant, as the same is taken from and compared with the original entry thereof in Book "Y" of Circuit Court Judgments for said County, on Pages One Hundred and Ninety-four, &c., now remaining of record in my Office.

20 (L. S.) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Courts and County, at Paterson, this Sixteenth day of December, A. D. Nineteen Hundred and Sixteen.

JNO. J. SLATER,
 Clerk.

30

40

Testimony.

PASSAIC COUNTY CIRCUIT COURT.

SYLVESTER MESSENGER, Plaintiff,	}	Before:	10
PATERSON SAVINGS INSTITUTION, Administrator, etc., of the es- tate of Effie J. Crouch, de- ceased, Defendant.		Hon. GEORGE S. SILZER, J., and a jury.	
vs.			

Paterson, N. J., December 4, 1916.

APPEARANCES:

Messrs. WARD & MCGINNIS, for the Plaintiff.
 J. H. REYNOLDS, Esq.,
 Hon. FRANCIS SCOTT, for the Defendant.

A jury being impaneled, and found satis-
 factory, they were sworn.

Mr. Ward opens for the plaintiff.

Mr. Reynolds opens for the defendant. 30

SYLVESTER MESSENGER, the plaintiff, sworn as a
 witness on his own behalf, testifies as follows:

Direct examination by Mr. Ward.

Q. You are the plaintiff in this suit? A. I am.

Q. How old are you? A. I am forty-eight years
 old.

40

Sylvester Messenger—Plaintiff—Direct.

Q. Whereabouts do you live? A. No. 26 Sherman Avenue.

Q. How long have you lived in Passaic County? A. All my life.

Q. When did you know Effie J. Crouch? A. In 1877.

10 Q. How old were you at that time? A. I was nearly nine years old.

Q. Your parents, or one of them, your last parent died at that time? A. No, sir, he died in 1884.

Q. Your mother, when did she die? A. My mother died in 1877.

Q. Is that the time when you became acquainted with the Crouch family? A. Just one week after my mother's death.

20 Q. Did you reside with them? A. I was taken there and lived there.

Q. You lived there until you were how old? A. Until 1911, thirty-four years old.

Q. And, at that time, what happened to you? A. I got married and left.

Q. You left your homestead at that time? A. I did.

30 Q. During your early part of your life, up to the time that you were twenty-one years of age, did you perform any services for the Crouch family? A. I certainly did.

Q. What was the manner of your work? A. Helping around in the house, helping Mrs. Crouch at her housework, helping Mr. Crouch on the farm.

Q. And that continued for how long? A. Until I was about sixteen years old.

Q. Then what did you do? A. I then went to school for one year.

40 Q. So that, from the time you entered this family at the age of nine, until you were sixteen years of age, you did not attend school? A. I did not.

Sylvester Messenger—Plaintiff—Direct.

Q. How did you occupy or use the day? A. In which way do you mean?

Q. What did you do during the day during those years? A. I went at hoeing with Mr. Crouch, picked berries, milked cows, during the night and morning and done other chores.

Q. Then you say when you were sixteen years of age you attended school; where did you go to school? A. Paterson, Lattimer's. 10

Q. Whose money paid for that? A. Money that I had earned picking berries, selling water cress, selling buttermilk, money that other people had given me from time to time and it was taken away from me and saved up for the purpose.

Q. Taken from you and saved for that purpose by whom? A. By Mrs. Crouch.

Q. That paid for your year at Lattimer's, did it? A. Yes, sir. 20

Q. How long were you at Lattimer's? A. One year.

Q. When you got out of Lattimer's what did you do, when you were seventeen, what did you do after that? A. I went to work. I got a job for about four months, and then I went to work again for Mrs. Crouch at her request.

Mr. Scott: I ask that the latter part of the answer "at her request" be stricken out. 30

Motion granted.

Mr. Ward: I might mention to the jury that so far as this witness is concerned, by the law his mouth is closed as to any agreement that was made between him and Mrs. Crouch. That is the law and I neglected to mention that in my opening, so that he cannot testify as to any contract or agreement that was made with Mrs. Crouch. 40

Mr. Scott: Any transaction with or conversation by him with her.

Sylvester Messenger—Plaintiff—Direct.

Q. After the age of seventeen you say you continued to work there? A. Yes, sir.

Q. When did you leave the work of the farm? A. At the age of twenty-one.

Q. You had then been living in the Crouch family about twelve years? A. Yes, sir.

10 Q. And, during that time, as you say, you had been one year to school? A. Yes, sir.

Q. After the age of twenty-one, where did you go to work then? A. To New York.

Q. Where did you live? A. I lived with Mrs. Crouch, and paid her board.

Q. Where did you work? A. For the Ashley and Bailey concern.

Q. How long did you work there? A. Four years.

20 Q. Then where did you work? A. Then I went to work on the farm for a little while.

Q. And then where did you go? A. I went back to New York and worked there for a concern that failed.

Q. And then what did you do? A. I picked up the business and went on for myself.

Q. The business of that concern that failed? A. Yes, sir, I picked their business up.

30 Q. What was the nature of that business? A. Foundry supplies and metal supplies.

Q. How long were you in that business? A. About a year and a half.

Q. During that year and a half that you were in that business, how much did you make a week?

Mr. Scott: Objected to.

The Court: How do you think that is relevant?

40 Mr. Ward: The defense, as the Court will recall, is that this man went back there and worked.

Sylvester Messenger—Plaintiff—Direct.

Mr. Scott: The defense?

Mr. Ward: Yes, indeed, worked because they requested him to, and agreed, or, at least they say there was no agreement made for any pay. Now, I want to show that this man had a good business at the time, that he gave it up, that he went back on this farm, as throwing light upon this contract, which we will afterwards prove. 10

The Court: The question is how much he made?

Mr. Ward: At that time, yes.

Mr. Scott: At this business?

The Court: I will let you ask whether it was profitable, but I will overrule this question. 20

Q. Was the business that you were in at that time profitable or not?

Mr. Scott: Objected to.

Objection overruled. Defendant excepts.

A. It was.

Q. You stated you continued to board during that time, during that period of time, at the Crouch home? A. While I was in business?

Q. Yes? A. Yes, sir. 30

Q. Did you, or not, pay board there? A. I did.

Q. How much board did you pay? A. \$5 a week.

Q. Do you recall when Mr. Crouch was taken ill?

A. I do.

Q. When was that? A. That was at the early part of January, 1896.

Q. Were you in business at that time? A. I was.

Q. As the result of something that happened between you and Mrs. Crouch did you or not discontinue your business? A. After I had been work- 40

Sylvester Messenger—Plaintiff—Direct.

ing for her for a period of years I discontinued it, at her request.

Mr. Scott: I object to that "at her request" and ask that it be stricken out.

Motion granted.

- 10 Q. You say Mr. Crouch was taken ill? A. I do.
 Q. At the time he was taken ill did you or not temporarily discontinue your business? A. I did.
 Q. How long were you away from your business at that time? A. About three weeks.
 Q. Did you still have the business itself during that period of time? A. It was running to pieces.
 Q. Eh? A. It was running to pieces.
 Q. Did you fill any orders or anything of that sort? A. No, sir, because I could not go and attend to it.
- 20 Q. What was the nature of Mr. Crouch's illness?
 A. Paralysis.
 Q. And to what extent did that affect him? A. Both arms were paralyzed and part of the body.
 Q. Did he or not work? A. He could not.
 Q. Did Mrs. Crouch at that time have any business of any sort? A. She was a music teacher.
 Q. How long had she been a music teacher, do you you know? A. Since I have known her, since
- 30 1877.
 Q. Did she have many pupils or not? A. Yes, she had quite a class.
 Q. After those three weeks, two or three weeks that you have mentioned, as the result of something that happened between you and Mrs. Crouch did you or not give up this business in New York? A. I did give it up.
 Q. And, when you gave it up what did you do there at the Crouch place? A. I attended to the
- 40 whole farm.

Sylvester Messenger—Plaintiff—Direct.

Q. Of what did the farm consist? A. Of ten acres.

Q. Just describe, if you will, the nature of the house and the grounds? A. It stands on a little hillside, sloping towards a little valley on the upper side, on the upper half of it, was a vineyard, about 400 grape vines, and there was quite an orchard back of the house, near the City Farm. 10

Q. Near the City Farm? A. Right adjoining the City Farm.

Q. Was this place of Crouch's within the City of Paterson or outside? A. In the City of Paterson.

Q. How far was it from the poor house or City Farm, as it is called? A. Right inside of it, right adjoining.

Q. With reference to the rest of the ground, what was the nature or character of that aside from the vineyard and orchard that you have mentioned? 20
A. All tillable ground.

Q. The house itself, how large a house was that?
A. It was a large six-room house.

Q. When you gave up this business in New York and started to work again on the farm did Mrs. Crouch, or not, continue to give music lessons? A. She did.

Q. Where did she give those music lessons? A. At different places. 30

Q. At her own home or at the homes of her pupils? A. Very seldom was it at her own home, she went out mostly.

Q. Who else was there in the family besides Mrs. Crouch and Mr. Crouch? A. There was a boy there.

Q. Who was he? A. David Milsop.

Q. How long had he been there? A. Four years.

Q. How long did he stay there? A. He stayed there about four years. 40

Q. Altogether? A. Yes, sir.

Sylvester Messenger—Plaintiff—Direct.

Q. Was he there at the time Mr. Crouch was taken ill? A. Yes, sir.

Q. How long after that did he continue to stay there? A. About five years.

10 Q. Then he must have been there more than four years, altogether? A. No. I am mistaken about that. Mr. Crouch was taken ill in 1896 and the boy died in 1901.

Q. How long was he there, how old was he then? A. About nineteen years old.

20 Q. After you gave up your business in New York will you tell us what you did around that place as nearly as you recollect, the different seasons of the year? A. In the spring time, along the 1st of February there began the pruning of the grape vines, and the pruning of the berry bushes, and I began plowing and planting and cultivating and harrowing and the farmwork.

Mr. Scott: In February?

Mr. Ward: No, he said he began pruning in February.

Q. When would you begin the plowing? A. Along in April.

30 Q. What else did you do there? A. I done the chores, and the work on the farm, milked the cows, churned and so on.

Q. How many cows did she have? A. She had two.

Q. Did she have any horses? A. Two at one time, finally one died.

Q. Who took care of the horses? A. I did.

Q. Who took care of the cows? A. I did.

Q. Did you have any other animals, any fowl around there? A. She had chickens.

Q. Who took care of the chickens? A. I did.

40 Q. Who helped you? A. The boy was sup-

Sylvester Messenger—Plaintiff—Direct.

posed to help me, but he was not there half of the time.

Q. What about the housework, who did that?

A. I helped Mrs. Crouch.

Q. Who took care of Mr. Crouch when Mrs. Crouch was away? A. I attended to him whenever it was necessary.

10

Q. You lived, of course, or boarded there? A. Yes, sir.

Q. Did you pay for it or not? A. No, sir.

Q. What about your clothes, where did you get them? A. Fortunately I had a good supply when I gave up my business to help Mrs. Crouch, and I had to make them do for a long time.

Q. From 1896 down to the time when you were married, what clothes, if any, did you get from Mrs. Crouch? A. Mostly clothing that had been given to her by other people.

20

Q. Did you get any new suits during all that time or any new clothes? A. No, sir, not from her.

Q. Did you do whatever you were requested by Mrs. Crouch to do there? A. I did.

Mr. Scott: I object to that and ask that it be stricken out.

Motion granted.

Q. Did you do everything that was necessary around the place? A. Yes, sir.

30

Q. During the period of time between 1896 and 1911 when you were married, that is a period of fifteen years, is it not? A. Yes, sir.

Q. Did you constantly and continually work there or not? A. With one exception I did.

Q. How long was that exception? A. From the 1st of January, 1903, to the 1st of May, 1903.

Q. During that period of time, what did you do? A. I worked in New York.

40

Sylvester Messenger—Plaintiff—Direct.

Q. Was there anything to be done around the farm during those few months? A. Nothing of any great account.

Q. What about the vines, who pruned them during that time? A. Well, I helped whatever I could when I came, but not steadily.

10 Q. Did you come back in May to the farm? A. She asked me to come back.

Mr. Scott: I ask that that answer be stricken out.

Motion granted.

Q. Was there work to be done? A. Yes, sir.

Q. When you went back there did you do the work or not? A. Yes, sir.

20 Q. What character of work did you do, the work around? A. Yes, sir.

Q. What character of work was it you did then, the same or not? A. The same as before.

Q. In the year 1910, was there anyone living or boarding at Mrs. Crouch's home, beside yourself, anyone boarding there? A. She had extra help during the haying season. No one boarded there.

Q. You did have extra help during the haying season? A. Yes, sir.

30 Q. Who was the extra help that you had there from time to time? A. A man by the name of Conklin, and a man by the name of Christie. He is dead.

Q. When did you first meet your wife? A. Well, I guess before she went West it was.

Q. When was it, what year? A. Around 1897 or 1898, around that time, I could not say which.

40 Q. Was there any time before you were married when your wife lived on the Crouch farm or at the Crouch home, or boarded there? A. Yes, sir.

Sylvester Messenger—Plaintiff—Direct.

Q. When was that? A. After she came from the West.

Q. What year was that about? A. Around 1909.

Q. When did you become engaged to marry Mrs. Messenger?

Mr. Scott: This is interesting at least and it might be entertaining, and I would like to hear this, but not now. 10

Mr. Ward: It will only necessitate putting him back on the stand.

The Court: It does not seem to be relevant to anything at this time.

Mr. Ward: Mrs. Messenger will have to fix it, but I am trying to fix it by this witness at this time as corroboration of her. I don't want to put him back again. 20

The Court: You can put him back if it becomes necessary.

Q. When were you married? A. In May, 1911.

Q. At that time did you leave the Crouch place?
A. I did.

Q. Where have you been living since then? A. At two or three different places I moved to, one was at 106 Sheridan Avenue.

Q. What has been your business or employment since then? A. I have had various employments. 30

Q. Where, and as what?

Mr. Scott: Is this material?

Mr. Ward: I think we ought to be given a little leeway.

The Court: I don't see that it throws any light on the issue.

Q. During all of the time from 1896 up to 1911 when you left that place did you ever receive any 40

Sylvester Messenger—Plaintiff—Direct.

pay from Mrs. Crouch? A. Just a few cents now and again for a pair of stockings or a pair of shoes.

Q. Did you keep an account of that or not? A. I did.

Q. Have you allowed her that in the papers that you served in this case? A. I have.

10 Q. How much does it amount to now, do you know? A. \$23.60, I think.

Q. This work that you did, were you familiar with that character of work? A. Yes, sir.

Q. Have you had any experience in employing other people to do this same character of work while you were working at Mrs. Crouch's? A. I was the head boss there.

20 Q. These men who were employed there, can you tell us how much they were paid? A. \$2 a day, I know, because she made the bargain in front of me.

Mr. Scott: I object to that.

Q. You know they were paid \$2 a day?

Mr. Scott: If that is his reason and that is his only reason, I move to strike out the evidence.

The Court: Yes, I am inclined to think that ought to be stricken out.

30 Mr. Ward: You mean the amount or the reason?

The Court: That is a transaction which took place in her presence and all of the answer should be stricken out.

Mr. Scott: He said he heard her make the bargain and that is all he knows, and if it is all he knows it ought to be stricken out.

40 Q. The other men who were employed there, do you know how much they got? A. Well, I only

Sylvester Messenger—Plaintiff—Direct.

spoke to one that I know of, the others had their transaction with Mrs. Crouch when I was busy.

Q. This one man, do you know how much he got?

A. \$2 a day and his board.

Mr. Scott: I move to strike that out because the experience on which that opinion is based was the bargain that he heard made with Mrs. Crouch and that is the only basis for the statement. He has already stated that and that is the reason I move to strike it out. 10

The Court: isn't that so?

Mr. Ward: I don't think so. I don't think the transaction is one within the statute, a transaction that took place with another person and her I don't think comes within the statute, so long as it fixes the value of the services of that character it is admissible. 20

The Court: I will strike it out.

Mr. Ward: That is not a transaction with the deceased and the witness.

The Court: It is in the presence and with the deceased.

Mr. McGinnis: It is nothing with regard to a transaction between him and Mrs. Crouch directly or indirectly. 30

Mr. Scott: But she could deny it if she was here. That is the test.

The Court: Yes, the trouble is her mouth is closed.

Motion granted. Plaintiff excepts.

Q. When did Mrs. Crouch die? A. The 31st of October.

Q. Between that time and the time that you were married, when you left the Crouch home, what were 40

Sylvester Messenger—Plaintiff—Direct—Cross.

your relations with her, friendly or not? A. Friendly.

Q. Did you ever visit her up there? A. I did.

Q. Did you ever do any work on the place? A. I helped her around the house, yes.

Mr. Scott: There is no claim for that.

10

Q. You made no charge for that, however? A. No, sir.

Q. That was done at odd times, was it?

Mr. Scott: I object. I don't think he ought to be asked if he did the work and did not make any charge for it.

Q. Since her death have you ever received any compensation for the work that you did there? A. No, sir, I have not.

20

Q. Did Mrs. Crouch have any children living? A. No, sir.

Cross-examination by Mr. Scott.

Q. Messenger is your real name, is it not? A. Yes, sir.

Q. You went under the name of Lester Crouch, did you not? A. Yes, sir.

30

Q. And was regarded as the son of Mrs. Crouch? A. Yes, sir.

Q. And, over what period of time did that continue? A. Up to the time that I left there.

Q. In 1911? A. Yes, sir.

Q. When you got married? A. Yes, sir.

Q. Then you resumed your real name? A. Yes, sir.

Q. Mr. Messenger? A. Yes, sir.

40

Q. And, by that name you were married? A. Yes, sir.

Sylvester Messenger—Plaintiff—Cross.

Q. Was Mrs. Crouch at the wedding? A. No. I had no wedding.

Q. You got married didn't you? A. I got married, but I had a very quiet wedding, we went to the minister's.

Q. Then you did have a wedding, although it was quiet? A. Yes, sir. 10

Q. Who were present? A. Three ministers.

Q. Then you got well married— A. (No answer).

Q. Why was not Mrs. Crouch present? A. She said that she had the——

Q. Never mind what she said, do you know of any reason except what she said? A. Yes, I do. I think that she wanted to go on teaching.

Q. Did you notify her? A. I had a talk with her just before I left. 20

Q. You say that you went to live on the farm in 1877 when you were nine years old? A. Yes, sir.

Q. Your mother died at that time? A. Just one week before I went there.

Q. Your father was living and lived until 1884, did he not? A. Yes, sir.

Q. Why didn't you live with him? A. He was not in circumstances to take care of me and my brother.

Q. Was he too poor? A. He was a poor man. 30

Q. How did you come to go to Mrs. Crouch? A. My mother was doing work for the family in which Mrs. Crouch was teaching and, having heard——

Q. Teaching music? A. Yes, sir, and having heard that Mrs. Crouch wanted a girl this girl broached the subject to her.

Q. Then, as a result— A. As a result I was taken down there on trial.

Q. To do what? A. To stay around there and help her do the chores. 40

Sylvester Messenger—Plaintiff—Cross.

- Q. Where was your father living at that time?
A. In Preakness.
- Q. Near the Crouch farm? A. No, sir, about five miles away.
- Q. And let you go to live with Mrs. Crouch? A. He brought me down there himself, having been directed where to go.
- 10 Q. Did he come to see you after that? A. Yes, sir.
- Q. He did not support you during that time, did he? A. He did not have the money to do it.
- Q. He did not give you anything at all, either money or clothing or anything else? A. He did not have the money to purchase anything except knickknacks, just as children get.
- Q. And he lived up to 1884? A. Yes, sir.
- 20 Q. During that time you never lived with him or were supported by him? A. No, sir; although I visited him.
- Q. During that time, of course, Mrs. Crouch supported you and clothed you, did she not? A. She did not clothe me.
- Q. Didn't you have clothes? A. I had some clothes when I went there.
- Q. Did they last you for those seven years? A. No, but she had clothing given to her from other people.
- 30 Q. She did furnish clothing to you during that time? A. Not out of her pocket.
- Q. But it was her clothing, wasn't it? A. It was clothing given to her.
- Q. If it was given to her it was hers, wasn't it? A. If you wish to take it so, yes.
- Q. If Mr. Ward gave you something wasn't it yours? A. If you wish to take it that way, yes, sir.
- 40 Q. That is the way you were clothed, you say, with clothing that had been given to you for the purpose? A. Yes, sir.

Sylvester Messenger—Plaintiff—Cross.

Q. You mean she did not buy any clothes for you, is that what you mean? A. Yes, sir.

Q. Aren't you willing to give her credit for giving those clothes to you? A. I admit that she gave me those clothes.

Q. Or, do you regard them as a gift from the people who gave them to her? A. From both. 10

Q. When your father died, I suppose he left nothing to you? A. No, sir.

Q. He had nothing to leave? A. No, sir, except a little furniture.

Q. Did you get that? A. Part of it.

Q. What did you do with it? A. I kept it.

Q. What was it? A. A table and chairs.

Q. An old table and some old chairs? A. Yes, sir; some tubs and some articles, household articles, plates, etc. 20

Q. From the time that you were nine years of age up to the time you were sixteen years of age you say you did not go to school? A. No, sir.

Q. Didn't you go to the country school up there in Preakness? A. No, sir.

Q. To no school at all? A. No, sir.

Q. Why was that done? Was that your own wish? A. No, sir.

Q. It was not your own wish? A. I did not have the opportunity. It was too far away to go. I 30 could not go five miles to school.

Q. Then you had no means of getting there? A. No, sir.

Q. But, when you were sixteen years old, you started to go to school with Prof. Lattimer here in Paterson, did you not? A. Yes, sir.

Q. To business college? A. Yes, sir.

Q. Did Mrs. Crouch teach you at home? A. I done most of my own studying.

Q. You had had some studying up to the time you were sixteen years of age? A. Yes, sir. 40

Sylvester Messenger—Plaintiff—Cross.

Q. And you learned something, did you not? A. Yes, sir.

Q. But she helped you though? A. Mr. Crouch done that.

Q. Did Mrs. Crouch help you at all? A. Not in my lessons.

10 Q. Mr. Crouch helped you in your lessons? A. Yes, sir.

Q. What did you study that time, do you recall? A. Yes, sir; spelling, grammar and geography, not much grammar, mostly spelling and a little arithmetic.

Q. You did not take any music lessons, did you? A. She gave me music lessons off and on, but not steady.

20 Q. She had a piano, of course, at her own home? A. Yes, sir.

Q. Did you learn to play? A. Yes, sir.

Q. Can you play now? A. I used to, but I don't know whether I can play now or not.

Q. During this time she treated you as her child, did she not? A. She always introduced me to other people as her son.

Q. And treated you as her son? A. Yes, sir.

Q. She gave you music lessons? A. Yes, sir.

30 Q. And she gave you this clothing that you speak of? A. Yes, sir.

Q. She fed you and looked after you, didn't she? A. Yes, sir.

Q. Then you went to Prof. Lattimer's when you were sixteen years of age and you went for the purpose of getting a business education, didn't you? A. Yes, sir.

Q. He had a business college down here in the old Katz building on Main Street? A. Yes, sir.

Q. That is where you went? A. Yes, sir.

40 Q. Where a lot of lawyers used to have their offices? A. Yes, sir.

Sylvester Messenger—Plaintiff—Cross.

Q. And you stayed there how long a time? A. About a year.

Q. Did you acquire a business education at that time? A. I passed the examination.

Q. And a good one, didn't you? A. Yes, sir.

Q. Did you get a sheepskin of any kind? A. A sheepskin? 10

Q. A certificate? A. Yes, I got a certificate.

Q. Of excellence? A. Yes, sir.

Q. That was in the course of a year? A. Yes, sir.

Q. So that, having been able at the end of the year to pass the examination and to get the certificate of merit, in order to do that, before that, you had to be pretty intelligent and pretty well educated, didn't you? A. I educated myself a great deal. 20

Q. With this assistance you speak of? A. Yes, sir.

Q. That is true, as I say, in order to do what you did in Lattimer's, accomplish what you did you had to be pretty well educated when you started there, is that right? A. Fairly.

Q. You say you were at Lattimer's for a year, did I understand you? A. Yes, sir.

Q. Didn't you say you were there for four months, and then there was an interval, or did you go there continuously for a year? A. I went there until I got through. 30

Q. And that was a year? A. Yes, sir.

Q. And you left because there was nothing further to learn? A. I left because he passed me through.

Q. Then, at seventeen years of age you were fairly well educated and had a business education besides, that you got at Mr. Lattimer's school, isn't that so? A. Yes, sir. 40

Sylvester Messenger—Plaintiff—Cross.

Q. You said to Mr. Ward that you paid for that schooling, did you? A. I did.

Q. How much was it? A. Around \$75.

Q. For the entire year? A. I think so, I think that was the instruction fee.

10 Q. Do you recall that that was the initial amount you paid? A. Not the exact amount, but I think it was about \$75.

Q. Do you mean to say that that is all you paid for an entire year's schooling at Prof. Lattimer's, \$75? A. Yes, sir.

Q. Where did you get the money? A. I accumulated it picking berries and doing other work.

Q. Here are some old receipts in Mr. Lattimer's inimitable writing, that is right, is it not? A. Yes, sir.

20 Q. Made out to E. L. Crouch? A. Yes, sir.

Q. That is one for \$44.55, is it not? A. Yes, sir.

Q. Here is another one made out to Mrs. Crouch, dated February 7th, 1885, for \$40.65, signed by Prof. Lattimer? A. Yes, sir.

Mr. Scott: I will have those two receipts marked for identification.

(The said receipts are marked for identification, "Defendant's D-1 and D-2 for Identification" of this date.)

30 Q. Here is one May 6th, 1886, Mrs. E. J. Crouch, \$20, two months and three weeks, for Messenger, that is right, is it not? A. That is right, yes, that is right.

Q. Can you see that? A. I cannot see without my glasses.

Q. Haven't you go them? Take that up. A. (The witness puts on his glasses.) Yes.

40 Q. Here is another one February 13th, 1886, received from Mrs. Crouch \$20 on account of tuition for Lester, is that right? A. Yes, sir.

Sylvester Messenger—Plaintiff—Cross.

Q. Here is November 16th, 1885, received from Mrs. Crouch \$20 on account of tuition of Lester, is that right? A. That is right, yes, sir.

Q. Here is September 1st, 1884, one-half school year, five months for Lester M. Crouch, and here for rulers, pens, pencils, blanks, etc., etc., small items, making \$44.55? A. Yes, sir.

10

Q. Well, they all amount to practically \$145, don't they? A. Yes, sir.

Q. So that, instead of \$75, Mrs. Crouch, according to these bills, paid a hundred and forty-five dollars for your schooling up there?

Mr. Ward: I object. The witness has said that he thought some of the bills included the others. That was his answer. He was not sure, but he evidently wanted to try to examine them, and then Judge Scott——

20

Mr. Scott: Suppose we let him do that?

Q. Just look over them and see whether any one of those bills are a repetition of the other? I will let you look those over and see if there is any repetition, and if there is we will, of course, consent to have it stricken out.

Mr. Ward: I am perfectly agreeable to have the aggregate of these sums stated.

30

Q. This first one is dated September 1st, 1884, that is when you entered, isn't it? A. It was around that time.

Q. Well, there is the bill. A. Yes, sir.

Q. And here is this apparently last bill, dated May 6th, 1886, and then one dated February 16th, two months and three weeks, and that other one \$20, so that you went to Mr. Lattimer's school from the 1st of September, 1884, until at least February, 1886, isn't that right, February 16th, 1886, isn't that right? A. No. I recall something now.

40

Sylvester Messenger—Plaintiff—Cross.

Q. What do you recall? A. Soon after I had entered Lattimer's college I was taken sick and I had to stay away from college for a while, I did not think of that while you were questioning me.

Q. How long? A. I could not recall now. I was away quite a while, I was suffering with lumbago.

10

Q. How long? A. About three months or more.

Q. So that this \$145 did not include that three months? A. I could not tell you about that. I remember that I was sick at that time.

Q. Were you at home during that three months that you were sick? A. I was.

Q. With Mrs. Crouch? A. Yes, sir.

Q. Did she look after you? A. She looked after me until I got up so that I could go around the house.

20

Q. Were you sick in bed? A. Yes, sir.

Q. And you could not work? A. No, sir.

Q. So that for three months, at least, you did not work around the house or the farm? A. I worked around in the house, but I could not go outside.

Q. Why not? A. I was not able to.

Q. What was the matter with you? A. I had lumbago.

30

Q. With the lumbago you could walk around the house and work around the house, but you could not go to school, is that right? A. Yes. I could not do heavy work.

Q. Did you charge \$2 a day for that three months?

40

Mr. Ward: I object. That is not in the time at all, and you know it. He was twenty-eight years of age at the time this bill started to run, and at the time you are examining about he was seventeen years old, eleven years difference.

Sylvester Messenger—Plaintiff—Cross.

Q. You went to Lattimer's College from the 1st of September, 1884, until the 16th of February, 1886? A. Yes, with the intervening time.

Q. Barring those three months? A. Yes, sir.

Q. If you take that three months out, that makes a good deal more than a year, doesn't it, that you were at Mr. Lattimer's college? A. Yes, but I had forgotten about it. 10

Q. These bills seem to indicate that Mrs. Crouch paid for your schooling and you say that is not so? A. I had accumulated about \$75 which she had taken from me and saved and which she was going to put into my schooling.

Q. So that all over the \$75 she paid, is that right? A. Yes, as far as I know now.

Q. Don't it indicate that to you now? A. It looks like it, yes. 20

Q. And yet you said in answer to Mr. Ward's question that you paid for your entire schooling with money that you got from picking blackberries, etc., and that is not so? A. Not the entire schooling, I did not say.

Q. Is not that the impression that you sought to leave here with the Court and jury? A. I said that I had accumulated money which went into my education.

Q. Didn't you say it was \$75? A. I said about \$75. 30

Q. Didn't you say that your schooling was for one year, and that it cost \$75, when I asked you, and that you paid for that? A. Yes, I paid for it and she told me that is all that she did pay for it.

Mr. Scott: I object. I am not asking what she told him.

Q. Have you given her credit for the amount of money that she paid for your schooling? A. I did 40

Sylvester Messenger—Plaintiff—Cross.

not know that she went over the amount that I had accumulated.

Q. And you are not aware that she paid a great deal of money for you in other respects, are you?

A. How?

10 Q. Well, are you aware, in any instance, of her having paid any other money for you for any purpose? A. No, sir.

Q. You said that when you were twenty-one years of age you went to New York to business? A. Yes, sir.

Q. What year was that when you went to business, do you recall? A. Around 1894 or 1895, 1894.

Q. What do you say the business was that you went into? A. Metal supplies and foundry supplies.

20 Q. Were you alone in that business? A. Yes, sir.

Q. Whereabouts was it? A. Down on John Street.

Q. In New York City? A. Yes, sir.

Q. How did you get in that business? A. I was working for a concern that failed.

Q. Did you put any money in it? A. Yes, the party owed me money.

30 Q. How much money did you put in it? A. \$300 about.

Q. Where did you get that? A. I had saved it out of my earnings.

Q. Earnings where? A. In New York.

Q. What were you doing in New York? A. When I was working for other people.

Q. You say in 1896 Mr. Crouch fell ill? A. Yes, sir.

Q. And you stopped business in New York, is that right? A. Yes, sir.

40 Q. What became of that business afterwards? A. It went to smash.

Sylvester Messenger—Plaintiff—Cross.

- Q. Did you get out of it altogether? A. I did.
- Q. Did you get your money out of it? A. No. I lost my money.
- Q. How much did you lose? A. A great deal more than I wish I had.
- Q. How much? A. Several hundred dollars.
- Q. When you left it, I suppose, it was a going business, wasn't it? A. When I left it to help Mrs. Crouch? 10
- Q. What is that? A. State your question again?
- Q. I say, when you left the business and went back to Mrs. Crouch's during Mr. Crouch's illness, was it a going business? A. Yes, sir, it was a going business.
- Q. Did you have anybody to assist you in the running of it? A. No, sir.
- Q. You ran it yourself? A. I did. 20
- Q. Did you give it up? A. I gave it up at Mrs. Crouch's request.
- Q. Never mind whether it was at her request or not, did you give it up? A. I did.
- Q. Did it fail? A. It failed, because I was not there to attend to it.
- Q. Did you undertake to run the business after you came back to Crouch's to work there, as you say? A. No, not after the three weeks I went back, after I had been working for her about three weeks I told her I wanted to go and see how my business was and she said, "All right." 30
- Q. Never mind her. I am not asking you about her conversation. As a result of the conversation you went back to your business at the end of three weeks? A. Yes, sir.
- Q. Did you try to run it then? A. Yes, I did.
- Q. Do you mean to say that during those three weeks you did nothing with reference to that business? A. I was there attending to duties for Mrs. Crouch around the place. 40

Sylvester Messenger—Plaintiff—Cross.

Q. Did you neglect your business altogether? A. I did.

Q. Then this business went, it went to pieces, isn't that right? A. Yes, sir.

10 Q. Don't you know, or didn't you know when you left the business that it would go to pieces if you did not give attention to it? A. I did.

Q. And, yet, you let it go to pieces, did you? A. Yes, sir.

Q. And you were making a good living out of it, were you? A. Yes, sir.

Q. You were making more than \$2 a day, weren't you? A. Yes, sir.

20 Q. And yet you gave it up and let it go to pieces for the sake of getting \$2 a day, is that right? A. No. It was going to pieces while helping her, during the three weeks that I was with her, I stayed with her at her request. Then I tried to revive it.

Q. Do you mean to say that you had a business that you say was profitable, out of which you were making money, a great deal more than \$2 a day, and that you deliberately let it go to pieces to work for Mrs. Crouch and Mr. Crouch at \$2 a day, do you say that? A. She did not make the bargain at that time.

Q. Answer that question.

30

Mr. Ward: Let him answer it, and if it is not responsive, then I submit that the answer can be stricken out.

40 Q. Do you mean to say that you had a business that you say was profitable, out of which you were making money, a great deal more than \$2 a day, and that you deliberately let it go to pieces to work for Mr. Crouch and Mrs. Crouch at \$2 a day, do you say that? A. No. That is not the case.

Sylvester Messenger—Plaintiff—Cross.

Q. Well, that is what happened, is it not? A. You understand, that when she asked me to help her with Mr. Crouch when he was first taken sick—

Q. You are not responding to my question; I say to you is not that what happened? A. That is what happened, yes, sir.

Q. And you knew it was going to happen, didn't you? A. Yes, sir. 10

Q. And you let it go? A. Yes, sir.

Q. What did you do it for? A. She made a promise to me that I was to work for her and she would settle—

Mr. Scott: I move to have that stricken out, I object.

Motion denied. Defendant excepts.

Q. In your charge you charge \$2 a day, I believe? A. Yes, sir. 20

Q. For seven days a week? A. Yes, sir.

Q. Including Sunday? A. Yes, sir.

Q. And your claim amounts to nearly \$11,000, doesn't it? A. Yes, sir.

Q. \$10,926, less \$23.60, for which you have given the estate credit? A. I have given the estate credit for that amount.

Q. That is practically all of the estate, is it not?

Mr. Ward: Objected to as immaterial and irrelevant. 30

Objection overruled. Plaintiff excepts.

A. No, sir, it is not.

Q. You never made any claim for this sum, or any part of it, did you? A. I made a claim for the whole thing as stated.

Q. And you made it in this suit, but I say you never made any claim upon the administrator of Mrs. Crouch's estate nor upon anybody else? A. Only through my lawyers. 40

Sylvester Messenger—Plaintiff—Cross.

Q. Eh? A. Only through my attorney.

Q. The only claim you ever made then was by beginning suit in this case? A. Yes, sir.

Q. You were not on unfriendly terms with the Paterson Savings Institution or with any of the relatives of Mrs. Crouch, were you? A. I was on
10 friendly terms with her relatives.

Q. You were on friendly terms with her relatives? A. Yes, sir.

Q. You, after her death, had an agreement made with Mr. Sturgeon to take care of that property for six months, didn't you? A. Yes, sir.

Q. And yet, notwithstanding that, you never intimated to Mr. Sturgeon, this gentleman over here, whom you knew to be a lawyer, that you had any claim against that estate whatsoever, did you? A.
20 I did. But whether he understood I don't know. Maybe he did not understand what I said.

Q. Why do you say he did not understand what you said? A. I met him when he came from the West and he was busy and we were talking and he was busy in the room. I told him that I had an understanding with Mr. Crouch at different times, but he paid no attention to what I was saying. I did not know if he understood.

Q. What did you tell him that for, in order to
30 make him understand that you had a claim? A. So that he would understand that if he found any papers that would indicate that she intended to remember me that I was expecting it.

Q. If that were the case, if you had a claim and you had a contract, as you say, or had a claim, why didn't you tell him in so many words that you had a claim for nearly \$11,000 against that estate and you expected it? A. I was waiting to see what they would find when they searched.

40 Q. Do you mean you were waiting to see whether the will indicated that you had received anything?

Sylvester Messenger—Plaintiff—Cross.

A. I did not know whether it would be a will or what it would be that she would pay me with.

Q. That is the only way she could remember you, is it not? A. I never knew, I could not tell what her intention was, what form it was going to take, what she was going to reimburse me with for my work.

10

Q. Did you expect to be left nearly \$11,000 by that will, or in any other way? A. I expected to be paid in full as she had promised me to do.

Q. I repeat the question, did you expect to receive nearly \$11,000 by her will or in any other way? A. I expected to be paid in full for what I had done for her during the period of years that I was with her.

Q. That claim, as I say, amounting to \$11,000, or nearly that, did you expect that sum? A. That is what it was understood it would be if I stayed with her as long as she—

20

Q. Did you expect that sum? Can't you answer that yes or no? A. I did not know just how much it would be until I figured it out.

Q. When did you figure it out? A. Right after her death.

Q. So that you knew what it was when you were talking to Mr. Sturgeon about it? A. No, I did not figure it out at that time.

30

Q. You had not figured it out at that time? A. No, sir.

Q. You knew she had not made a will, right after her death, didn't you? A. I did not know anything about it.

Q. When did you find out she had not made a will? A. Not until after they had opened the safe deposit box.

Q. When was that? A. I could not tell you, I was not there.

40

Q. She died October 15th, didn't she? A. Yes.

Sylvester Messenger—Plaintiff—Cross.

Q. How soon after October 15th did you find that she had not left you anything or that she had not left any will at all? A. It was just before Thanksgiving.

Q. Of 1915? A. Yes, sir.

10 Q. And you were caretaker of that place from January 1st, 1916, until July 1st, 1916, weren't you? A. I was caretaker from Thanksgiving Day of 1915 until the 30th of June, 1916.

Q. Then you saw Mr. Sturgeon many times during that period, didn't you? A. Only two or three times.

Q. In those times, at any of those times, did you indicate to him that you had a claim against this estate? A. Once.

20 Q. What did you say to him? A. I told him I had an understanding with Mrs. Crouch several times——

Q. Did you tell him what about? A. No, sir.

Q. Did you tell him that you wanted him or anybody else representing the estate to pay you? A. No, I did not.

Q. Now, you say that in your conversation with him you did not know whether he understood you or not, did you? A. He was busy talking and so was I.

30 Q. That was an important thing to you, wasn't it? A. Yes, sir.

Q. That claim of \$11,000 practically was an important thing, and do you mean to say that you had that in mind and a conversation with him about it and yet you did not tell him that was your claim? A. He was a lawyer and I knew little about what they had.

Q. You were not afraid of him on that account, were you? A. No, sir.

40 Q. Were you ashamed of the claim? A. No, sir.

Sylvester Messenger—Plaintiff—Cross.

Q. Mrs. Crouch had a note of yours when she died, did she not? A. Yes, sir.

Q. And you talked with Mr. Sturgeon about that, didn't you? A. Yes, sir.

Q. And you were very much worried, weren't you, for fear the estate would sue you for the \$40? A. No, sir.

10

Q. Didn't you tell Mr. Sturgeon that you were afraid that they would charge you compound interest on that? A. No, I did not.

Q. Didn't you tell Mr. Sturgeon that you were afraid if they did they would take the only piece of property you had, which was a lot? A. No, sir.

Q. You never said that? A. No, sir.

Q. Nor anything like that? A. No, sir.

Q. When was that \$40-note given by you to Mrs. Crouch, what year? A. Around 1894 or 1895, I could not say just which year now.

20

Q. About that time? A. Yes, sir.

Q. Is this the note which I show you? A. I could not remember the exact date nor what time it was.

Q. It is February 1st, 1897? A. Yes, sir.

Q. After the time you went to work for Mrs. Crouch, is it not? A. That is the way it is dated, yes.

Mr. Scott: I will have this note marked for identification, it reads: "Six months after date, I promise to pay to Mrs. E. J. Crouch forty dollars with interest at six per cent. Value received. Lester M. Crouch."

30

(The said note is marked "Defendant's D-5" of this date, for identification.)

Q. That was after you had started to work for Mrs. Crouch as you say, was it not? A. Yes, sir.

Q. How did you come to get this \$40? A. It was part of a note of \$85 which I had paid \$45 and

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the interest on and she said she would take the balance of the note and leave it stand.

Mr. Scott: Never mind what she said.

Mr. Ward: I insist that he ought to be given the opportunity to explain.

10 The Court: I think he has gone far enough in answer to that.

Mr. Scott: I am not asking for irrelevant matter.

The Court: I think the answer is complete.

Mr. Ward: I don't think the witness should be interrupted. If the answer is not responsive, of course, it can be stricken out, or if it is improper.

20 Q. At the time that you gave this note, according to your theory, she owed you some money for your work, didn't she? A. Yes, sir.

Q. What did you give her the note for? A. This is for money that she had given me when I was about in the very beginning of my business and carried over. This is part of an old note.

Q. You say that you ever paid Mrs. Crouch board? A. I did.

30 Q. When was that? A. Up to the time that I commenced working for her.

Q. How long did that continue? A. From the time I was twenty-one till I was twenty-eight years old.

Q. I suppose when you paid her that board there was nobody present but you and her and Mr. Crouch, was there? A. Mr. Crouch was there.

Q. And they are both dead? A. They are both dead.

40 Q. During the six months that you stayed there after her death, from Thanksgiving until July 1st, 1916, did you get paid for that? A. The six months?

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Q. Yes? A. I did not.

Q. Did you do it for nothing? A. Do it for nothing?

Q. Yes? A. Yes, and I got an injury on my wife's finger that will carry her to her grave.

Q. I am sorry for that, but that does not enter into this case. I am asking if you, for that period, received anything? A. I did not. 10

Q. Have you made any charge for anything? A. I did not.

Q. Why not? A. Because I had this other claim.

Q. Did you tell Mr. Sturgeon that or anybody else? A. I told Mr. Sturgeon.

Q. Did you tell him that you would not take anything for those six months because you had this other claim against the estate? A. That was the agreement. I was to have the house. 20

Q. Did you tell Mr. Sturgeon that? A. No, I did not tell him.

Q. You never told Mr. Sturgeon or anybody else about your claim except in the way you said something to him which he may not have understood, is that the way you put it? A. Yes, sir.

Q. During those six months you bought some chickens there, didn't you? A. Yes, sir.

Q. And paid for them? A. Yes, sir.

Q. Why did you pay for them if you had this claim against the estate? A. They said they had not searched through her trunks and they did not know what they would find. 30

Q. Were you waiting then to see if they would find out something that would be a recognition of your services? A. Yes, sir.

Q. Did you mention that at the time you paid for those chickens? A. No, sir.

Q. You did not? A. No, sir.

Q. You bought a walnut table, or tried to buy a walnut table for \$5, didn't you? A. I wanted to 40

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know what they would sell it for, to buy it for someone, but got no answer.

Q. And you were willing to pay \$5 for it, weren't you? A. No, I was not.

Q. Didn't you say so in a letter? A. I was buying for another party, not for myself.

10 Q. I show you this paper, this is your handwriting, is it not? A. Yes, sir.

Q. That letter is dated June 18th, 1916, is it not? A. Yes, sir.

Q. Didn't you know at that time whether or not Mrs. Crouch had made any will? A. I did not.

Q. That was a month before you left, you had waited there five months, you had already been five months taking care of the place? A. Yes, sir.

20 Q. And you had frequent interviews with Mr. Sturgeon? A. I did not.

Q. You saw him several times when he was there? A. I only saw him two or three times.

Q. When he was there? A. He was there only once while I was on the place.

Q. Wasn't the administrator appointed before June, 1916? A. Yes, sir.

Q. Didn't you know about it? A. I heard about it, but I did not see any notice.

30 Q. Then you knew there was not any will, didn't you? A. No, I don't know anything about how the law stood in regard to such things.

Q. Here is a part of your letter, "How much would you let me have it for. Please let me know by return mail and oblige"? A. I had a customer who wanted to buy it.

Q. This is for the walnut table? A. Yes, sir.

Q. You don't say so in the letter, do you? A. No. The party would not pay more than \$5 for it.

40 Q. It says, "Mr. Steele said he would not give more than three or four dollars for the walnut

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dining table as he can get a new one for about six dollars.”

Mr. Ward: Then he does say that someone else would not give more than three or four dollars.

Mr. Scott: He says, “How much do you want for it?”

10

Q. You were asking for somebody else, weren't you? A. I was.

Q. Not Mr. Steele, but somebody else? A. Yes, sir.

Q. You were going to buy it to sell it to somebody else, weren't you? A. No, I was not going to sell it. A party told me if I could get it for \$5 they would take it. I would not pay more than that.

20

Q. You were trying to buy it here, weren't you? A. I was trying to buy it, but they wanted more than \$5.

Q. You were very much disappointed, weren't you, when you discovered that Mrs. Crouch had not left you any money? A. Yes, I was.

Q. And you told Mr. Sturgeon, didn't you, that you were disappointed and that if you got anything at all out of the estate it would depend upon the good will of the heirs, isn't that right? A. No, I did not.

30

Q. You never said that? A. No, sir.

Q. Did you tell that to Mrs. Steele? A. No one.

Q. Did you tell that to Mr. Steele? A. To no one.

Q. Did you tell that to Miss Steele? A. No one, no, sir.

Q. Do you know a man by the name of Vreeland? A. I know several Vreelands. Perhaps if you will state the first name.

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Q. Wasn't there a Vreeland that worked on the farm for some time, on this Preakness Farm? A. Never; not during the thirty-four years——

Q. What is the name of the Vreeland who has a claim against this estate now for \$5,000; do you know that one? A. Yes, sir.

10 Q. What is his name? A. Elias.

Q. You know that is the man I mean? A. I have known quite a number of Vreelands, three different Eliases.

Q. What is that? A. I know of three different men by the name of Elias.

Q. But there is only one Elias Vreeland that is making a claim for \$5,000 against this estate? A. Yes, sir.

20 Q. Mr. Sturgeon asked your opinion about that claim, did he not, in writing? A. Yes, sir.

Mr. Ward: That was not for services on the farm, as I understand it.

Q. What was it for, do you know? A. For services?

Q. Any Vreeland claim? A. I don't know what the claim was about; I was not there at the time.

Q. Mr. Sturgeon wrote a letter to you about it, didn't he? A. Yes, sir.

30 Q. And you answered? A. I answered to the best of my ability.

Q. And you told him all about this Vreeland and his claim, didn't you? A. Yes, and he had no claim up to that time that I lived there.

Q. And you ridiculed the claim, didn't you? A. Yes, sir.

Q. You said it was a soap bubble and a lot of other things, did you not? A. I don't remember just what I said.

40 Q. What was the claim for then? A. For services rendered.

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Q. On the farm? A. It did not say.

Q. How could you declare that this claim was a soap bubble and a fraud if you did not know what the services were? A. He put in his claim for services after I had left the farm.

Q. After you had left? A. After I had left the farm.

10

Q. But in this letter of yours which I will show to you, written at great length, six and a half pages all devoted to a discussion of Mr. Vreeland's claim, is it not? A. Yes, undoubtedly.

Q. That is dated February 24th, 1916? A. Yes, sir.

Q. And you declare that it is a fraud and a soap bubble and no basis for it, is that right? A. I based my opinion on what I knew positively, that he had done no work during the thirty-four years I was with Mrs. Crouch; I also based my opinion upon what I had heard from the neighbors around there who knew whether or not he might have worked or done any services after I left Mrs. Crouch in 1911.

20

Q. You say he was there after you left in 1911? A. He bases his claim after I left.

Q. You knew that when writing about the claim? A. Yes, sir.

Q. And you said there was no basis for it, and it was a fraud; did you say that? Why did you say that? A. I based my opinion on what I heard after I left.

30

Q. Only on what you had heard? A. Yes, sir.

Q. After you had left? A. Yes, sir.

Q. In the conclusion of your letter, to sum up the whole, Vreeland depends on his cheek and on a visionary soap bubble, is that right? A. As far as I could learn anything about it.

Q. Did you say in that letter that if he was entitled to \$5,000 or one penny even from the estate

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Sylvester Messenger—Plaintiff—Cross.

of the late Mrs. Crouch without working for it, "Where do I come in after toiling for years"? Did you write that? A. Yes, sir.

10 Q. And did you write this, "To sum up the whole, Vreeland depends on his cheek and on a visionary soap bubble for his soft-soaped grandma" to the point of soiling the family honor; did you write that? A. Yes.

Q. And when you wrote that on February 24th, 1916, when you wrote that, you meant it, didn't you? A. Yes, sir.

Q. And you meant what you said when you said that it cannot be done only to pay you for their toil? A. Do I mention Sturgeon's name there?

20 Q. Is that true, on the payment of toll of the family honor? A. I did not mention the Sturgeon family at all.

Q. What did you mean by the family honor? A. The honor of the Messengers has been left with me to be preserved by me; I am the sole surviving member of my father's family.

Q. Didn't you put that in there with the idea that you always had in mind that you had no claim against this estate and depended upon the honor of the family to pay you if you were to be paid anything? A. No, I did not.

30 Q. Didn't you say that to Mr. Sturgeon? A. No, I did not.

Q. And to all the people? A. I never said it to anybody.

Q. You had some agreement in regard to your staying there six months during 1916, didn't you? A. Yes, sir.

Q. You went there under some agreement? A. Yes, sir.

40 Q. An agreement with Mr. Sturgeon? A. Yes, sir; Mr. Sturgeon is one of the parties.

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Q. And you were to get your rent free and to get the fuel that was there or anything else that might have been there that you could use, isn't that right? A. Yes, sir.

Q. And you were not to charge anything for your services? A. No, sir.

Redirect examination by Mr. Ward.

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Q. From the time that you were ten years of age, when you entered that family, up to the time that you were twenty-one, when you went to New York to work for yourself in business, were you ever taken to a single place of amusement or picnic, or did you ever go to any place?

Mr. Scott: Objected to. Asking whether he was ever taken to a single place of amusement during this period. That is part of the affirmative case.

20

The Court: What is the purpose of that?

Mr. Ward: This witness was cross-examined at quite some length. I briefly sketched his use to the family, but on cross-examination he was examined at quite some length as to the clothes he got and all that. I think on redirect examination I should be permitted to ask this.

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The Court: I will permit it. I think it shows the relationship.

Mr. Scott: It is not redirect on anything brought out on the cross-examination. On the contrary, it is distinctly a part of the affirmative case, just what the relationship was. If she gave him clothes which she got from other people, that is no excuse for asking him if he ever went to a show or a theatre during that period. I suppose I could ex-

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amine him and show that he was away up in the country and far away from the movies and could not very well go on that account.

Objection overruled. Defendant excepts.

A. No, sir.

10 Q. Before you ever went to live with Mrs. Crouch had you ever received any education at all? A. Yes, sir.

Q. How many years? A. From the time I was able to go to school.

Q. How many years? A. About four or five years.

Q. That is from the time that you were about five until you went to live with Mrs. Crouch? A. Yes, sir.

20 Q. And this education that you received in the Crouch house or home, when did you do your studying and in what manner? A. At night-time.

Q. Were you permitted to study during the day? A. No, sir.

30 Q. Counsel asked you why you did not go to school, and you said it was five miles away; was there any other reason you did not go to school during the time you were there from the time you were nine or ten years of age until you were sixteen or seventeen, while you lived with the Crouches? A. Mrs. Crouch wanted me during the day all the time doing chores and helping her in the house.

Mr. Scott: That is really forbidden ground. I move to strike that out, what Mrs. Crouch wanted.

The Court: Yes, it may be stricken out. Plaintiff excepts.

40 Q. During those years from the time you were only nine years of age until you were sixteen years

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of age were you or not occupied almost constantly during the day doing those chores? A. Yes, sir.

Q. Were you ever taken to church by Mrs. Crouch?

Mr. Scott: Objected to.

Objection overruled. Defendant excepts.

10

A. No, sir.

Q. Were you ever taken to Sunday school by Mrs. Crouch?

Mr. Scott: Objected to.

Objection overruled. Defendant excepts.

A. No, sir.

Q. Were you ever sent there by her?

Mr. Scott: Objected to.

Objection overruled. Defendant excepts.

20

A. No, sir.

Mr. Scott: All this is objectionable because Mrs. Crouch is not able to contradict him.

Mr. Ward: Counsel examined on those things.

The Court: But counsel kept away from any transactions with the deceased.

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Mr. Ward: Your Honor will recall that he asked this witness did not Mrs. Crouch give you clothes, and the witness said they were given to her by others, and counsel then said don't you consider they were hers if they were given to her.

The Court: I will strike all those questions out, all those that deal with transactions with the deceased.

Plaintiff excepts.

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Sylvester Messenger—Plaintiff—Redirect.

Q. Did you ever go to Sunday school while you were in that home? A. No, sir.

Q. Did you ever go to church while you were in that home? A. Two or three times.

Q. You stated on cross-examination that you had lost some money in that business you went into?

10 A. Yes, sir.

Q. Why did you lose that money? I will put the question this way: Was this the business that you were in (showing the witness a sample case)? A. That is part of it.

Q. That was a sample case you had at that time?

A. Yes, sir.

Q. Up to the time that you ceased going to New York, or up to the time that you stayed—that you were away—after you were in this business, from the start, up to the time that you stayed at the Crouch home, was that or not a paying business?

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Mr. Scott: I object to that; it has been brought out already.

A. It was.

Q. When you stated on cross-examination that you had lost money in this business, when did you lose the money? A. During the period of three weeks that I was home there for Mrs. Crouch, when Mr. Crouch was first taken sick.

30

Q. You were asked if you had deliberately let your business go, a prosperous paying business, to accept the sum of \$2 a day, and you were asked what did you do it for; now, will you tell us what you did it for; why you did that? A. At the time that Mr. Crouch was taken sick, I stayed away from the business about three weeks to help take care of him. Then I said to Mrs. Crouch, "I have got to go to New York and attend to my business." And I went back about two days, attending to the

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business, and she said to me, "I cannot get along." She said, "I have got to have somebody here."

Mr. Scott: I object to that.

The Court: I don't think that is admissible.

Mr. Ward: If your Honor please, counsel brought it out himself, and then when he had gotten sufficient of the answer to please himself, he interrupted the witness. 10

Mr. Scott: I object to that remark.

Mr. Ward: I think the record will show that, because I objected at the time, and the Court said that the answer was complete.

The Court: He can give the explanation without telling transactions with the deceased, or without conversations. 20

Mr. Ward: I suppose it will be necessary for me to lead a little bit then.

Q. When you gave up this work for the \$2 a day, did you or not expect to be paid that continually?

A. I did.

Q. And was it because of anything that Mrs. Crouch said to you at that time that you gave up your work? A. Yes.

Mr. Scott: I object to that and move to strike it out. 30

Motion denied. Defendant excepts.

Q. Something has been said about the claim of Elias Vreeland for \$5,000; is this a copy of the claim that was sent to you which was referred to by Judge Scott?

Mr. Scott: Do you mean the copy was sent to him? 40

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Q. That is the copy that was sent to you in the letter you referred to? A. Yes, sir.

Q. Do you know who was the attorney for Elias Vreeland in that matter; I notice the name John O. Benson? A. I presume he was the attorney.

Q. An associate in Judge Scott's office?

10

Mr. Scott: I object to that. He don't know that. You are acting as the witness now.

Mr. Ward: Then I withdraw the question.

20

Mr. Scott: I want to call the attention of the Court to the fact that the counsel is testifying that Mr. Benson is an associate of mine, which would necessitate my going on the stand and contradicting it and showing that he is not an associate of mine. We have no business relations whatsoever.

Q. Do you know whether or not Mr. Benson's office is in the same suite with Judge Scott's? A. I do not.

Mr. Scott: I object to all this. What difference does it make? This is purely gratuitous.

30

Mr. Ward: You asked all about this claim and examined at great length on it.

Mr. Scott: Not along personal lines that way. I hope not. I would not do any such thing as that.

40

Q. When you went up to this place, under the agreement that you had with Mr. Sturgeon, did you have any agreement with the Paterson Savings Institution, the administrator in this estate at the time? A. No, sir.

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Q. And, so far as the cultivation was concerned, were you or not to have the control of the place while you lived there? A. None of the products.

Q. You had rent free, however? A. Yes, sir.

Q. Whatever work you did at that time, has Mr. Sturgeon ever written to you that you would be paid for up there? A. No, sir.

10

Q. (Handing witness paper) Just look at this letter. Did Mr. Sturgeon write to you, "Of course, we expect to pay you for the time you actually spend in fixing up the place and for material which you may find it necessary to purchase, such as staples and wires; I would suggest you keep an account of your time and material"? That was written to you, was it? A. Yes, sir.

Q. And yet you did not do any cultivating there? A. No, I could not.

20

Q. You still keep your position, do you not? A. Yes, sir.

Q. What is your work? A. Machinist.

Q. You were asked about seeing Mr. Sturgeon after Mrs. Crouch's death; when did you first see Mr. Sturgeon and where? A. About two weeks after her death.

Q. When did you first see any of the relatives of Mrs. Crouch? A. About two weeks after I saw Mr. Sturgeon. The relatives about on the day of her funeral.

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Q. Where? At her funeral? A. Yes, sir.

Q. Of course, you had no conversation or talk then, or did you have any talk with Mr. Sturgeon then? A. No. Mr. Sturgeon was not there.

Q. When did you first see Mr. Sturgeon, two weeks after the death, as you stated? A. Yes, sir, after her death.

Q. Where? A. At Mrs. Crouch's home.

Q. What did you say to him at that time? A. I

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greeted him as usual, and then I explained to him about that note, and, well, he was busy fixing a fire there, and I also told him that I had an understanding with Mrs. Crouch, but whether or not he took any notice of it I don't know.

10 Q. At that time did you ask him anything about the papers, Mrs. Crouch's papers? A. Not at that time that I can recall.

Q. When was there anything said about a trunk? You mentioned about a trunk; was that on that occasion that it came up, about a trunk full of papers? A. I don't remember of having said anything about that.

20 Q. On your cross-examination you said something was said about a trunk full of papers; when was that mentioned? On that occasion or afterwards? A. Afterwards.

Q. Was there anything said by Mr. Sturgeon at that time as to whether or not they had had an opportunity to find any will or any other papers? A. They were still searching.

Q. When did you next see Mr. Sturgeon? A. When he came down to my home.

30 Q. And on that occasion what was said of Mrs. Crouch's affairs, if anything? A. He claimed they had not found any will or papers indicating what she would do with her property or otherwise.

Q. Were you or not waiting to see whether they would find proof of your claim, and so forth? A. Yes, sir.

Q. After that when did you next see Mr. Sturgeon? A. About two days or two nights after that.

Q. What was said on that occasion and where was that? A. At my home.

Q. At what occasion? A. He came down to see about having me go back on the place.

40 Q. What was said with reference to Mrs. Crouch's affairs at that time? A. They had not

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found any will or papers that would indicate her disposal of the property.

Q. Tell us the conversation as nearly as you can; what was said. A. I cannot recall just word for word now.

Q. As much as you can recall? A. Well, "We are still looking things over, and we cannot find any will." I asked him if they found a will, and he said no, and I understood them to say that they were going down to the savings bank the next day to find out what was there. I did not see this Mr. Sturgeon again—

Q. Was there anything else said at that time? A. Well, talking about the matter of going back to the place, and he said he felt sorry that things had been left in the shape they had been; as far as he found he was horrified at the condition of the home and hoped that we would be able to get along and fix things up and be a help for me and him and all.

Q. Was that about all? A. That was the general line of that conversation.

Q. When did you next see him? A. I never saw this man Sturgeon again until the following June he wrote me to the effect that he had to go to Washington and would on the way of returning home come to Paterson and visit me over night.

Q. Did he? A. He did.

Q. What was the conversation you had with him then? A. When he came in he was surprised to see me with my furniture packed up and said, "What is the trouble here, are you cleaning house?" I said, "No, I am getting ready to move away." He appeared to be surprised, and he said, "Move away?" He says, "How is that?" "Well," I said, "I have stuck to my agreement of living here for six months with the understanding that I was to have one month's notice if you sold the place or

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it was disposed of, and now I give you thirty days' notice that I am going to leave."

Mr. Scott: You said that to him?

The Witness: Yes, sir.

10 Q. At any time did Mr. Sturgeon say anything to you with reference to the fact that your claim would be taken care of, or words to that effect?

Mr. Scott: Objected to as leading.

A. He said I would be looked after, yes.

Q. Was there anything said by Mr. Sturgeon at any time with reference to your claim or any claim that you might have against this estate? A. No, sir.

20 Q. With reference to this note, will you just explain to the Court and jury this transaction that you had with Mrs. Crouch?

Mr. Scott: Objected to because that is not cross-examination of anything I asked. It is not a direct question. He asks him to tell about it. Is there any question counsel wants to ask?

The Court: Ask him more directly.

30 Q. You stated that that note was given in part payment of another note; when was that note given? A. Along in 1894.

Q. What was the occasion of the giving of that note? A. She had my building and loan book, which I had given her to take care of—

Mr. Scott: I object to this.

The Court: You opened the door for that.

40 Mr. Ward: The argument of the defense will be that that note was given and noth-

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ing could have been due him. We have the right to make our explanation as to that.

The Court: Yes. I think counsel opened the door to it. I assume the argument will be that if the deceased owed him money that he would not give her a note for anything she advanced to him. Now, the other side have a right to explain, even if it does involve transactions with her. This note the defense introduced, and I will permit the plaintiff to go into it. 10

Mr. Scott: I asked him principally about the date and the fact that that was a note he had given to her during the time he had this contract and did this work for which he charges. That is all I examined about.

The Court: I think you went further than that. That is my recollection. I will allow the question. 20

Defendant excepts.

Q. Now, will you tell us what was the occasion of the giving of that note? A. She had my building and loan book, which I had given to her to take care of, and she refused to let me have it, stating that she did not want me to draw my money out to carry on my business, and my business was increasing so rapidly that I had to have more money to swing it, and the result was that she let me have little sums of money until the whole total amounted to \$85, and I told her then that I had book accounts out that would cover the whole thing and a great deal more— 30

The Court: This note was in reduction of the eighty-five-dollar note?

The Witness: Yes, sir. 40

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Q. Go on.

The Court: I think that explains it sufficiently now.

10 Q. Then how did you happen to pay off the certain sum and give this as the balance of the note, do you know? In 1897, at a time after you had entered into this arrangement with her? A. I called in enough from my accounts while I was in business, just prior to Mr. Crouch having been taken sick, to cover half of it, and the other I had tied up in the building and loan, which she would not release by giving me the book.

Q. So you paid off one-half, did you? A. I said to her, "I have got money——"

20 The Court: You paid off one-half?

The Witness: Yes, sir.

Q. And you gave her this note then, did you not?

A. Yes, sir.

Q. And is this the note that you gave her or not?

A. That is the note.

Q. Look at the date of that note. A. 1897.

Q. What I want to know is, if at that time you had been working for her for about two years? A. Yes, sir, 1896.

30 Q. What I want you to explain to the Court and jury, is, why, if you had been working for her for that year for nothing, why you gave her this note? Now, explain that. A. I gave it no thought at that time, but she came to me and said that she had lost the note——

40 Q. That is just what I want— A. And she did not know what to do. "Well," I says, "As near as I can remember the date now," I said, "I will give you the money for the whole note, but if you can find the note, I want the original note." She says,

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"I cannot find it." She says, "Never mind the money now." She says, "Give me a copy of the note as near as you can remember the date." And this is the one.

Q. That is the copy? A. That is the copy.

Q. And then what happened? A. And when it came due, in my memory, I told her that I had the money, which I had saved out of my business. 10

Mr. Scott: Is that relevant, when this came due? We did not inquire after the date of the note.

The Court: Never mind about that.

Mr. Ward: I will omit that then.

Q. In your letter that you were shown by Judge Scott, he read to you, "I depend upon the toil and the family honor," referring to this Vreeland claim; you referred to it as a bubble, and you stated something about yourself; you said, "I depend upon the toil and the family honor." What did you mean by that? 20

Mr. Scott: I object to that.

The Court: The defendant asked about it. But I think he answered it, unless the plaintiff wants it repeated. I understood he answered it. 30

Recross-examination by Mr. Scott.

Q. This note of February 16th, 1897, for \$40, that is in your handwriting? A. Yes, sir.

Q. And you say that was made to pay some money that you owed her, some \$85, part of which you had paid? A. Yes, sir.

Q. Is that the date that arrangement was fixed up? A. No, this is the date this copy was made. 40

Q. Do you mean to say there was no other note

Sylvester Messenger—Plaintiff—Recross.

just like this? A. There was a note she claimed she could not find.

Q. Which note was that; was that a note for \$40? A. That was a note for \$40.

Q. Had you made a note before this date for \$40? A. I had.

10 Q. Do you remember the date of it? A. It was during my business transactions in New York.

Q. What was the month? A. Along in 1895.

Q. It was in 1895? A. I think so.

Q. Have you got that note? A. No. (Examining papers.) In 1896. I cannot just say what it is.

Q. What is this you are looking at? A. This is a copy.

20 Q. Of what? A. Of the original note for \$85. She said she had lost it, and I had made a copy of it, and I wrote on the bottom to the effect that this note was for the annexed note of \$85, dated on or about such and such a date, which neither one of us could recall at that time.

Q. When did you say the eighty-five-dollar note was dated? A. This was dated in 1896.

Q. What is the date, the exact date? A. I cannot tell you, because this is torn off.

Q. Is that the eighty-five-dollar note? A. This is the copy which I gave to her.

30 Q. Of the eighty-five-dollar note? A. Yes, sir.

Q. That was dated in 1896? A. Along in 1896.

Q. And you don't know whether it was the spring, summer or the fall? A. I cannot tell you.

Q. You have not any idea at all? A. I think it was along in the spring, but I could not say.

Q. Along in the spring of 1896? A. Yes, sir.

Q. How long did that note have to run? A. Six months.

40 Q. Then at the end of six months the forty-dollar note was made, was it? A. Wait till I explain, will you please—

Sylvester Messenger—Plaintiff—Recross.

Q. Answer that question; that is the explanation I want; at the end of the six months this forty-dollar note was given, was it not? A. Yes, sir.

Q. Then you say that forty-dollar note was made, and this was made after that time? A. That forty-dollar note was the balance of the eighty-five-dollar note.

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Q. I know it was, and do you say it was made at the end of six months, in the spring of 1896, and was this made afterwards as a copy of it? A. This was made afterwards as a copy of that, yes, sir.

Q. Do you know what date the original forty-dollar note was made? A. I cannot recall. It has been destroyed or lost.

Q. That forty-dollar note, you say, was made to represent the balance of the eighty-five-dollar note or the note that represented the \$85 that you borrowed from her? A. Yes, sir. Which she had loaned me from time to time of her own motion.

20

Q. How came you to make the note for \$85 if she had let you have that from time to time? A. Because I kept track of what she had loaned me—a little at a time—instead of allowing me to get my own money, which I had in the building and loan, she loaned me her own money instead of letting me swing the business on what I had earned before.

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Q. Didn't you find \$40 in the house, just \$40, in the house, and made use of it, and then afterwards make this note to represent that \$40? A. No, you don't understand the whole transaction.

Q. Well, it was of that character or anything like it? A. Why, yes, I knew where she had hundreds of dollars laid aside in the house, and knowing that I had to have money to increase my business with, or else lose large orders which I had at

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Sylvester Messenger—Plaintiff—Recross.

10 that time, I came back purposely from New York one afternoon to see her and try to persuade her to let me have my building and loan so that I could draw money enough out to carry on my business, because I had to buy for cash and sell on time; not having been an old established concern, I had to make myself known to the manufacturers first as being a good cash buyer, therefore, when I got home I found that she was not there; Mr. Crouch was not in a condition to do anything himself financially, and he did not know where she kept her bank book or the building and loan book with her bank book. So, knowing that I either had to lose large orders or else have the money, I decided the best thing I could do was to go where she had about \$450 laid aside——

20 Q. In the house? A. In the house. I took out \$40, enough to cover my orders, cash money, and put my check in in its place and signed it.

Q. Your check? A. Yes, sir, on the bank.

30 Q. That was your own check? A. I dated that check thirty days ahead of time so as to give me time to swing my business around and collect in enough to cover that \$40, anyway, over and above what little I had in the bank. When she came home in the evening—of course, I went away that afternoon in order to look after my orders; I went back to New York again to send my orders off. And I came back to her and told her in the evening what I had done. "Well," she says, "That is all right; I will let it go as it is, but," she says, "I don't like to have you draw your money out." I says, "Let me have my building and loan book to-morrow morning or go with me and I will see that you get your money for that \$40." She says, "I won't let you have your building and loan book."

40 Q. As a result of your taking that \$40 in the

Sylvester Messenger—Plaintiff—Recross.

way that you have described, did you make that note? A. No, not at that time.

Q. How long after that? A. This note was made a couple of years afterwards.

Q. This was made to represent that \$40? A. No, it was not.

The Court: Was the \$40 included in the eighty? 10

The Witness: The \$40 was included in the eighty.

The Court: It was included in the total that made up the \$80?

The Witness: Yes, sir.

Q. That \$40 that you say you took to swing those orders that you speak of was represented only by a check and nothing else? A. Yes, sir. 20

Q. Never by a note? A. Never by a note, no, sir.

Q. It was not represented by a note? A. No, sir.

Q. This note had nothing to do with that transaction? A. Nothing whatever. That has got nothing to do with the first transaction.

Q. You sold your business out in New York, didn't you? A. No, I did not sell it out, but I did close it out, because it went to smash.

Q. Didn't you sell to somebody the things that you had? A. No, sir. 30

Q. Were the things kept afterwards? A. I had no things left over at all.

Q. You did not sell to anybody and did not get anything for it? A. No; I just simply closed up my business; that is the best I could do.

By Mr. Ward.

Q. All these transactions with reference to this note and the money borrowed were before you went back to live and work there? A. Yes, sir. 40

Johanna Messenger—For Plaintiff—Direct.

Q. And this is simply a copy of the note that was lost? A. Yes, sir.

10 JOHANNA MESSENGER, sworn as a witness on behalf of the plaintiff, testifies as follows:

Direct examination by Mr. Ward.

Q. You are the wife of the plaintiff in this case? A. Yes, sir.

Q. How long have you been married? A. For five years.

Q. Did you know Mrs. Crouch in her lifetime? A. Yes, sir; I did.

20 Q. When did you first become acquainted with her? A. When I was about seventeen years of age.

Q. Whereabouts did you live at that time? A. On Chester Street.

Q. From the time you were seventeen years old up to the time you went to live—I believe you lived at her home, did you not? A. Yes, sir; nine weeks.

Q. When was that, in what year? A. That is six years ago.

Q. That would be in 1910? A. Yes, sir; I was married in 1911.

30 Q. Before 1910 how often did you see Mrs. Crouch at her home there? A. Well, I had been to Philadelphia, and then I was out West, and I had not seen her for a number of years before I went to reside there.

Q. Before you went to live there were there any occasions when you saw Mr. Messenger around there, your husband? A. Yes, sir; I saw him twice.

40 Q. Do you know what character of work he did there? A. Well, he was working around the field; I think he was plowing the place then.

Johanna Messenger—For Plaintiff—Direct.

Q. During the nine weeks you lived there at Mrs. Crouch's home will you just tell the Court and jury what kind of work he did there and in what way he made himself useful? Won't you tell us fully? A. I remember he was plowing and milking; there was chickens; there was the horse; there was eggs to collect; there was general farm work, and I don't think I ever saw him dressed up. He was always working around, working around day and night. 10

Q. What time would he usually begin his work in the morning? A. Before I went to work, and I went out at half-past six.

Q. Do you know what time he would get through in the evening? A. Well, any time.

Q. What do you mean by any time? A. Why, he would go with the horse and carriage to meet Mrs. Crouch to drive her home from her pupils; wait on the corner of Preakness Avenue and Totowa until she came along in the car. 20

Q. What time would that be? A. Any time she got there.

Q. Would it be 6 o'clock or 7 o'clock, or when? A. Well, she went out teaching in the night-time, in the evening.

Q. What about the housework there? A. Well, Lester did most of it. 30

Q. What about the cooking? A. He helped a good deal with that.

Q. Did Mrs. Crouch go out very much teaching? A. Yes, she went out considerable; yes, she did.

Q. Who took care of the house when she was out? A. Lester.

Q. Do you know who took care of Mr. Crouch while he was alive? A. Lester.

Q. You were there, you say, for nine weeks? A. Yes, sir. 40

Johanna Messenger—For Plaintiff—Direct.

Q. What season of the year was it; when was it?

A. I went there in March, and I left nearly the last of May.

Q. Was there ever any occasion when Mrs. Crouch had any conversation or talk with you with reference to Lester and his work around there? A. Yes; there was one afternoon I remember very distinctly; I came home from work.

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Q. When was that? A. I think I had been living there about five weeks at the time.

Q. Go on. I came home from work; it was while I had to work; after having worked all my life, I had been left alone with nothing, and she said to me, "It is hard." "Why," she says, "there is Lester; when I die, he will have a tidy little sum. I am not giving him his wages now, but I am going to remember him when I die. I have promised him so, and I will do it." I remember that distinctly.

20

Q. At that time was there anything said about Mr. Crouch? A. Yes, sir.

Q. Was Mr. Crouch alive at that time or not? A. No, sir; he was dead.

Q. Was there anything said about Mr. Crouch? A. Yes, she did; she referred to one time, the time when Mr. Crouch was stricken with paralysis; she had no one on the place to help her; Lester was in business and had a good business. "I told him if he would stay out of his business and help me for a while I would make it all right for him. I would pay him. I had to have someone; that is all about it." Then she told me he did go back to her for three weeks, and she said he gave up his chances to help her, because he knew his business would go, and he helped her for about three weeks, and then finally he went back to his business, and then she said, "I had no one here to help me, and I told Lester he should stay home and help me at the

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Johanna Messenger—For Plaintiff—Direct.

home, and I would pay him at my death. I have promised to pay him. And since then," she added, "he has been with me ever since."

Q. Do you remember any other occasion after that when she, in your presence, or to you, ever said anything? A. About three weeks later Lester was coming from the chicken house with a big pan of eggs, and Mrs. Crouch was standing in the door, and Lester and her had had some words, and Lester said to her, "I want some money; I want some clothes; I want more to eat." She answered him, "I won't give you any clothes; you have got enough to eat. A bargain is a bargain. I will pay you when I die." And she just said it like that and went back like that right in the house. 10

Q. Of course, you remember when Mr. Messenger proposed marriage? A. I certainly do. 20

Q. Now, when was that? A. I think it was about six months after I had left the house that we became engaged.

Q. What season of the year was it? A. May. It was May, the same year I lived there; I think it was May, the same year that I lived there; I left in May.

Q. After you became engaged did you have any conversation with Mrs. Crouch, shortly after you became engaged, you and Lester? A. Yes; Lester and I went out there. 30

Q. Just explain to the Court and jury about that. A. Yes. Lester and I went out there. Lester explained to Mrs. Crouch he wanted to get married. He had stayed with her long enough. He wanted some of his wages. She told him, no, a bargain was a bargain. He could not have his wages till she died. He better stay there with her and look after the place and wait a while; put off for a little while. And we did. We waited a year and two months. 40

Johanna Messenger—For Plaintiff—Direct.

She said, "I have agreed to pay you at my death for what you have done for me, and I won't give you any money until then." And she did not.

Q. So you waited a year and two months? A. We waited a year and two weeks.

10 Q. Before your marriage did you ever see her, or shortly before your marriage? A. Yes, we did.

Q. Tell me about that. A. We went up there, and Lester told her he had made up his mind to get married; he wanted to get a home of his own; he had waited long enough; he wanted some of his wages; he wanted some of the money she had promised him. She told him, "No, a bargain is a bargain; I won't give you any money till I die. Then you will have it. Get married if you like, and if you have not got any work, come out here and work
20 for me when I want you, as I want you to work, but you cannot have any money." And we were married a week later.

Q. Did she say how much she would pay him? A. No, sir; I never heard it.

Q. After that did you ever see her? A. I went up often. I waited on her; I took care of her; I nursed her in her stroke.

30 Q. You were her last nurse? A. No. I was not her last nurse. The first stroke she had. I left my work and went up there and took charge of the house and cleaned the house and did everything for her.

Q. Did she ever come down to see you? A. Yes, sir; she did.

40 Q. Do you remember any other occasion when she ever said anything about that? A. She was always remarking that Lester was going to be paid; she would make everything right over to him; he was the only one she had about the place, and the only one she could depend upon; he was always there. She was constantly making such remarks.

Johanna Messenger—For Plaintiff—Direct—Cross.

Q. What remarks? A. "Oh, he is a good boy; he had always been right here; he is always taking care of me and the house. I will remember him in my will. I will pay him. He knows it." Those remarks were made almost every day.

Q. Did she ever say whether or not she had paid Lester for his work? A. No, she never did. 10

Q. Did she ever say anything about that? A. No. She did not; she said he was to be paid at her death. She told me that several times.

Q. How did Lester address Mrs. Crouch? A. Mrs. Crouch.

Q. Did he ever call her anything else? A. I never heard him.

Q. During the ten weeks you were up there, I think you have described the work he did there.

A. I did. 20

Q. And you have also told us how Lester dressed at that time? A. He dressed like a scarecrow; he was described as such; he never had anything decent on him; he never had anything decent to wear. He never had any clothing.

Q. The work he did there; was it hard work or not? A. It was hard work.

Mr. Scott: I object to that.

Q. The work he did there; did it keep him busy or not? A. It did; he never had a minute off. 30

(The Court then took a recess until 2 o'clock this day.)

AFTER RECESS.

JOHANNA MESSENGER resumes the stand.

Cross-examination by Mr. Scott.

Q. You are the wife of the claimant in this case? 40
A. I am.

Johanna Messenger—For Plaintiff—Cross.

Q. You went to live with Mrs. Crouch, you say, in 1910? A. Yes, sir.

Q. From March to May, 1910? A. Yes, sir.

Q. That was about a year before you were married to Mr. Messenger, wasn't it? A. Two years.

10 Q. And you say you worked during that time at the Crouch homestead for nine weeks? A. No, sir; I did not say I worked in the homestead.

Q. You say you were there for nine weeks? A. I was there for nine weeks.

Q. Didn't you work there? A. I worked during the day and boarded with Mrs. Crouch and paid my board, four dollars and a half a week.

Q. You worked downtown? A. Yes, sir; I worked on Main Avenue.

20 Q. And you boarded with Mrs. Crouch for four dollars and a half a week? A. Yes, sir.

Q. At that time your present husband was there, you say? A. My present husband was there, but we were not married.

Q. You say that he worked there at that time? A. He did.

Q. He did not work anywheres else? A. No, sir; he did not.

Q. And you say that he was busy every minute? A. Every minute he was busy.

30 Q. What time would he get up? A. Well, he got up before I did. And I got up 6 o'clock. I cannot tell you the time he got up. I got up at 6 o'clock, and he was always up ahead of me.

Q. It was some time before 6 o'clock? A. Yes, sir.

Q. He worked all day long? A. He sure did; yes, sir.

40 Q. And how late at night? A. He often went after Mrs. Crouch with the horse and carriage when she was out teaching.

Johanna Messenger—For Plaintiff—Cross.

Q. Teaching music at night-time? A. Yes, sir.

Q. And she came home how late? A. Whenever her pupils got finished.

Q. Give us an idea of the time. A. Sometimes 11 o'clock.

Q. And later than that? A. Well, I don't think later than that. 10

Q. Practically every day he was busy from 6 o'clock in the morning until 11 or 12 o'clock at night? A. Yes, sir.

Q. During all of the nine weeks that you were there? A. Yes, sir.

Q. And in 1911 from March to May— A. Yes, sir.

Q. What kind of work did you say he did in the daytime? A. He did the regular farm work, the plowing, the planting, and there was chickens, cows, horses and all to look after and the house-work to do. 20

Q. Mr. Crouch could not work? A. Mr. Crouch was dead.

Q. Then he could not work, certainly. A. No, he could not work.

Q. And Mrs. Crouch did not work, did she? A. She helped around.

Q. What did she do? A. She helped around the house when she was not teaching. 30

Q. She was teaching most of the time, was she not? A. No, not every day in the week; her pupils did not call her out every day in the week.

Q. Did she have a large class of pupils? A. Yes, sir.

Q. She taught in the night-time and the day-time both? A. Yes, sir.

Q. So that she was practically busy every moment, doing that work? A. Well, she was busy, yes. 40

Johanna Messenger—For Plaintiff—Cross.

Q. What did you do? A. I was a silk weaver.

Q. When you got home at night did you do any work? A. I helped out.

Q. Who did you help, Mrs. Crouch or Mr. Messenger? A. Sometimes Mrs. Crouch and sometimes Mr. Messenger.

10 Q. What did he do at the night-time? A. He had the horse to look after, to lock the barn, the regular barn work, if there was any; he had to shovel snow if there was in the winter and such as that.

Q. What did he do in the house? A. The regular housework; he would do housework like a woman; he helped do up all the fruit, helped do the fruit in the summer.

20 Q. You were only there from March to May? A. Yes, sir, but I know what Mrs. Crouch told me.

Q. While you were there he did not put up any fruit, did he? A. From March to May there was none to put up, no, sir.

Q. There wasn't any fruit doing up at about that time, was there? A. No, sir.

Q. What else did he do in the house besides those things; did he do any scrubbing? A. He sure did.

Q. He scrubbed the floors? A. Yes, sir, and cleaned the windows.

30 Q. He did that in the time when you were there? A. He did it whenever it was necessary to be done.

Q. Did you do any of the scrubbing? A. I helped.

Q. Did Mrs. Crouch do any of it? A. No, she was kind of old for that work.

Q. Did he do any cooking? A. He sure did.

Q. He was a cook, too? A. Yes, he was; if she was out teaching, when I got home Lester made my supper.

Johanna Messenger—For Plaintiff—Cross.

Q. So that he was a good cook? A. Yes, he was; he is.

Q. He is yet? A. Yes, sir.

Q. Does he do the cooking now? A. Once in a while.

Q. Then you had a number of talks with Mrs. Crouch? A. Yes, sir.

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Q. During those nine weeks, was it? A. Yes, sir.

Q. When would you talk with her? A. Why, if my work was out in the afternoon, and she happened to be home when I came home, we would talk, and then there would be Saturday afternoons and Sunday.

Q. You would come home sometimes? A. Yes, sometimes; I would come home sometimes with a headache.

20

Q. You would come home with a headache? A. If I came home with a headache.

Q. Did she talk to you then when you had a headache? A. Why, sure, Mrs. Crouch would talk any time and all the time.

Q. She was a great talker? A. Yes, she was.

Q. When did she first tell you about this bargain that she had made? A. I think I had been living there about three weeks then.

Q. And what was the first conversation you had with her? A. She said it was a pity I had been left with no means by my first husband. She said, "Why, there is Lester," she says, "when I die, he will have a nice little sum."

30

Q. You were not married to him then, were you? A. No, sir, I was not.

Q. How would her fortune left to him help you? A. It did not help me. It was not supposed to be going to help me then. She said that to me, "When I die, Lester will have a nice little sum. I have

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Johanna Messenger—For Plaintiff—Cross.

promised I would leave him his wages. I will leave him his pay like any other workman."

Q. She would leave him his wages, is that the way she put it? A. Yes, sir.

Q. And "I will leave him his pay like any other workman"? A. Yes, sir.

10 Q. Were there any other workmen on the farm at that time? A. No, sir, there was not.

Q. Had there been any other working there during the nine weeks you were there, any other workmen? A. No, sir, there was not.

Q. Did she tell you how much wages she was going to leave him? A. No, sir.

Q. Was that all of the bargain, that she was to leave him his wages like any other workman? A. "I will leave him a nice little sum when I die. I will leave him his wages. He will be paid like any other workman."

Q. Did she tell you what that nice little sum would be? A. She did not.

Q. If she was to leave him his wages, what period were those wages to cover? A. Well, about fifteen years' work; he had worked for her all along.

Q. So she was to pay him up to the time of her death? A. She said she would pay him at her death; he would be paid; "He will be paid at my death."

30 Q. What time was it to cover? A. Well, I judge it was to cover all the time he had worked there.

Q. Up to the time of her death? A. Up to the time he had worked there, I should think.

Q. He was working there still at the time, wasn't he? A. Yes.

Q. And she was not dead yet, of course? A. No, sir.

Q. Was he to work then up to the time she died? A. No, I don't think I ever heard her say that.

40

Johanna Messenger—For Plaintiff—Cross.

Q. She simply said that when she died she was going to leave him a tidy little sum, wages, just like any other workingman, without saying how long he should work, is that right? A. Yes, sir.

Q. You did some work there, for which you were paid, did you not? A. I left my work and went to take care of Mrs. Crouch when she first had a stroke of paralysis, and her oldest brother said to me I would be paid, and when they came down to the house to get us to go back and take care of the house, I asked for one week's wages. 10

Q. And you got that? A. I asked for \$14 and got it.

Q. Was it one week's wages? A. Yes, sir.

Q. And you gave your receipt for it? A. No, I did not.

Q. Are you sure about that (showing witness a paper)? A. I did not write any receipt. 20

Q. Did you sign a receipt? A. I have forgotten if I did.

Q. That is your signature, is it not? A. Yes, it is.

Q. Then you signed this receipt, didn't you? A. Well, I did not give one; I did sign one.

Q. For \$14? A. Yes, sir.

Q. Received from Mrs. Henry C. Sturgeon and Harold M. Sturgeon the sum of \$14 in advance as settlement of bill for services for nursing Mrs. C. J. Crouch and acting as housekeeper for same for one week during the month of September, 1914? A. Yes, sir. 30

Q. Is that your husband's writing? A. That is my writing.

Q. But this; that is your husband's writing, is it not? A. I am not sure.

Q. He was there at the time? A. He was there at the time, but I don't know—yes, I think it is. 40

Johanna Messenger—For Plff.—Cross—Redirect.

Q. Didn't he used to write love letters to you?

A. No, sir.

Q. So you don't know his writing? A. I think it is, yes.

10 Q. When your husband was present, didn't you tell Mr. Sturgeon that you thought your husband ought to get something for the work he did there?
A. I don't recall. I don't think I did.

Q. Didn't Mr. Sturgeon tell you that if Mr. Messenger, your husband, had any claim to make out his bill and they would— A. No.

Q. There was nothing said of that kind? A. No, sir.

20 Q. But you are not sure whether you said that you thought your husband ought to receive something for the work he had done? A. I don't recall.

Q. You bought some things there, didn't you? A. I did. I bought from Mr. Harold M. Sturgeon the parlor carpet, for which I paid \$5, and he gave me his receipt.

Q. You bought some chickens, too? A. Yes, we bought some chickens.

Q. You and your husband? A. Yes, sir.

Q. And you paid for them? A. Yes, sir.

30 *Redirect examination by Mr. Ward.*

Q. At the time that you went up with your husband, just prior to your marriage, and discussed your marriage with Mrs. Crouch, was she or not apparently willing to let Mr. Messenger go at that time and be married? A. Well, the first time—

Q. No. I am speaking about the second time. A. Yes, sir; she was quite willing that he should go and get work.

40 Q. And, with reference to your husband's claim, do you recall at any time when Mr. Sturgeon came

*Johanna Messenger—For Plaintiff—Redirect.
Freda Meyer—For Plaintiff—Direct.*

to your home and had dinner there? A. Yes, sir, I do.

Q. I mean after Mrs. Crouch's death now. A. Yes, I had a visit from him, on Albion Avenue, where we lived.

Q. And, at that time, was there anything said by you to Mr. Sturgeon about your husband's claim? A. Yes, I did; I asked Mr. Sturgeon, "What have you done about Lester's wages? Mrs. Crouch always promised to pay him." 10

Q. What did he say? A. He said, "We are considering that. We have not found any papers, but we are thinking about that."

Q. Where was Mr. Messenger at that time? A. He had gone out. He had gone out of the room; he was not present. 20

By Mr. Scott.

Q. Why didn't you mention that when you first told your story? A. I was not asked.

FRED MEYER, sworn as a witness on behalf of the plaintiff, testifies as follows:

Direct examination by Mr. Ward. 30

Q. Where do you live? A. No. 59 James Street.

Q. Did you know Mrs. Crouch in her lifetime? A. I knowed her about thirty years.

Q. Whereabouts did you live during the time that you knew her? A. Next door, 200 Preakness Avenue.

Q. Did you know Mr. Messenger during that time? A. All the time. 40

Freda Meyer—For Plaintiff—Direct.

Q. Do you remember when Mr. Messenger was married? A. Yes, sir.

Q. Before that time do you know whether or not Mr. Messenger worked around there at Mrs. Crouch's place? A. Well, he most always worked there.

10 Q. Do you remember when Mr. Crouch had a stroke of paralysis? A. Yes, sir.

Q. From that time on up to the time that Mr. Messenger was married was he around working at the Crouch place? A. Yes, sir, all the time.

Q. What was the kind of work he did? A. Well, all kinds of work, farming work; I would see him working outside from the early in the morning, and when I came home from work at night I would see him working there yet.

20 Q. Did you ever visit the Crouch house? A. I was up there hundreds of times.

Q. When you were there, do you know whether or not he did any work inside of the house? A. Well, he done all kinds of work inside; he even manicured Mrs. Crouch's feet.

Q. What about cooking; can you tell us whether or not Mr. Messenger ever did any cooking there? A. No, I could not tell you that.

30 Q. Did you ever have any talk with Mrs. Crouch about Mr. Messenger? A. Well, many a time; she always spoke well of him.

Q. Did she ever say anything to you with reference to his pay? A. Sir?

Mr. Scott: I don't think counsel ought to lead this witness on this point.

The Court: I don't think that is leading. That is simply drawing attention to the subject.

40 Q. Did she ever say anything to you with reference to his pay? A. Well, she never had any con-

Freda Meyer—For Plaintiff—Direct.

versation with me over his pay, but I happened to go up there one time, and I heard Mrs. Crouch and Mr. Messenger having an argument in that way, just at the time when they were getting the hay in, or cutting the hay, and she wanted to know why he was not down working in the fields just as long as the workmen were there, so I heard him say, "Well, if you paid me like those two men, I would be down there 1 o'clock, too." So I heard her say, "Well, you are getting your pay." And then with that I walked up the stoop, and she did not say any more. 10

Q. Did you ever hear her say anything else about his working there? A. Well, I could not recall anything she said, but I know she often spoke to me about him doing the work and one thing and another, and I know he done it, because everybody could see him doing it. 20

Q. Do you know how much men who did the work that he did earned upon a farm, how much they received as pay?

Mr. Scott: Objected to.

The Court: He may answer simply yes or no.

A. What is that? 30

Q. Do you know what pay is given to men who do farm work such as that done by Mr. Messenger on that farm?

The Court: Just do you know or not?

Mr. Ward: Just say whether you know or not, not how much it is, do you know?

A. Well, I think I know how much a farmhand should get. 40

Freda Meyer—For Plaintiff—Direct—Cross.

Q. How do you know that? Have you ever worked in that way yourself? A. I have worked at it at times, short times.

Q. Have you been at places where you have been employed in that way? A. Yes, and I know men told me how much they got.

10 Q. How much is that work worth? A. Well, it ain't what it is worth; it is what they pay.

Q. I mean, what they pay? A. Well, most farm-hands—well, I don't know what they get just now, but they used to get \$20 a month and their board, I should think.

Q. If they came in by the day, do you know how much they would get then? A. \$2 a day.

Cross-examination by Mr. Scott.

20 Q. \$20 a month and board, you say? A. Yes, sir.

Q. Mr. Messenger was living there, wasn't he? A. Yes, sir.

Q. So that if he got paid at the rate of \$20 a month, he would be getting what was due to him, would he not?

Mr. Ward: Objected to as argumentative. Objection sustained. Defendant excepts.

30 The Court: You may ask him if that is compensation for the amount of work he was doing, if that is what you mean. I did not intend to overrule such a question as that.

Mr. Scott: That is what I mean.

Q. You say people doing that kind of work got \$20 a month and their board? A. Yes, sir.

Q. And he was living there? A. Yes, sir.

40 Q. And \$2 a day if they came by the day and boarded elsewhere; that is, what you mean, is it not? A. Yes, sir.

Freda Meyer—For Plaintiff—Cross.

Q. Where do you live now? A. 59 James Street.

Q. In Paterson here? A. Yes, sir.

Q. During the thirty years you were up there you became very well acquainted with Mr. Messenger? A. I could not say very well acquainted. I always knew him, and I did not associate with him.

Q. He passed by the name of Lester Crouch, didn't he? A. Yes, sir. 10

Q. And you say that the only time that you ever heard talk between Lester and Mrs. Crouch about pay was one time in haying time? A. Yes, sir.

Q. When was that? A. That was eight years last summer; I was loafing all summer, and I went there every afternoon to Crouches.

Q. About 1908? A. About that.

Q. And you say that she was finding fault with him? A. They were having some words over him not being down in the field at 1 o'clock, and this was right after 1 o'clock. 20

Q. He said, "If you paid me like those two men," and so forth? A. Yes, sir.

Q. What two men did he refer to? A. Well, there was two men working, making hay; they were cutting hay, and Lester was helping, at the time.

Q. "If you paid me like those two men." Then she said what in answer to that? A. I heard her say, "You are getting your pay." And, of course, I guess there was others she said before that; she says she did not have no money, hardly had money to pay those other two men; never mind paying him just now, but, "You will get your pay." 30

Q. Did she say when? A. No, she did not say when.

Q. She did not mention the time? A. No, sir.

Q. What day of the week was this? A. I could not tell you what day of the week it was.

Q. It was not pay day, was it? A. No, it was not pay day. I don't know what day pay day came 40

Freda Meyer—For Plaintiff—Cross.
Mary A. Scott—For Plaintiff—Direct.

on, whether it was pay day or not; I could not say.

Q. But that is what you heard in regard to this question of pay? A. Yes, sir.

10 Q. During the thirty years that you have been up there, or rather, since 1896 to 1911, other men besides those two men worked there? A. Well, there was an old man living up there for a while.

Q. Did you ever see a man by the name of Vreeland working there? A. I don't know anybody by the name of Vreeland.

Q. Did you ever see a man by the name of David Millsop working there? A. Yes, I remember him there.

20 Q. Any others? A. As I say, there was an old man there, but I could not say his name; I never saw him do much.

Q. During the hay time, wasn't it, Mrs. Crouch was accustomed to have extra men? A. She always had two men for a week to help out.

Q. How much of a farm did she have? A. Ten acres.

30 MARY A. SCOTT, sworn as a witness on behalf of the plaintiff, testifies as follows:

Direct examination by Mr. Ward.

Q. Where do you live? A. I live at 51 Doremus Street now.

Q. Did you know Mrs. Crouch in her lifetime? A. Yes, sir, very well.

40 Q. Do you remember Mr. Messenger living there? A. Yes, sir.

Mary A. Scott—For Plaintiff—Direct.

Q. Do you remember the time of Mr. Messenger's marriage? A. No, I was not living there at his marriage.

Q. Was it before or after? A. Before.

Q. Before Mr. Messenger's marriage? A. Yes, sir.

Q. How long did you live there? A. Ten years. 10

Q. Were you personally acquainted with Mrs. Crouch up to the time she died? A. I was very well acquainted with her, yes.

Q. During the ten years that you lived there will you tell us whether or not Mr. Messenger worked in and around that place? A. Yes, he was always working, early in the morning and late at night.

Q. What was the character of his work? A. General farm work.

Q. Do you know how many acres they had there? A. Well, I have heard Mrs. Crouch say it was ten acres. 20

Q. Was it under cultivation or not? A. Part of it. Part of it was vineyards, grapes, and others was an orchard or fruit.

Q. Do you know whether there were any animals on the place? A. Yes, a cow; I believe she had one cow, one horse, while we were there.

Q. Who took care of them? A. Lester. Mr. Messenger. 30

Q. Do you know whether or not Lester did any work besides farm work? A. Yes, he done house-work.

Q. During the time that Mr. Messenger was there, and you lived there, do you know whether or not Mrs. Crouch did any other business besides farming? A. Well, she taught music; she taught my children.

Q. Did you ever have any talk with Mrs. Crouch about Mr. Messenger? A. Yes, very often. 40

Mary A. Scott—For Plaintiff—Direct.

Q. Well, you just tell us what she said on those occasions. A. Well, on one occasion I was ill, and she came over to see me, and she got talking about property and wills, and she said, "Well, I have not made a will yet," she says, "but I intend to, because," she said, "I have to look out for Lester." 10 She says, "We never took out adoption papers for Lester, and," she says, "I mean to make it all right for him, and," she says, "I intend to make a will and provide for him, to see that he gets his rights"—before she died. On another occasion she said—I said, "Why don't you give him some of it now?" That was on that same day. She says to me, "Well, if I did, he would go off and get married." "Well," I said, "I did not know that Lester was keeping 20 company with anybody." And she says, "Oh, yes, he has got a girl." That is all was said at that time. Another time she was talking to me, and I asked her, "Did you make your will yet?" And she said, "No, but I am going to. All I have got is Lester and a niece in Erie, Pennsylvania." And then she talked about a will, and she said, "I don't know why I should leave her anything. She never comes to see me. Lester is all I have got. He has been a son to me, and he has been more than a son to me."

30 Q. Do you recall anything else? A. No. Only she has many times said to me, "I don't know what I would ever do without Lester." I used to go there for milk many times; Lester was always working around the house there, morning and night, and she said, "I don't know what I would do without Lester; he has been more than a son to me. He is man servant and maid servant."

40 Q. Did she say anything to you as to whether or not she was paying Lester wages? A. No, she never said it.

Mary A. Scott—For Plaintiff—Direct—Cross.

Q. She never told you anything about that? A. No, sir.

Cross-examination by Mr. Scott.

Q. You say you have known Mrs. Crouch for many years? A. Yes, sir; it is about twenty years now. 10

Q. She died in October, 1915, did she not? A. Yes, sir.

Q. Mr. Messenger was not there at the time, was he? A. No. We were not living up at Preakness any more, on Preakness Avenue, at the time Mrs. Crouch died.

Q. When did you move away from there? A. We moved away from there about eight or nine years ago, as near as I can remember. 20

Q. Did you know Mr. Messenger, when he got married, moved away from there? A. I heard it.

Q. And that he was not there during the period from that time up to the time of her death in 1915; do you know that? A. Well, no; I heard he had went back there several times; different ones told me Lester was up there when she was taken sick. I heard Lester was.

Q. To live? A. No. I don't know that he was there to live, but I heard he went and cleaned up the place. 30

Q. He went under the name of Lester Crouch, did he not? A. Yes, that is what we always knew him as.

Q. And was regarded like her son? A. Yes, sir.

Q. That is the way she used him, didn't she? A. Yes, sir.

Q. Wasn't she good and kind to him? A. Not that I ever saw.

Q. She spoke well of him? A. She always spoke 40

Mary A. Scott—For Plaintiff—Cross.

well of him, but the way they dressed and the way they ate was not like a son.

Q. She ate at the same table, didn't she? A. Yes, but she ate a good deal outside, too.

Q. How do you know that? A. She has often told me.

10 Q. You never had any trouble with her, did you?

A. No, I never had any trouble with her at all.

Q. What did she say to you about her eating outside? A. She taught three of my children; she would often be there three hours at a stretch, and she said in many places where she went she would often get her supper or get her dinner.

Q. Get her meals? Did get her meals at your house? A. No, she never did; only once or twice she got tea or a piece of cake.

20 Q. So, so far as your knowledge goes, you don't know that she got food outside? A. No, only her own words for it.

Q. She did not get anything from you? A. Only once or twice a cup of coffee and a piece of cake.

Q. Whatever she ate in her own house she shared with Lester? A. I suppose so.

Q. She had a cow? A. Yes, sir.

Q. And she used her own milk? A. Yes; they sold a great deal of it.

30 Q. She had chickens? A. Yes; they sold eggs; a great deal of them.

Q. Didn't he get any? A. I don't know whether he got any or not, but I know people would go there and buy eggs.

Q. Did you ever buy any eggs there? A. Yes, sir.

40 Q. These conversations that you had with Mrs. Crouch about her will; when did that conversation, the first one, happen? A. In the October following Mr. Crouch's death.

Mary A. Scott—For Plaintiff—Cross.

Q. When did he die? A. He died in the February; I cannot recall just the date of the year.

Q. Do you know the year? A. No, I could not, but it was in the following fall.

Q. How do you come to fix that time? A. I know it was the following fall after he died.

Q. You don't know when he died? A. No, we were there when he died, but I could not tell you just the year. I have never fixed it just in my mind. 10

Q. You are sure it was the following February? A. Yes, the summer had elapsed during that time.

Q. Have you anything there to remind you of the date? A. No, sir.

Q. You just recall that from where you are sitting? A. Yes, sir.

Q. You never thought of it before? A. I have thought of it before, without having talked about it, but I know it was the following October. 20

Q. She said she was going to remember him in her will? A. She said she was going to provide for Lester, to see that he got his wages.

Q. That he got his wages? A. Yes, those are the words.

Q. Did you use that term or did she? A. She did.

Q. Are you sure about that? A. Yes, sir. 30

Q. Have you any memorandum in any book or paper that makes you recall her use of that word? A. No, I have not.

Q. Has anybody told you that is what she said? A. No, that is the word she said to me, that she must fix it for Lester; she said, "I have to make a will because of Lester," and she stated that she had not taken out adoption papers, and that is why she would have to provide for him and see that he got his wages. 40

Mary A. Scott—For Plaintiff—Cross.
Josiah Conklin—For Plaintiff—Direct.

Q. That is the reason she said she would have to make a will, because he was not her son? A. Yes, sir.

10 Q. She not having taken out adoption papers, so that he was not her heir if she made no will? A. I suppose she meant that.

Q. Did she tell you how long Lester was to stay with her? A. No, she did not.

Q. During the time you lived up there, do you know whether Lester went to school anywhere? A. No, not that time. He was a grown man at that time.

Q. Did he do any business? A. Not while we lived there.

20 Q. Did you know he had been in business? A. I had heard he had been; my husband said he had been in business; he had known him longer than I did.

Q. You don't know for how long a period he had been in business? A. No, sir.

Q. You never heard Mrs. Crouch say he was to work for her up to the time she died? A. No, sir.

Q. You never heard her say anything about that at all? A. No, sir.

30

JOSIAH CONKLIN, sworn as a witness on behalf of the plaintiff, testifies as follows:

Direct examination by Mr. Ward.

Q. Where do you live? A. At Butler.

Q. How long have you lived at Butler? A. Since last August.

40 Q. How long have you lived in New Jersey? A. All my life.

Josiah Conklin—For Plaintiff—Direct.

Q. Do you know Mrs. Crouch; did you know her in her lifetime? A. Yes, sir.

Q. What is your business? A. I am a plasterer.

Q. Do you remember when Lester Messenger lived at the Crouch place and worked there? A. Yes, sir.

Q. Do you remember the time of his marriage? I don't mean the date of it, but I mean the occasion of his marriage. A. Well, I am not positive, but I think it was in 1911. I am not positive. 10

Q. Before that time how long had you known Mrs. Crouch? A. Well, I have known Mrs. Crouch as long as I can remember, living just below there in Sheridan Avenue; their house is in sight of where I lived.

Q. Do you remember when Mr. Crouch had a stroke of paralysis? A. Yes, sir. 20

Q. Before that time do you know what Lester was doing? A. Yes, sir.

Q. What was he doing? A. He was doing farm work. General work around the farm.

Q. Do you remember his being employed in New York or working? A. Well, I have heard him speak about it.

Q. When Mr. Crouch had this stroke of paralysis, from that time up to the time Lester married, do you know whether or not he worked around that place? A. Yes, sir. 30

Q. Did you ever work there? A. Yes, sir, on different occasions.

Q. Have you ever worked there on the farm as a farmhand? A. Yes, sir, I helped there in haying and harvest.

Q. When you worked there as a farmhand, did Messenger work along with you or not? A. He helped me, yes, sir.

Q. The character of work that you did there, was that or not the same character of work that he 40

Josiah Conklin—For Plaintiff—Direct.

did? A. The same thing, only he done more of it.

Q. How much did you get a day there? A. \$2 a day and my board.

10 Q. Will you just tell the Court and jury the kind of work or what work Messenger did there? A. Why, when I would come over there to do work, I would start 7 o'clock and quit 6, and he would be working before I came over there and work after I quit. They had two cows at the time and a horse and chickens, and, of course, they had to be attended to first before he could go in the fields, or after coming back from the fields, then finish them. That is, the night work.

Q. Do you know whether or not he did any housework? A. Yes, sir, he has got our supper there and dinner many times.

20 Q. Do you know whether or not Mrs. Crouch at that time had any other business? A. Well, she was a music teacher.

Q. Did you ever have any talk with Mrs. Crouch about Lester and about his work there? A. Oh, yes, I did have a talk with her once.

30 Q. Just tell us what was said, if you will? A. This was in 1910, after I was getting paid off, he was paying me off then, this was on a Saturday and Lester was away; we always called him Lester; we did not know any different name at all, not till afterwards, and he was paying me off, and he said, "You are pretty lucky." "Why?" I said. "You get yours every week." "I don't get mine at all." "What?"

Q. This was before Mrs. Crouch? Was Mrs. Crouch there? A. No; she was not there at the time.

Mr. Scott: I object to it and ask that it be stricken out.

40

The Court: Yes; that will be stricken out.

Josiah Conklin—For Plaintiff—Direct.

Q. Did you ever have any talk with Mrs. Crouch?
A. Yes, sir.

Q. Tell us about what? A. I told Mrs. Crouch that Lester felt kind of bad seeing me get paid and he did not have any pay. I says, "I was embarrassed. I was always under the impression he was paid." And, "Well," she says, "he keeps bothering me all the time, pestering me for a dollar now and a dollar then. I won't do it. I won't give it to him. I told him I would pay him. The more work he done on this place the more improvement that would be for him, for his own benefit." By that I took she was to leave him, remember him in her will. 10

Mr. Scott: This witness is usurping the function of the jury. 20

Q. Did you ever have any other talk with her about Lester being paid? A. Well, two or three times after that. But that is the first I ever knew. I was always under the impression that he was an adopted boy. I did not know any different.

Mr. Scott: You supposed he was what?

The Witness: An adopted son.

Q. Go on and tell us what she said after that about Lester's pay, if anything? A. That was the general talk all the time, "Lester keeps pestering me for a dollar two or three times, and I told him I did not have the money, that he would get his all in a lump." 30

Mr. Scott: All in a what?

The Witness: All into a lump. All at once. That is the way she spoke. 40

Josiah Conklin—For Plaintiff—Direct—Cross.

Q. How many times did she say those things to you? A. Two or three times; I could not tell exactly when; only on those occasions.

10 Q. Is there anything else you can remember her saying to you about his pay, or about his getting paid? A. No; that was about all in regard to that; she said that she clothed him and was keeping him, and he was eating the same as she was, and she was clothing him, but I could never see the clothes she mentioned or the eating.

Q. How was he clothed, as a matter of fact? Did you ever see any decent suit of clothing on him? A. No; not to my knowledge; not while he was there. The man wore the same straw hat three or four years.

20 *Cross-examination by Mr. Scott.*

Q. You say you live in Butler now? A. Yes, sir.

Q. What do you do now? A. Plasterer; working above the Clinton Reservoir.

Q. And you say you worked for Mrs. Crouch during what year? A. I worked numerous times for Mrs. Crouch, but at the time I mention it was in 1910.

30 Q. Had you worked for her before that? A. Yes, sir.

Q. And after that? A. Yes, sir.

Q. When did you work for her before that? A. Why, the first work I done there was in 1899, I think; I am not positive.

Q. Way back as far as that? A. Yes, sir.

40 Q. Was Messenger there during that time, from 1899 to 1910? A. As far as I know. I could not say, because I was not there all the time, only just at different times, probably during the haying season. He was always there, as far as I know, during that time from 1899 up to 1910.

Josiah Conklin—For Plaintiff—Cross.

Q. From 1899 up to 1910, during the haying season, you were there? A. Sometimes; yes, sir.

Q. Can't you tell whether he was there or not? A. What time? 1910?

Q. From 1899 to 1910. A. I saw him there different times. I would be there two or three times a year. Maybe more. I used to go visiting.

10

Q. Did you see him every time you went there during that period, from 1899 to 1910? A. As near as I can judge; yes, sir.

Q. As far as you can recollect? A. Yes, sir.

Q. You say you got \$2 a day every day that you worked there for the time you worked? A. Yes, sir; when I worked at laboring work there.

Q. From Mrs. Crouch? A. No, sir.

Q. Did you ever get less? A. Yes, sir.

Q. You say you got your board? A. Such as it was.

20

Q. Well, you got it, whatever it was? A. Yes. There was no trouble in getting away with it.

Q. You have been dissatisfied ever since on that account? A. Well, I don't know as it done me any harm since then.

Q. Haven't you had a grudge against Mrs. Crouch because she did not feed you well? A. Well, she did not feed the men according to the way you should when they work. I bought stuff myself sometimes for dinner.

30

Q. Did you stay there all night? A. I have stayed there; yes, sir; all night.

Q. Did you get \$2 and your board and your lodging, too? A. Yes, sir.

Q. Everything? A. Yes, sir. While I stayed there. I was there about three weeks in 1910.

Q. You say you had a talk with her in 1910? A. Yes, sir.

Q. About Lester and his pay? A. Yes, sir.

40

Josiah Conklin—For Plaintiff—Cross.

Q. From 1899 up to 1910 had you ever conversed with her about that? A. No, sir.

Q. During that whole period? A. No, sir.

Q. This was the first? A. That was the first. We had talks since 1910.

10 Q. What? A. We have had talks together since 1910, Mrs. Crouch and I.

Q. What do you say she said? A. Why, "He keeps pestering me about a dollar, he wants a dollar now and a dollar then." She says, "I told him I won't do it. I have not got it to spare, and I have not got any money, and I told him to not get excited, that I would remember him. What improvement he put in that place would all be for his benefit."

20 Q. That she would remember him and what improvement he put in that place would be for his benefit? A. The more he worked; I suppose tilled the ground.

Q. You say you understood from that that she was going to leave him the whole thing? A. Well, I don't know about the whole thing; I suppose he would have a certain share of it to come to him.

Q. You say he was like her son, was he not? A. Well, I always thought he was her adopted son.

30 Q. He went by the name of Lester Crouch? A. Lester Crouch; yes, sir. I knew no different until just before this conversation. I don't know whether it was a year before that. In fact, I could not remember what his right name was; I always called him Lester Crouch.

By Mr. Ward.

40 Q. What did Mr. Messenger call Mrs. Crouch, do you know? Do you remember how he addressed her? A. Mrs. Crouch.

David Conklin—For Plaintiff—Direct.

DAVID CONKLIN, sworn as a witness on behalf of the plaintiff, testifies as follows:

Direct examination by Mr. Ward.

Q. Where do you live? A. No. 86 Belmont Avenue.

Q. Do you know Mr. Messenger? A. Yes, sir.

10

Q. Did you know Mrs. Crouch in her lifetime?
A. Yes, sir.

Q. Did you ever work up at her place? A. Yes, sir.

Q. In what capacity? A. Mowing grass.

Q. What were you getting a day? A. I was getting a dollar and a half and my father was getting \$2.

Q. Were you working there the same time your father was? A. Yes, sir.

20

Q. Did you at any time while you were there ever have any conversation with Mrs. Crouch, or did you hear any conversation with Mrs. Crouch, any conversation she had when Lester was mentioned? A. I heard her having a conversation with father.

Q. Will you tell us what that conversation was?
A. Father said that Messenger had made quite some few improvements on the place, and she said, "Well, it is for his own benefit, because he will get it all paid back to him at the close of my life."

30

Q. Is that all she said? A. That is all that I heard her say.

Q. Do you recall when that was said? A. That was in 1905.

Q. How do you fix it that it was in that year?
A. Because father only worked with me once after that on the place.

Q. She said it was all for his benefit? A. It

40

David Conklin—For Plaintiff—Direct—Cross.

was as much for his benefit as for her own, because he would have it, he would get his at the close of her life, he would get his pay at the close of her life.

Q. She said he would get his pay at the close of her life? A. Yes, sir.

10 Q. There had been some talk about wages, had there? A. I could not tell you that. That was the only talk I heard.

Q. That is what she said, he would get his pay at the close of her life? A. Yes, sir.

Cross-examination by Mr. Scott.

20 Q. That is the same conversation your father told about when he was on the stand a moment ago?

Mr. McGinnis: That is not his father. Where is your father? Living or dead?

The Witness: He is dead.

Q. Who is this last witness, a relative of yours? A. A brother.

30 Q. Are you testifying now to the conversation he told about? A. I am testifying to what I heard. I was not there at the time, nor he was not there at the time I heard this conversation.

Q. Your brother was not there at the time you heard that conversation? A. No, sir; only father and I were there and Mrs. Crouch.

Q. It was between Mrs. Crouch and your father? A. Yes, sir.

Q. You did not take part in it at all, did you? A. No, sir.

Q. How old are you now? A. Forty-five years old.

40 Q. This was in 1905, you say? A. Yes, sir.

David Conklin—For Plaintiff—Cross.

Q. Was your brother working there at the time?

A. No, sir. It was only father and I and Mr. Messenger.

Q. It was eleven years ago that this conversation took place? A. Eleven years ago.

Q. How do you fix this date? A. Why, by remembering that he had sued for his payment of wages, and I recollected the conversation with father and Mrs. Crouch that they had. 10

Q. Did you have anything to remind you of it in the way of a memorandum or anything like that?

A. No, sir.

Q. You say it was in 1905? A. It was in 1905.

Q. What time of the year? A. Why, it was in the summer, after haying time.

Q. Then at that time, in 1905, besides Lester working there was your father and you? A. There was Mr. Messenger and father and I. 20

Q. Anybody else? A. There was an old man there, but he was not working at the time.

Q. He did not do anything at all? A. No, sir.

Q. That was when you were about thirty-four years of age, eleven years ago? A. About that.

Q. You were a good, strong, husky youth, weren't you? A. Yes, sir.

Q. A young man? A. Yes, sir.

Q. And you could work the hay as well as anybody, couldn't you? A. No, sir; I would not. 30

Q. Weren't you an expert at that? A. No, sir.

Q. Weren't you as good as your father was? A. No, sir.

Q. Were you as good as Messenger? A. I don't know. I never worked with Messenger. My work is plastering. I was a plasterer. I only worked at that when I did not have anything else to do.

Q. Your brother was a plasterer, too, wasn't he? A. Certainly. 40

David Conklin—For Plaintiff—Cross.

Q. He got \$2 a day? A. Well, that was afterwards.

Q. Why should he get \$2 a day and you only a dollar and a half; couldn't you work as well as he? A. Certainly I could. I got all I could. But I could not do as much as him; it is not likely.

10 Q. As much as who? A. As much as my brother or father.

Q. Why not? A. Because I could not; we were not experts at it.

Q. Your brother was a plasterer and you are a plasterer? A. I am not talking about plastering; I am talking about mowing.

Q. I want to know whether you could not mow as well as your brother? A. I come just as high, but I cannot do as much.

20 Q. Why not? A. Come, take a trial and do as much as I can in it.

Q. I think I could do more? A. I guess you could, with your tongue.

Q. You were thirty-four years of age at that time, weren't you? A. Yes, sir.

Q. Right in the prime of your health and strength and beauty? A. I don't know about the beauty part.

Q. Did you stay there nights then? A. No, sir.

30 Q. You went home? A. Yes, sir.

Q. Your brother stayed nights? A. That I could not say. Not at the time we were there.

Q. Did you get your meals there? A. No, sir; we took our meals with us.

Henry Haywood—For Plaintiff—Direct.

HENRY HAYWOOD, sworn as a witness on behalf of the plaintiff, testifies as follows:

Direct examination by Mr. Ward.

Q. Where do you live? A. 374 Totowa Avenue.

Q. Do you remember Mrs. Crouch in her lifetime? A. I knew her; yes. 10

Q. Did you live anywhere in that vicinity? A. No, sir.

Q. Did you ever have occasion to go there? A. Yes, sir.

Q. Do you know Mr. Messenger? A. Yes, sir.

Q. Do you know whether or not he was employed on the Crouch farm? A. I know he was working there for a number of years; I don't know just when.

Q. During what period of time was that, if that is a matter of your personal knowledge? A. I could not tell you. I don't remember the years, time; probably it would be ten years ago, and probably he was there ten years, to my knowledge; I don't know. 20

Q. Will you just tell us, if you will, the character of work that Mr. Messenger did there and what you know about it? A. As far as I know, he just worked on the farm. I know he used to come down with produce and things of that kind when he was selling them. That is all I know. 30

Q. You did not know Mrs. Crouch personally? A. No, sir.

(No cross-examination.)

Keuren Keys—For Plaintiff—Direct.

KEUREN KEYS, sworn as a witness on behalf of the plaintiff, testified as follows:

Direct examination by Mr. Ward.

Q. What is your business? A. I am a policeman.

10 Q. Whereabouts do you live? A. No. 491 Totowa Avenue.

Q. Did you know Mrs. Crouch in her lifetime? A. I knew her for quite a while.

Q. Did you know Mr. Messenger at the time he was there? A. Yes; I knew him quite well, too.

Q. How far did you live from the Crouch place? A. Quite a distance; a mile, I guess; but I done police duty up around there.

20 Q. Do you know whether or not Mr. Messenger worked for Mrs. Crouch? A. I do. He worked there on the farm.

Q. What did he do there? A. I could not say. I guess he was farming. I never was on a farm. I never was in the place; only I met him several times and he spoke to me on the street and told me he worked on a farm up there.

Mr. Scott: I object to that and move to strike it out.

Motion granted.

30 Q. Did you ever see him working on the farm? A. I never did. I never was on the farm when he was working on it. He told me he was working on the farm there.

Mr. Scott: I object to that and move to strike it out.

Motion granted.

40 Q. Did you ever have any conversation with Mrs. Crouch? A. Yes, sir.

Keuren Keys—For Plaintiff—Direct—Cross.
John G. Donnelly—For Plaintiff—Direct.

Q. With reference? A. Several times; well, I never spoke of him but once.

Q. What was it was said about him at that time?

A. He told me—I always called him Mr. Crouch. He said that was not his name. One time was when I met him he told me that. So when I met her I told her I always thought he was her son. She said, “No; that is a boy I raised,” she said, and she asked me about him. That is about all was said. She said, “Whenever I die I will be good to him and leave him something.” That is all the conversation there was about him. 10

Q. Did she say anything about his working for her? A. No; there was nothing any more than that said. He worked there.

Q. That is all that you heard? A. Yes, sir. 20

Cross-examination by Mr. Scott.

Q. Didn't you say that she said that he was a boy that she had raised? A. That he was a good boy; yes; and that she would remember him in her will.

Q. Did she say he was a boy she had raised? A. Yes; she raised him; yes.

JOHN G. DONNELLY, sworn as a witness on behalf of the plaintiff, testifies as follows: 30

Direct examination by Mr. Ward.

Q. You are the keeper of the Poor Farm? A. Yes, sir.

Q. And you have been for a number of years?

A. Almost twenty-five years now.

Q. Did you know Mrs. Crouch in her lifetime?

A. I never knew the old lady. 40

John G. Donnelly—For Plaintiff—Direct.

Q. Did you know Mr. Messenger at the time Mrs. Crouch was living? A. I have known Mr. Messenger since he was a boy.

Q. How far is the Poor Farm from where the Crouch farm was? A. It adjoined our farm.

10 Q. During the time Mrs. Crouch was living do you know whether or not Mr. Messenger worked on her farm? A. Well, Mr. Messenger, as far as I could observe, done all the work around the place. I never saw anybody else working there.

Q. And of what did that work consist; will you tell the Court and jury what kind of work it was? A. He went to the stores; I saw him coming through our fields to go down to the store, and he had a little patch growing there and tried to raise some stuff on it, but in my estimation that was a joke; 20 the ground was not properly cultivated; it was not manured. It had gone sour, and it would not produce, and I told him, told Mr. Messenger, one day that if he——

Q. We don't dare have you tell what you told Mr. Messenger; that is not evidence; I mean what you saw him do? A. I saw him trying to raise some produce on the farm there.

Q. What about the haying; did you see who did that? A. The what?

30 Q. The haying? A. No; I never paid any particular attention to him, because we are pretty busy at our own place, but I remember distinctly once I saw a crop of corn there, and I said to him——

Q. No; you cannot tell that, unfortunately. Do you know anything else about the work he did up there? A. No. Nothing.

Q. And you did not know Mrs. Crouch personally? A. I never spoke to the lady in my life.

(No cross-examination.)

Charles E. Downs—For Plaintiff—Direct.

CHARLES E. DOWNS, sworn as a witness on behalf of the plaintiff, testifies as follows:

Direct examination by Mr. Ward.

Q. Where do you live? A. No. 70 North 3rd Street.

Q. Did you know Mrs. Crouch at the time she was living? A. Yes, sir.

Q. How long did you know her, for how long a period of time? A. About eight years.

Q. Do you remember when Mr. Messenger was working for her on her farm? A. Yes, sir.

Q. How long did you know Mr. Messenger while he was working there? A. I knowed him—while he was working there? About ten years since I know him.

Q. Were you ever in a position to observe or see the kind of work that he did there? Did you ever see what he did up there? A. Yes, sir; I seen him do all kinds of farm work.

Q. Did you ever visit the house? A. Yes, sir.

Q. Do you know whether he did any housework? A. Yes, sir.

Q. What? A. I have seen him blacken the stove, scrub the floors and peel potatoes, and that like, look after the milk.

Q. What about the farm work; what did he do on the farm; what work did he do there? A. He raised corn, raised a few potatoes, and produce, and grapes, and they had fruit on the place, and gardens.

Q. Did you ever have any talk or conversation with Mrs. Crouch about him? A. Nothing more than I used to plague him, that is all, about doing the housework.

Q. I mean Mrs. Crouch; did you ever have any

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Charles E. Downs—For Plaintiff—Direct—Cross.

talk with her? A. I used to plague her about letting him do the housework.

Q. Did you ever have any talk with her with reference to any wages? A. No, sir.

Q. You never had any talk about that? A. No, sir.

10 Q. Was there ever anything said to you by her about his pay? A. Well, not any more than she always said she would remember him when she died.

Q. Can you remember just what she said about that? A. Well, that is all.

Q. What, now? What did she say? A. She said she would always remember him after she was gone; that is all.

20 Q. Do you know whether he got anything for the work he did there? A. I could not say.

Cross-examination by Mr. Scott.

Q. That was a very poor farm, wasn't it? A. A very poor farm?

Q. Yes. A. Oh, yes.

Q. You could not raise anything on it? A. I don't know. I never farmed the place myself. I don't know how it was; I could not tell that.

30 Q. You heard what Mr. Donnelly said about it, didn't you? A. They always raised stuff on it; I seen stuff grow on it.

Q. You don't know whether it was any good or not? A. I don't know whether it was any good or not; I could not say.

George W. Scott—For Plaintiff—Direct.

GEORGE W. SCOTT, sworn as a witness on behalf of the plaintiff, testifies as follows:

Direct examination by Mr. Ward.

Q. Where do you live? A. No. 51 Doremus Street now.

Q. You are the husband of Mrs. Scott, who was a witness here? A. Yes, sir. 10

Q. You knew Mrs. Crouch, then, in her lifetime, didn't you? A. Yes; I have known her a great many years.

Q. How many years do you think it was that you knew her? A. About thirty years, I should think; about thirty, or maybe more.

Q. Do you remember the time Mr. Crouch had a stroke of paralysis? A. Well, now, the old gentleman do you mean? 20

Q. Yes. A. Yes; I remember that.

Q. Do you remember the time when Mr. Messenger was married? A. Well, I did not know he was married until about a year after he was married.

Q. Between those two times, between the time that Mr. Crouch had this stroke of paralysis and the time that Mr. Messenger was married, do you know where Messenger worked? A. Well, the only place I ever saw him work was around the farm. 30

Q. What did he do there; just tell the Court and jury as fully as possible? A. I worked on the farm myself, and I can tell you what he done; he done everything; they had cows to look after, a horse; they had chickens, and they had the farm work, and he did all the farm work that had to be done around the place.

Q. And he did all that? A. He done it all, as far as I know; I never seen anyone else there.

Q. What about the housework; did you know anything about who did that? A. What? 40

George W. Scott—For Plaintiff—Direct.

Q. Do you know who did the housework? A. Mrs. Crouch done that and Lester helped her with the work. She used to tell us that Lester helped her with the work.

Mr. Scott: What she said is not evidence.

10 Q. Do you know what business she had besides this farm? A. She used to teach piano lessons and would come to my house and would give our boys lessons.

Q. Do you know whether she was ever out nights in that time? A. Yes; she was out at night a good deal.

Q. Do you know who met her? How did she get home? A. She used to come on the car up, and I have seen her standing at 11 o'clock in front of
20 Cortes' store waiting for Lester, and I saw him there already with the rig waiting for the car to be along.

Q. Do you know how she got from the car to her place? A. Sometimes she would walk, I suppose, and sometimes somebody came along and gave her a lift; I have met her on the road more than once with my horse and wagon.

Q. How far was it from the car to where she lived? A. Well, that would be about; I don't think
30 it was over a half mile.

Q. What have you to say as to the way Lester dressed during that time? A. Well, I will tell you the truth about it; I never seen him have a decent suit of clothes on at all till after he was married.

Q. Did you ever have any talk with Mrs. Crouch about Lester? A. Why, she used to come over once in a while and sit there, and talk with us, and one time there she says that after she was gone she was going to leave Lester so that he would get his
40 wages; she says Lester would have his wages, but

George W. Scott—For Plaintiff—Direct—Cross.

I don't know whether he ever got anything out from them or not.

Q. Did she tell you anything more about that?

A. No, sir.

Q. How often did she say that to you? A. Oh, once or twice; she would be over talking. She would come over and stay at our house and talk with us a little while and go back home again, and she was always talking about Lester. 10

Q. What else did she say about him? A. She did not say anything else, only that Lester was good around the house and done the work for her; and what else could she say?

Q. Did she say that he was to get his wages? A. She did not tell me that, you know. I supposed she was going to leave him his wages. That is all I knowed about it. 20

Cross-examination by Mr. Scott.

Q. You say you were up there thirty years? A. I say I have knowed her thirty years.

Q. Where did you live with reference to Mrs. Crouch's place? A. Well, I used to live back in the country, and I used to drive my father up and down to work with a horse and wagon.

Q. Between 1896 and 1911 where did you live? A. Well, I have lived at Totowa. 30

Q. How near to the Crouch farm? A. My house is right across the street from their house.

Q. During that period, from 1896 to 1911? A. No; we were away; it is about ten years difference; we have been up there about twenty years; we owned that place up there.

Q. This last twenty years? A. Yes, sir.

Q. You say you never saw anybody else work on this farm? A. There was one man I did see 40

George W. Scott—For Plaintiff—Cross.

there; that was an old man they called Christie. He used to be monkeying around the place; he was an old man and could not do much.

Q. But he did monkey around? A. Yes; he just was around the place.

10 Q. He did some work? A. I suppose so; he done a little, whatever he could do, but he could not do much.

Q. You never saw anybody else work around there, did you? A. No, sir; I never seen anybody else working there as long as I live.

Q. And that you say covered this period for the last twenty years? A. Yes, sir.

Q. Did you work in the daytime? A. Yes; I always worked in the daytime.

20 Q. Where? A. I worked in the King-Gerbin Machine Works.

Q. Down in Paterson? A. On Montgomery Street.

Q. You would leave early in the morning and come back home at night? A. Yes, sir.

Q. So that you don't know who worked on the farm during the day? A. No; I don't know who worked there during the day, but I could always see Lester night and morning, before I went to work.

30 Q. But, so far as the day is concerned, you don't know whether one or twenty people worked there? A. No; I could not tell you that.

Q. The farm is not much good? A. I don't know; it seemed to be quite a nice little place, but there ain't much to it.

Q. How much is there? A. I suppose about eight or ten acres, I should think.

40 Q. How much of that was covered with vines? A. Well, she had a big grapery out back of the house; I could not tell you how much space; it might be an acre.

George W. Scott—For Plaintiff—Cross.

Q. Do you know how much was given over to cultivation? A. I guess if they wanted to they could cultivate the whole place; the ground looks good enough.

Q. You say Lester did not have decent clothes? A. No, sir; he did not.

Q. That was when he was working, wasn't it? 10
A. It was over the whole time he was up there. I have seen him wear a hat I would not begin to wear, nor I would not want none of my children to wear it, either.

Q. What kind of a hat was that? A. A straw hat; he wore it three or four years then; I guess it was an old one that somebody gave to him even then.

Q. Wasn't that when he was working? A. No, 20
sir; only when he was around the farm.

Q. But he was around the farm when he had that on? A. I seen him around the farm all the time; yes.

Q. Did you ever see him come to town? A. Once in a while; yes, sir.

Q. How often? A. Maybe once in two weeks. I just see him going down or met him on the road, something like that.

Q. Did you ever see him down in the City of Paterson? A. I have met him on Totowa, not down- 30
town here; no; at the hill up there.

Q. He passed under the name of Lester Crouch? A. He always went by that name; that is what we always named him, Lester Crouch.

Q. You thought he was a son of Mrs. Crouch? A. I did not think he was a son, but we always heard she had adopted him. That is what we always understood.

Q. This conversation you heard; was your wife present? A. No, sir. 40

George W. Scott—For Plaintiff—Cross.

Q. This was when she was talking to you alone?

A. Just me alone.

Q. She said she would remember him in her will?

A. She said she would see that he got his wages.

10 Q. Did she say she would remember him in her will? A. She said about his wages; she did not say anything about the will; she said she would see that he got his wages.

Q. Did she mention a will? A. She did not say anything about a will.

Q. Why should she say anything to you about his wages? A. Why would she tell me anything about a will?

20 Q. Why should she tell you anything about his wages? A. She used to get talking there; she would come over there and stand and talk there maybe for an hour or so.

Q. She never said anything to you about a will? A. Not about a will; but she has told my wife about a will.

Q. You mean your wife told you? A. No; my wife never told me. Sure she has told me; but she did not tell me at that time.

Q. Did you hear her speak to your wife about a will? A. No, sir; I did not.

30 Q. Why do you say she told your wife? A. Why, my wife has told me she talked to her about it.

Q. And she never mentioned a will in your presence? A. No, sir; not to me.

Q. And she talked to you about repaying Lester? A. Yes, sir.

Q. How many times? A. She said she was going to see that Lester got his wages.

Q. How many times? A. Only once that she told me.

40 Q. And she did not mention the word will? A. No, sir.

*George W. Scott—For Plaintiff—Cross—Redirect.
Anna Messenger—For Plaintiff—Direct.*

Q. She did not say when she was going to pay him? A. No, sir.

Q. She did not say how much she was going to pay him? A. No, sir; not a bit.

Q. She simply said she was going to pay him his wages? A. Yes, sir.

Q. Not mentioning any time at all? A. No, sir; she did not tell me anything about that.

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Redirect examination by Mr. Ward.

Q. When Messenger came to Paterson, came to town, when you met him on the road there, how was he dressed then? A. When did he come down first?

Q. You have stated on cross-examination that you had sometimes seen him as you were coming from Paterson, seen him going down in the direction of Paterson; how was he dressed then? A. Well, he was dressed very poorly.

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Q. Do you know in what way Lester used to address Mrs. Crouch; what he called her? A. He always used to say to her Mrs. Crouch; that is all I know of it.

ANNA MESSENGER, sworn as a witness on behalf of the plaintiff, testifies as follows:

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Direct examination by Mr. Ward.

Q. Where do you live? A. No. 308 Sixth Avenue.

Q. Did you know Mrs. Crouch when she was alive? A. I did.

Q. You are married to Mr. Messenger's brother, are you not? A. Yes, sir; he is dead now.

Q. Do you remember when Mr. Messenger lived up there and worked on the Crouch farm? A. He

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Anna Messenger—For Plaintiff—Direct.

did not work up there; he just lived with them; just boarded with them.

Q. I mean this Messenger? A. Oh, yes; and my husband boarded there at the time.

Q. Your husband boarded there, too, did he? A. Yes, sir.

10 Q. Do you remember when Lester Messenger was in business in New York? A. I do.

Q. Do you know whether or not at that time he paid Mrs. Crouch board? A. Yes; she had said that after he had started to work that he would have to pay her board, but she never told me the amount.

Q. And, after that, do you remember that Mr. Crouch had a stroke of paralysis? A. Yes, sir.

Q. And, from that time, until Mr. Messenger was married, whereabouts did he work; I mean Lester?
20 A. Oh, he worked around the place.

Q. At the time when Mr. Crouch had this stroke of paralysis; before that had he worked in New York? A. He did; yes.

Q. From that time on up to the time he was married—I am referring to Lester Messenger now—can you tell us what kind of work he did around the farm? A. Well, he done all the work that it was necessary to do around there.

30 Q. What was that? A. Well, I remember seeing him sometimes cutting the grapes, and I have seen him plowing, and I have seen him up there sometimes in haying time, gathering the hay in.

Q. What about the housework? A. Yes; he done a great deal of that around.

Q. Do you know whether or not he got paid for anything of that sort that he did? A. I know he did not get paid.

40 Q. Did Mrs. Crouch ever talk to you about his being paid or about his wages? A. Yes; she had told at different times in our home that she had-

Anna Messenger—For Plaintiff—Direct—Cross.

that Lester wanted wages, and, she says, "I was not going to pay him any wages," she says, "now." She says, "But I have made a promise with him if he would keep on working around the place that I would leave him enough to cover his wages after my death."

Q. How often did she say that to you? A. Well, she said that quite often. I could not just recall how often. 10

Q. Did she ever say anything else about Lester's work around the place? A. Well, she said he was a faithful worker around there; yes, sir.

Q. Do you know why Lester gave up his work in New York? Did Mrs. Crouch ever tell you anything about that? A. Well, I believe she said that she wanted him to help her.

Q. Did she say why she wanted Lester to help her? A. Well, she could not do without him. 20

Q. Did she tell you when that was when she wanted Lester to help her? A. No; I don't remember that.

Cross-examination by Mr. Scott.

Q. Are you a sister-in-law of Lester Messenger, the man who is making this claim? A. Yes, sir.

Q. His wife, then, is no relation of yours? A. No, sir. 30

Q. And your husband? A. Was a brother to him.

Q. He is dead? A. Yes, sir.

Q. You say your husband lived up there with Mrs. Crouch, too? A. Yes; he boarded there for a while.

Q. While he was married to you? A. No; before.

Q. Do you know how long he boarded there? A. Well, I should think about four years, something like that. 40

Anna Messenger—For Plaintiff—Cross.

- Q. Did he work? A. Yes, sir.
- Q. While he boarded there? A. Yes, sir.
- Q. Where did he work? A. He worked in the file shop.
- Q. And he slept there at night and got his meals there? A. Yes, sir.
- 10 Q. Do you know what period that was, that four years? A. Well, I should judge that he was about fifteen or sixteen years old.
- Q. Do you know what time it was? A. No, sir.
- Q. When did he die, your husband? A. Four years ago; the 6th of January.
- Q. How old was he when he died? A. In his forty-eighth year.
- Q. Were you ever up to the Crouch farm? A. I was.
- 20 Q. When were you up there? A. I used to go up there right often.
- Q. During the time you were married? A. Yes, sir.
- Q. Covering what period? A. All my married life.
- Q. Covering what period? You know what the period of your married life was? A. Well, about twenty-eight years.
- Q. And that would date back twenty-eight years?
- 30 A. I have known Mrs. Crouch for thirty years, over thirty years.
- Q. When would you visit there? A. Well, sometimes of a Sunday I have been up there; two weeks at a time sometimes.
- Q. With your husband? A. Yes, sir.
- Q. You and he were there together? A. Temporarily; yes, sir.
- Q. What were you doing there during that two weeks? A. Well, I had a child that was sick and
- 40 they wanted us to come up there.

Anna Messenger—For Plaintiff—Cross.

Q. Did she board you? A. Yes; and Mr. Messenger helped while they were taking in the hay, helping them out.

Q. Did you pay your board? A. We did.

Q. What did you pay? A. Well, I don't just remember what we paid, but we paid enough to cover our expenses while there.

10

Q. What did you pay in money? A. Well, we did not pay all in money; we turned around and got a great deal of the things to put on the table to eat.

Q. You mean you bought things? A. Yes, sir.

Q. Is that the way you paid your board? A. Well, we paid some to her; yes.

Q. What did you pay? A. I don't just remember. I did not pay it. It was Mr. Messenger paid it.

Q. Did he pay anything at all? A. He did.

20

Q. Did he pay so much a week? A. Well, now, I cannot say that, because I don't know.

Q. How do you know that he paid anything? A. Because I remember him saying to Mrs. Crouch, "I will settle up with you." She says, "All right."

Q. That is all you know about paying board? A. Yes, sir.

Q. You say you heard Mrs. Crouch talk about Lester? A. Yes, sir.

Q. And what she was going to do for him? A. Yes, sir.

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Q. When was that conversation had with her? A. Well, that was——

Q. After you were up there some time? When you were up there that two weeks? A. No. Well, she came to our house different times.

Q. Was it then? A. Yes, sir.

Q. Was anybody present while she said this to you? A. Just my husband and myself.

Q. Anybody else? A. No, sir.

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Anna Messenger—For Plaintiff—Cross.

Q. What did she say? A. She said, "I promised to pay Lester. I promised to pay him money after my death. I would not give him anything now because I could not afford it."

10 Q. Did she say how much? A. No; she did not; but she says, "I will leave him enough; I promised him to leave him enough to pay for his work while he was here."

Q. You mean to pay him for all the time that he was working there?

Mr. Ward: I object to what she means.

Q. Do you know that he stopped working when he got married in 1911? A. Yes; I believe he did.

20 Q. And he did not work there after that? A. Yes; he went there and did things for her at different times.

Q. After 1911? A. Yes, sir.

Q. For any period of time? A. That I could not tell you.

Q. How do you know that he went there and did things after that? A. Why, because he told it himself that he had been up there helping her out.

Q. After 1911? A. Yes, sir.

Q. For any period of time? A. That I could not tell you.

30 Q. But it was after 1911? A. Yes; I know that he did help her considerable when Mr. Crouch was sick.

Q. Mr. who? A. Mr. Crouch.

Q. You mean during the period before his death? A. Yes, sir.

Q. But I am speaking of since 1911; you don't know personally of his having worked up there, except what he said? A. Well, when he was sick there he was up there.

40 Q. But during the last twenty-eight years, which

Anna Messenger—For Plaintiff—Cross.
August Winan, Jr.—For Plaintiff—Direct.

goes way back before 1896, you were only up there on Sundays, excepting those two weeks you speak of? A. Yes, sir.

Q. What did Mrs. Crouch say to you about Lester? A. Well, she said, "I have promised to pay; I have promised Lester," she says, "to leave him money enough to cover his wages while he was working for me." 10

Q. Did she say that in his presence? A. In Lester's?

Q. Yes. A. No, sir.

Q. While you were there? A. No, sir.

AUGUST WINAN, JR., sworn as a witness on behalf of the plaintiff, testifies as follows: 20

Direct examination by Mr. Ward.

Q. What is your business? A. I am in the dairy business.

Q. Where do you live? A. In Lower Preakness.

Q. Where did you live during the lifetime of Mrs. Crouch? A. In Lower Preakness.

Q. Did you know Mrs. Crouch? A. Yes, sir.

Q. Do you remember the time Mr. Messenger worked on the farm there? A. Yes, sir. 30

Q. Do you remember when Mr. Crouch had a stroke of paralysis? A. No, sir.

Q. Did you ever see Lester Messenger do any work around the farm there? A. Yes, sir.

Q. What kind of work? A. Just outside work, while I was driving past.

Q. Did you know Mrs. Crouch to talk to? A. Yes, sir.

Q. Did you ever have any conversation with her about Lester? A. Yes; one time. 40

August Winan, Jr.—For Plaintiff—Direct—Cross.

10 Q. Just tell us what it was. A. Mrs. Crouch, she fell one day and she hurt her head, and she lost a lot of blood, and she needed a milkman, and so I went to work and I left her milk, and so that two weeks when I would go there we would have quite a conversation together, and she would be talking how she hated like anything to part with the money. Well, I said to her, "You can go to the bank and gets lots of it. You have got lots of money." Well, she said she wanted to keep what she had a while yet, because Lester had been such a good boy to her when he was there and she wanted to pay him for his work what he done when she died. And so, during the time she was sick, Lester and his wife went up there to help quite a few times in the week.

20 Q. This was after Lester had been married? A. This was after Lester had been married; yes.

Q. Go on. A. And so, one time when I was there, you know, she was talking; they thought she was going to die when she had this fall, and them parties from the West came there to see if they was going to get their share out of the will or not, but she says, "They are going to get fooled, because Lester will have everything when I die."

30 Q. When she told you that Lester would get his pay when she died, did she state to you or not that Lester knew that, whether or not she had ever said anything to Lester about it? A. No; she never did say anything to me about that.

Cross-examination by Mr. Scott.

Q. Where did you say you live? A. In Lower Preakness.

40 Q. How long have you lived there? A. I have been living there a while; I have been away, you know, for five years.

August Winan, Jr.—For Plaintiff—Cross.

Q. You have been away this last five years? A. No. Five years before that. I have been there five years now, and five years before that I have been gone, and then I lived there twenty years.

Q. You were away from there from 1906 to 1911? A. No; from 1907 some time.

Q. Until 1912? A. Yes, sir.

Q. And you have been there since that time? A. Yes, sir.

Q. But you were away from 1907 to 1912? A. Yes, sir.

Q. Has Mr. Messenger been away since you have been there; these last four or five years he has been away? A. Yes, sir.

Q. He has not been there at all? A. No, sir.

Q. So that the only time that you ever saw him there was before 1907? A. Yes, sir.

Q. And how long before that time had you seen him there? A. I have seen him there ever since I was a young boy.

Q. When did you say that this conversation took place that you had with Mrs. Crouch? A. When I used to go to collect for my milk bill.

Q. You delivered milk to her? A. Yes, sir.

Q. During what period was that? A. That was a little over two years ago.

Q. That is since Messenger has been away? A. Yes, sir.

Q. And do you know where Messenger was living at the time you had this talk with Mrs. Crouch? A. No, sir.

Q. Did you ask her where he was? A. No, sir.

Q. Did she tell you? A. No, sir.

Q. Did she tell you that he was working anywhere? A. No, sir.

Q. What do you say she said to you about leaving him everything she had? A. Yes.

August Winan, Jr.—For Plaintiff—Cross.

John Suter—For Plaintiff—Direct.

Q. She said she was going to leave him everything she had? A. She said Lester was such a good boy while he was working there, and so on, she was going to make a will to pay him for it when she died.

10 Q. In answer to the question put by Mr. Ward you said she said she was going to leave him everything when she died? A. That is what she did say at one time; yes.

Q. She said she was not going to leave anything to anybody else? A. When she talked about having other relatives coming from the West, they thought they were going to get a share out of it, but she was going to leave everything to Lester.

20 Q. What did she say about those relatives being fooled? A. They would get fooled, because she was not dead yet, anyway.

Q. And she was not going to leave them anything? A. Yes.

Q. She was going to leave everything to Lester? A. Yes, sir.

30 JOHN SUTER, sworn as a witness on behalf of the plaintiff, testifies as follows:

Direct examination by Mr. Ward.

Q. Where do you live? A. In Lower Preakness.

Q. Did you know Mrs. Crouch when she lived up there? A. I did.

Q. Did you know Mr. Messenger when he lived at the place before his marriage? A. I did.

Q. How long did you know Mrs. Crouch? A. About thirty-two years.

40

John Suter—For Plaintiff—Direct.

Q. During that time do you remember Lester Messenger living there? A. Yes, sir.

Q. Do you remember when he got married? A. Well, I heard of it.

Q. Do you remember when he moved away there? A. Yes, sir.

Q. Do you remember when old Mr. Crouch had a stroke of paralysis? A. I heard of that, too. 10

Q. Before that time, do you know whether or not Lester was working in New York? A. Well, that is what they were telling me, that he was working in New York.

Q. Who told you that? Mrs. Crouch? A. The people around.

Q. Anyway, from the time Mr. Crouch had this stroke of paralysis up to the time, well, about fifteen years there, do you know whether or not he worked on the farm? A. He did most of the time, I think. 20

Q. Did you see him there? A. Yes, sir.

Q. Did you see the kind of work he did? A. Yes, sir.

Q. What did he do? A. He took care of the thing generally, and she had some cows there, and he used to run all the way over Lower Preakness after them, to find them, and all such things as that I know. 30

Q. What is your business? A. I am in the milk business, the dairy business.

Q. Have you employed men to do such work as Lester Messenger did around the place there? A. I do, all the time.

Q. How much do you give them? A. At the present time?

Q. No; at that time——

Mr. Scott: 1896 to 1911?

A. 1896? 40

John Suter—For Plaintiff—Direct—Cross.

Q. From that time on to 1911? A. Well, we paid anywheres from twenty to twenty-five dollars a month.

Q. And board? A. And board.

10 Q. Do you know how Lester was dressed during that time? A. On the farm—why, in that time, I don't know. I was under the impression he took care of himself, but before that when he was a young fellow he had pretty poor clothes.

Q. Did you ever have any talk with Mrs. Crouch about Lester? A. Not a great deal.

Q. Whatever it was, what was it? A. She would come up towards the home one day and we spoke a little about it, and she says Lester was a good boy, and "I will be good to him some day." That's all.

20 Q. Anything else, do you remember? A. That is all.

Cross-examination by Mr. Scott.

Q. That is what she said to you, she will be good to him some day? A. Yes; she will be good to him some day.

Q. She did not say anything about paying him wages, did she? A. No; nothing about wages to me.

30 Q. You say men were worth at that time for the kind of work he did twenty to twenty-five dollars a month, with their board? A. Yes, sir.

Q. That does not include lodging? A. Yes; and I would not get as good men as Lester was, either.

Q. You spoke about he worked there most of the time; do you mean all the time? A. Well, I could say all the time, because I traveled that road every day and have traveled it for, you might say, twenty to twenty-three or twenty-five years every day.

40 Q. You said most of the time; I did not know when you said that whether the impression you

John Suter—For Plaintiff—Cross.
Lucy A. Jeffries—For Plaintiff—Direct.

meant to convey was that you knew he worked somewhere else during this period from 1896 to 1911? A. I don't suppose he did.

Q. You say he had poor clothes, that he wore poor clothes? A. When he was a young fellow he did.

10

Q. When he was around on the farm? A. Yes, sir.

Q. That is the way all men dress, is it not, on a farm? A. Oh, no.

Q. They don't wear fine clothes to work on a farm, do they? A. Yes; but not such holes as he had in his clothes.

Q. Clothes with holes in? A. Yes, sir.

Q. You say that was when he was a young fellow? A. That was when he was a young fellow.

20

Q. He got better clothes as the time went on? A. Later on he did; yes.

LUCY A. JEFFRIES, sworn as a witness on behalf of the plaintiff, testifies as follows:

Direct examination by Mr. Ward.

Q. Where do you live? A. No. 266 Preakness Avenue.

30

Q. Did you know Mrs. Crouch during her lifetime? A. Yes, sir.

Q. How long did you know her? A. I have known her for twenty-five years.

Q. Do you remember when Lester Messenger lived there with her? A. Yes, sir.

Q. Did you know Mr. Messenger and Mrs. Crouch when Mr. Crouch had a stroke of paralysis? A. I heard he was very sick and had a stroke.

40

Lucy A. Jeffries—For Plaintiff—Direct.

Q. Before that time do you know whether or not Lester worked in New York before that stroke? A. Well, I don't know.

Q. After the stroke, do you know whether or not he worked around the farm there? A. Yes; he worked around the farm all the time; that is the only way I know Lester, when he was working around the farm.

Q. Did you ever have any conversation with Mrs. Crouch about Lester? A. Yes; I had a conversation. She came to my house two years and gave music lessons to my daughter, and in that way we used to converse when she got through teaching; we would converse on different things.

Mr. Scott: I object until the time is fixed. I ask Mr. Ward to fix the time.

The Witness: I remember one time she was very much worried about her hay, and Lester was, I guess, away then, and she said to me the hay was out, and she was worried about the hay, getting her hay in, and she said she wished Lester would hurry home and help to gather the hay. I said to her, "Mrs. Crouch, get someone else." She said, "Well, money is tight and Lester, he knows that he will get his."

Q. Lester knows what? A. Lester knew that he would get his pay.

Q. Did she say whether or not she was paying Lester for what he did? A. No; she did not say she was paying him anything.

Q. What did she say about that? A. I understood her to say——

Mr. Scott: I object to the understanding. The Court. What did she say?

The Witness: He would be satisfied any time to get his money

Lucy A. Jeffries—For Plaintiff—Direct.

Q. What did you say she said? A. He was satisfied to have his money any time, but strangers she would have to have the money right away for them.

Q. When was that, as nearly as you can recollect it? A. Well, I cannot just tell; I am living in the place where I live now twelve years, and it was during that time Mrs. Crouch called into my home. 10

(The court then adjourned to to-morrow, December 5th, 1916, at 10 o'clock A. M.)

SECOND DAY.

Paterson, N. J., December 5, 1916.

(The trial was resumed this day, pursuant to adjournment.) 20

LUCY A. JEFFRIES resumed the stand.

Direct examination (continued) by Mr. Ward.

Q. How many times do you think that you had conversations with her? A. Oh, a great many times. 30

Q. I mean about Lester? A. Well, most every time she came to our house she would say something about Lester; nearly every time she came she would always drift around to Lester; he always seemed to be on her mind.

Q. Do you recall the last time you saw her when she talked about Lester? A. Well, I don't know; it may be about three or four years ago.

Q. How many years? A. About three or four years. Lester was married then. She was the first one to tell me that Lester was married, and she 40

Lucy A. Jeffries—For Plaintiff—Direct—Cross.

seemed to feel very bad about it. I said, "Is that so?" She said, "Yes."

Q. At that time did she say anything to you about Lester's compensation or pay? A. No; I don't think there was anything said at that time about Lester's pay.

10 Q. Do you recall the last time she told you anything about Lester's wages or pay? A. Well, she always came in the evening to give my daughter music lessons, because she was busy; she could not give any other time; she could not spare any other hour in the day for her, so she always came in the evening.

Q. Do you remember the last time she said anything about Lester's pay? A. I don't remember dates, but I know one evening she came there and talked a long time about Lester.

20 Q. What did she say then? A. She said she had always promised if he would only stick to her he would have what she had. She said, "I have promised Lester time and again what little I have would be Lester's."

Q. Did she ever say what that was? A. No. She always talked about the farm. She always talked as if the farm would be Lester's. She was interested in him and wanted the farm so as to keep it into farm land so the city would not tax them for anything only farm lands.

30

Cross-examination by Mr. Scott.

Q. She gave your daughter music lessons? A. Yes, sir.

Q. What did she charge? A. Fifty cents a lesson.

Q. Did she give them in the day or night? A. In the evening.

40

Lucy A. Jeffries—For Plaintiff—Cross.
Robert Gehring—For Plaintiff—Direct.

Q. Mrs. Crouch seemed to think a great deal of others, too, did she not? A. Yes; she always seemed to think a lot of Lester. Her mind seemed always to be on him. She never would come to my house that that subject would not be brought around to Lester.

10

Q. The last time you had a conversation with her was after he was married? A. Yes; she told me he was married.

Q. She was very much hurt about that? A. Well, she seemed to be hurt, and I did not question her much about it, because it seemed to hurt her.

Q. You said she said if he would only stick to her he would get what she had? A. He would get what little property she had; she said, "Lester is the only one." She said, "I have a brother, but he is just as though he was dead to me."

20

ROBERT GEHRING, sworn as a witness on behalf of the plaintiff, testifies as follows:

Direct examination by Mr. Ward.

Q. Where do you live? A. No. 29 Belmont Avenue.

30

Q. How long have you lived in Paterson? A. Practically all my life.

Q. Did you know Mrs. Crouch in her lifetime? A. Yes, sir.

Q. Did you know Mr. Messenger in that time? A. Yes, sir.

Q. Where did you live during the time that you were acquainted with Mrs. Crouch? A. I lived in Cliff Street, Seventh Street, and after that I don't remember.

40

Robert Gehring—For Plaintiff—Direct.

Q. Do you remember when Messenger was married? A. No, sir.

Q. Can you fix the time when you were acquainted with Mrs. Crouch, about what years? A. The last time I worked over there was in 1907.

10 Q. For how long a period before that time had you known Mrs. Crouch? A. Oh, perhaps forty-five years.

Q. Did you work there more than once? A. Yes, I worked there several times.

Q. What kind of work did you do? A. I helped my grandfather with the mowing.

Q. What did you receive as compensation or pay? A. A dollar and a half a day.

20 Q. During the time that you worked there, do you know what character of work Messenger did? A. Yes, sir.

Q. What kind of work? A. General farm work.

Q. Did you ever see him working around the house? A. No, sir.

Q. When you were working there where did you get your meals, you and your father? A. I brought it with me.

Q. How did Messenger dress during that time? A. Not very well.

30 Q. In what respect? A. Well, his clothes were all tore to pieces and I saw him at different times with the toes out of his shoes, and he often remarked to me he had been working and talking to Mrs. Crouch about a month past trying to get enough money to buy a pair of shoes.

Mr. Scott: I object to this.

Q. Was Mrs. Crouch there at that time? A. No, sir.

40 Mr. Scott: I move to strike it out.
Motion granted.

Emil Meyer—For Plaintiff—Direct.

Q. Did you ever have any talk with Mrs. Crouch, or ever hear her say anything with reference to Lester? A. No, sir.

Q. Did you ever have any conversation with her about Lester's wages? A. No, sir.

No cross-examination.

10

EMIL MEYER, sworn as a witness on behalf of the plaintiff, testifies as follows:

Direct examination by Mr. Ward.

Q. Where do you live? A. On Preakness Avenue.

Q. How old are you? A. Sixty-seven years old. 20

Q. Did you know Mrs. Crouch during her lifetime? A. Oh, well, as long as I live there, about thirty-five years.

Q. Do you know Mr. Messenger? A. Oh, yes.

Q. When he lived there? A. I knew him as a boy there.

Q. How far did you live from the place where Mrs. Crouch lived? A. Well, you mean the house to my house?

Q. Yes. A. Well, it is about the distance there of two blocks away. 30

Q. Do you remember when Mr. Crouch had the stroke of paralysis, when Mr. Crouch was taken sick? A. Yes, I remember that.

Q. Do you know whether or not Lester Messenger was working in New York at that time? A. I remember that too.

Q. You remember that he was working in New York, do you? A. I cannot say the time, but I remember that. 40

Emil Meyer—For Plaintiff—Direct.

Q. After that where did he work, after Mr. Crouch was taken sick where did Lester Messenger work? A. Well, I seen him going up and down, I did not have much opportunity to talk to him, but I heard from my children that he was going to see—

10

Mr. Scott: I object to what he heard.

Q. Just what you saw, not what you heard. Did you ever see him working around the farm? A. Oh, yes.

Q. What kind of work did he do there? A. Well, he done all the kind of work around is necessary on a farm. I saw him fixing the fence, plowing, planting, harvesting, feeding chickens, chopping and sawing wood, that is what I seen.

20

Q. Did you visit Mrs. Crouch's home, ever? A. Yes. Not very many times.

Q. Do you know whether he did any of the house-work there, I mean Messenger? Did you ever see him doing any cooking or scrubbing? A. Well, I cannot say that. Cooking, that I seen that.

Q. Did you ever have any talk with Mrs. Crouch about Lester? A. Yes, sir.

30

Q. What did she say? A. Well, this question is not very clear to me, I cannot hear so well.

Q. I asked you if you had ever had any talk with Mrs. Crouch about Lester? A. Not that I know of. She never was willing to speak about Lester any whenever I had the opportunity to talk to her. She never spoke to me about that.

No cross-examination.

40

Dugald Holmes—For Plaintiff—Direct.

DUGALD HOLMES, sworn as a witness on behalf of the plaintiff, testifies as follows:

Direct examination by Mr. Ward.

Q. You live in Paterson? A. Yes, sir.

Q. Where? A. Totowa Section, Manchester Avenue. 10

Q. Did you know Lester Messenger at the time he was living home with Mrs. Crouch? A. I knew him when I was a boy and he was about the same year, I was a boy, about the one age, is what I mean to say.

Q. Do you remember when he was working in New York? A. I do really remember that.

Q. Do you remember when Mr. Crouch was taken sick, seriously ill? A. Well, no, I could not just say the day or the month or anything about the date. 20

Q. I mean the occurrence. A. Yes, I remember when he died.

Q. After Mr. Crouch was taken ill where did Lester work, if you know? A. He worked in New York.

Q. And after that do you know where he went to work? A. I know he went on the farm.

Q. Do you remember when Lester Messenger married? A. I do, well. 30

Q. Do you know whether or not from the time he left his employment in New York, at the time of Mr. Crouch's illness, up to the time of his marriage he worked for Mrs. Crouch, or on the farm there? A. He always worked there as long as I remember.

Q. What kind of work did he do there? A. Well, I will tell you, he was just like all the rest of the farmers, behind the plow, harrowing, mowing, hay cutting, 'tend corn, planting potatoes and all that 40

Dugald Holmes—For Plaintiff—Direct—Cross.

kind of stuff, that I ever seen him doing, fixing the fence, everything.

Q. Do you know anything about a vineyard there? A. Yes, sir.

Q. Do you know whether he took care of that? A. I know well he took care of it.

10 Q. Did you ever visit Mrs. Crouch's home? A. No, I never did.

Q. Did you ever have any conversation or talk about Lester with Mrs. Crouch? A. No, I never did.

Cross-examination by Mr. Scott.

Q. You and Lester were boys together? A. Yes, sir.

20 Q. Do you recollect when he was working in New York? A. Yes, sir.

Q. Can you give us that date? A. No, I could not give you the day and date.

Q. Can you give the date when he started to work on the farm after he had been to New York? A. I knew him when we were boys, and just like anybody would go by the house there and you would not think of the time or the date, and I never thought I was going to be here to-day. You know what I mean.

30 Q. I never did either. A. No. That's right.

Q. How much of a farm was there there? A. In the grapes?

Q. How much of a farm? A. In that plot do you mean?

Q. Yes, in that plot, Mrs. Crouch's? A. Well, I could not just say. I would judge in the neighborhood of eight or ten acres at the most, if there is that.

40 Q. How was it used? Was it all cultivated? A. Why, no, it was not all cultivated.

Dugald Holmes—For Plaintiff—Cross.

Q. What did they raise on it? A. They raised some berries at one time and they had this water cress, to sell that, and had grape vines there and apple trees and like that, they raised potatoes, corn, etc., there, I could not just say what they raised.

Q. Who was that all raised for, do you know, for Mrs. Crouch? A. Well, I guess it was raised for the family that was there, there was only three that I knew. 10

Q. Who was the family? A. Mrs. Crouch, Lester and the old man, and one boy by the name of David, afterwards. That man sitting right there was on that farm when I was a boy (indicating a person in the court room).

Q. You have got him all right? A. I have got him all right. He was there before Lester Crouch was there. 20

Q. This boy, did he work there? A. He worked there. He was taken back home one time.

Q. This boy you speak of, he worked there? A. He was what they call a wild boy, but there is no getting away from it, he was a boy, but at that time you could not tell him anything, this David, he was one wild boy. He never helped Lester, or never done anything good around the farm, you could not tell me he did.

Q. Did Mrs. Crouch take care of him, support him? A. That is what she was doing. 30

Q. Then, after Mr. Crouch was dead, there was Mrs. Crouch and Lester? A. There was an old sort of a man there, I don't know what his name was, I never was on the farm.

Q. Did he work there? A. What he done I could not say. I know he gave her a licking, I seen him one Sunday by that turn you go down there, I seen him have her up by the grape vines and pounding the life out of her, which I could testify myself, so 40

*Dugald Holmes—For Plaintiff—Cross.
Motion for Non-suit.*

I seen some old man was there. Who he was I don't know, but I seen him licking her that day.

Q. Occasionally, especially haying time, were there other men working there? A. Yes, sir.

10 Q. Were there other men working there at times when they were not mowing hay? A. Yes, years gone by, I seen old man Conklin and his son mowing hay and things like that.

Q. She did have men doing different work at times? A. Certainly she did.

Q. Mr. Crouch could not do it all? A. You could not expect him to do it all. You take ten acres of land and take it yourself, you cannot work it.

PLAINTIFF RESTS.

20

Mr. Scott: The defendant makes a motion for a non-suit.

The declaration declares itself upon an express contract, the gentlemen on the other side have declared in both counts upon an express contract. There is in the declaration no count that they rely upon the performance of services with the expectation that they would be paid for and an acquiescence in the doing of the work by the deceased, Mrs. Crouch, and a knowledge that it was done with the expectation of paying for it. It seems to me that they have determined to stand or fall upon an express contract which they say was made on the 1st of January, 1896, in her lifetime.

30
40 Number three on the first page, and on or about the 1st of January, 1896, the said

Motion for Non-suit.

Effie J. Crouch entered into a contract with the plaintiff, whereby the plaintiff agreed to perform work for the said Effie J. Crouch, and that for the said performance of said work the said Effie J. Crouch was to pay for the same the sum of \$2 a day to the plaintiff. That is the express contract in that paragraph. The next paragraph of the complaint says that in accordance with such contract he performed the terms of it, the work, and his claim amounts to \$10,950 less \$23.60. 10

And the second count, all the statements contained in the first and second paragraphs of the said count are made a part of this count, then during the contract, in her lifetime, on or about the 1st day of January, 1896, the said Effie J. Crouch entered into a contract with the plaintiff, whereby the plaintiff agreed to perform services for the said Effie J. Crouch whenever she should request the same, agreeing to pay the said plaintiff for such services as much as they would be reasonably worth. 20

Third, the plaintiff complains that in accordance with the said contract, etc.—

The Court: The said payments to be made at the time of her decease? 30

Mr. Scott: Yes, but your Honor will observe that the attorneys have evidently determined to stand or fall upon this express contract which they say was made on the 1st of January, 1896. Now, I submit to your Honor that unless they have proven this contract, not that there is evidence upon which the jury can infer that perhaps there was an implied contract, but they have undertaken to prove an express contract made on the 1st 40

Motion for Non-suit.

of January, 1896, there is nothing else in the declaration.

10

Your Honor well knows that in a declaration of this kind the rule of pleading and evidence is more stringent than in the ordinary contracts, the terms of a contract to give property by will must be definite and certain and clearly proved. (Segers vs. Segers, 14 L. R. A., 862.) That is the principle, that the contract must be definite and certain and clearly proved.

20

Now, I submit to your Honor that there is not a particle of evidence to show an express contract. The only thing that looks or winks towards a contract is the testimony of the wife of the claimant in this case, Mrs. Messenger, who spoke about Mrs. Crouch saying that a bargain was a bargain, as if she had made a bargain. But her admission, we will say, or statement, that she had made some kind of a contract, is not the definite, clear and certain proof of a contract, a written contract. That is the single point upon which they have to hang their case, and the only one, and that is not sufficient from a legal standpoint to prove the contract which they allege here and upon which they have undertaken to stand.

30

(Counsel argue the motion.)

The Court: I will deny the motion. I think there are sufficient facts from which it may be inferred, indefinite as it may be.

Motion denied. Defendant excepts.

40

William R. Meakle—For Defendant—Direct.

WILLIAM R. MEAKLE, sworn as a witness on behalf of the defendant, testifies as follows:

Direct examination by Mr. Reynolds.

Q. You are the secretary of the Paterson Savings Institution, the administrator of the estate of Mrs. Crouch? A. I am. 10

Q. Have you got a copy of the letters of administration? A. I have, yes, sir.

Q. What is the date of them? A. The 22nd day of December, 1915.

Q. The Paterson Savings Institution thereupon took upon itself the burden of the administration of this estate? A. It did.

Q. What did the estate consist of? A. The inventory of the estate shows nothing but a bank account, the balance of which was \$3,947.80. As a matter of fact there were some few household effects, but they were considered as of no value, and did not form any part of the inventory as to value. 20

Q. Did you advertise for any claims to be filed against the estate? A. I did.

Q. Was there a doctor's bill? A. The undertaker's and doctor's bills, excepting those, no others.

Q. Those two were all the claims that were proved against the estate? A. Yes, sir. 30

Q. When did you first know anything about the claim filed by Mr. Sylvester Messenger? A. We were never apprised directly of the claim of Mr. Messenger's. Incidentally I read an article in the newspaper stating that there was such a claim.

Mr. Ward: I object to that and move that it be stricken out.

Motion denied. Plaintiff excepts.

Q. You were afterwards served with a subpoena? A. Yes, sir. 40

William R. Meakle—For Def't—Direct—Cross.

Q. Do you know anything about any other property belonging to Mrs. Crouch? A. The real estate on Preakness Avenue.

Q. How much land was there in that? A. I am told there is ten acres approximately.

10 Q. Do you know what that property was assessed at?

Mr. Ward: Objected to.

The Court: How do you think that is material?

(Question withdrawn.)

Q. Among the papers in the estate of Mrs. Crouch did you find any note? A. The note that has already been submitted here in evidence, if that is what you refer to.

20 The Court: A note against the plaintiff for \$40?

The Witness: Yes, sir, signed Lester M. Crouch.

Q. Were there any vouchers made for payments made for the schooling of Sylvester Messenger? A. Yes, several bills of Mr. Lattimer's for tuition of Lester.

30 Mr. Reynolds: I offer in evidence the bills, the note and the letters of administration.

(Admitted and marked "Defendant's Exhibits D-1, D-2, D-3, D-4, D-5, D-6, D-7" of this date.)

Cross-examination by Mr. Ward.

Q. These bills you say were for Lester Messenger, the plaintiff in this suit? A. Yes, as far as I know.

40 Q. And that is also true of the note? A. Yes, sir.

Henry C. Sturgeon—For Defendant—Direct.

HENRY C. STURGEON, sworn as a witness on behalf of the defendant, testifies as follows:

Direct examination by Mr. Reynolds.

Q. Where do you live? A. I live at Fairview, Erie County, Pennsylvania.

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Q. How old are you? A. Seventy-three years old.

Q. Are you any relative of Mrs. Crouch? A. I am her brother.

Q. When did she come to live in Paterson? A. About 1867, she came, in the fall.

Q. Where did she go to live at that time? A. On the same place she is on now.

Q. In Preakness Avenue? A. Number 452 Preakness Avenue.

20

Q. Did she live there all the rest of her life, so far as you know? A. Yes, sir.

Q. Did you visit her? A. Frequently.

Q. When was the first visit? A. In 1871.

Q. And did you make another one? A. I did, in 1876.

Q. Did you make a visit in 1887? A. Yes, sir.

Q. How long did you stay with her then? A. Four or five months, in that neighborhood.

Q. Do you know Mr. Messenger, the plaintiff in this suit? A. I do.

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Q. When did you first know him? A. In 1887 when I went to Mrs. Crouch's.

Q. What name did Messenger go under then? A. Lester Crouch then.

Q. How old was he would you think about that time? A. Well, I don't know, I should judge from sixteen to eighteen, somewhere along there.

Q. Do you know what relation existed between Mrs. Crouch and Mr. Messenger or Lester Crouch,

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Henry C. Sturgeon—For Defendant—Direct.

as he was sometimes called? A. It was pleasant at that time.

Q. Was he living in the house? A. Yes, sir.

Q. What position did he occupy in the household? Was he a member of the household? A. Just as a son would be. She took as much care as she would of a son, just as a son would live in the family. As I did when I was a boy.

Q. Did you ever see him do any work around the place at that time? A. Yes, I saw him do some work around the house. It was in the winter time that I was there mostly.

Q. Did you observe how he was dressed at that time? A. Just as good as I was, yes, I thought he was dressed good.

Q. Do you know anything about his going to college? A. Why, I know of him going, but I don't—

Mr. Ward: I object.

The Court: That is only what you heard?

The Witness: Yes, sir.

Q. Did you visit there again in 1889? A. Yes. I was there again in 1889.

Q. At any time during those visits did Mrs. Crouch say anything about recompensing Mr. Messenger, the plaintiff? A. Not to me, no.

Q. When did you see Mrs. Crouch again? A. I guess not until my father died.

Q. When was that? A. In 1894.

Q. Where did you see her then? A. At my home, she came to Fairview to see her father buried, to his funeral.

Q. How long did she stay with you then? A. I should judge about two weeks.

Q. At that time did she have any conversation with you in regard to Lester? A. No, sir, nothing at all.

Henry C. Sturgeon—For Defendant—Direct.

Q. When did you see Mrs. Crouch next? A. Well, when my brother Allen died, that was in the year 1902, the last time I saw Mrs. Crouch at the funeral.

Q. Did you see her in 1914? A. Yes, sir.

Q. What was the occasion of your seeing her then? A. We got a telegram that she had had a stroke and come to see her, so I did. 10

Q. Did she say anything about Lester at that time? A. No. She said that he was not using her right. I suggested that she remember him in her will, and she said she would not, she had no use for him, she had lost confidence in him, and that he took some money and left a note for it. That is what she said.

Q. Did you have at those various visits or at any other time any conversation with the plaintiff, Messenger, about this matter? A. No. I talked to him. But not about this matter. 20

Q. Did he ever say anything to you about wages? A. No. Not a word.

Q. Did he ever claim there was anything due to him? A. Not to me.

Q. Did Mrs. Crouch at any time, or at that time, tell you anything about it? A. Well, she was pretty bad off, you know, and I had no chance to talk to her very much. 30

Q. Do you know anything about his being in business anywhere except on this farm?

Mr. Ward: I don't think this witness has disclosed sufficient knowledge to talk of this.

The Court: Does the witness know about this of his own knowledge?

(Question withdrawn.)

Q. Did you come on to Mrs. Crouch's funeral? A. No, I did not. 40

Henry C. Sturgeon—For Defendant—Direct.

Q. You came on right afterwards? A. Not until after, I came to see about the estate.

Q. Did you see Mr. Messenger then? A. Yes, sir.

Q. How was that? How did that happen? A. Well, they came over when we were at the house. We went to the house and they came over and I met him there.

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Q. What did he speak about? A. I don't know, only he spoke about, he seemed to be worried about this note that was found in the bank and was telling about that mostly. We first told him he need not worry about that, we did not think it would ever harm any, and that is about all.

Q. Did he say anything about Mrs. Crouch owing him any money, at that time? A. No, sir.

Q. Or wages, or anything of that nature? A. No. Nothing of that kind.

20

Q. Did you see him again on that same visit here? Did you go to his house for dinner? A. Yes, we went to his house.

Q. Was anything said about it then? A. Well, Mrs. Messenger said that she worked previous to that for a week there at Mrs. Crouch's, and said that she promised to see her paid and she put in a bill for \$14 for services and we paid it.

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Q. Was there anything said in that conversation, at that time about any wages due to Mr. Messenger? A. No. We were there for the purpose of finding if there was anything and to settle it, or to find if there was any claim made that they might make it, but I did not hear any made.

Q. When did you first know Mr. Messenger had a claim against the estate? A. When did I what?

Q. When did you first know that Mr. Messenger had a claim that the estate owed him any money?

A. When I saw it in the paper, a notice of it, that is the first I knew about it.

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Henry C. Sturgeon—For Defendant—Direct.

Q. You are familiar with the farm that has been spoken of here as belonging to Mrs. Crouch, are you not? A. Yes, sir.

Q. How big is that? A. Ten acres it is supposed to be.

Q. Are you a farmer? A. Yes, sir. That is what I work at. 10

Q. And you have been for how many years? A. All of my life.

Q. What was the condition of that farm when you first saw it, these various times? A. Well, it was pretty rough and stony, and not very good to till. I saw it mostly in the winter time, so I did not have a very good chance to see the condition of it in the growing season.

Q. Can you tell whether any part of it was in pasture? A. There was over half of it. 20

Q. And, whether there was any used for hay, raising hay? A. Well, I should judge there was, well, one-third at the outside, not that, I guess, two acres, would probably be what was in hay.

Q. How about buildings, what buildings are there on the property? A. Why, there is a house on there, and an old house, that is rickety and pretty near ready to fall down, and a barn, but the barn was burned when I came to her in 1914, so that was not there. 30

Q. Was that barn rebuilt? A. No, sir.

Q. How big was that barn? A. Well, it was just about big enough to hold two or three loads of hay I should think, good, what you could call good loads.

Q. Were there any accommodations for horses? A. Yes, they kept one horse and two cows I should think, in that stable.

Q. At the various visits you made to Paterson when you have seen Mr. Messenger and Mrs. Crouch together, how did he address Mrs. Crouch? 40

Henry C. Sturgeon—For Def't—Direct—Cross.

A. Why, he called her, mother, when I was there, to stay, he used to call her mother, that was in 1887.

Q. Can you tell me how Mrs. Crouch acquired this property? A. Yes, through her father and the help of us boys, there was three of us, bought her interest in my father's farm and paid the money and he fetched it down there and paid for the farm and gave her a deed to it. I have got the documents here to show where the money came from.

Q. You did not come to the funeral? A. No, sir.

Q. Where was Mrs. Crouch buried? A. Up at our place. She was fetched up there, and I attended the funeral there.

Q. In Fairview? A. In the Fairview Cemetery.

Q. You said you did not attend the funeral here, did you come down here? A. No. I did not come down.

Q. What house was Mrs. Crouch buried from? A. From the old homestead where I lived.

Q. You live on the old homestead? A. Yes, sir.

Cross-examination by Mr. Ward.

Q. You have told us of a visit that you made to Mrs. Crouch and the visits that she made to you?

A. Yes, sir.

Q. All of them? A. Yes, sir.

Q. She came to Paterson about fifty years ago, didn't she? A. Well, she came in 1867. I have not figured it out.

Q. That will be fifty years ago next year? A. Yes.

Q. And you have resided in the State of Pennsylvania all this time? A. Yes, sir.

Q. And she has been dead about a year, hasn't she? A. Yes, sir.

Henry C. Sturgeon—For Defendant—Cross.

Q. During that period of time you visited her about five times altogether? A. Yes, sir.

Q. And she visited you twice, on the occasion of the death of her father and your brother? A. Yes, sir.

Q. Then on those different occasions when you came here, on those five occasions that you came here, it was in the winter time, wasn't it? A. 10
Mostly, yes, sir.

Q. You did not see very much of each other during all those years, did you? A. No, sir.

Q. She was not a very affectionate person, was she? A. Yes. I would not ask anyone more so. She was with me, she was affectionate, yes.

Q. And yet you only saw each other these five times? A. I could not be running back and forth all the time, you know. 20

Q. You did not come here when she died, to her funeral, did you? A. Not at the funeral, but when she had the stroke I came here and stayed with her till she came back.

Q. At the time of her death you did not come to Paterson? A. No, sir.

Q. But, shortly after you did come to see about the estate? A. Yes, sir.

Q. When you came on after the funeral to see about her estate, you saw Mr. Messenger twice, didn't you, altogether? A. I don't remember just 30
how many times, but I saw him as much as that anyway.

Q. The first time do you remember his inquiring whether or not any will had been found or any papers had been found? A. No. I don't remember about that.

Q. Do you remember your telling him, or you and your son, either one of you, telling him, that a trunk full of papers had been sent on to your home that had not been examined? A. No, sir. 40

Henry C. Sturgeon—For Def't—Cross—Redirect.

Q. As a matter of fact a trunk full of papers was sent to your home? A. I never saw them yet, they ain't been unpacked.

Q. They have never been unpacked? A. Well, no.

Q. Well, you don't know whether there is any will there or not in that trunk full of papers? A. Well, the house was looked over thoroughly for it, but we did not find anything.

Q. Where is that trunk full of papers? A. Well, there ain't any papers there without there is some old relics such as pictures.

Q. But you never unpacked them to know what is there? Have you? A. Yes, we have, we looked them over.

Q. I thought you said a moment ago, that since they had been sent to your home you never unpacked them? A. Well, we could not divide them, they are undivided and that is the reason.

Q. You did tell Mr. Messenger on the first occasion of your talk with him that these papers had been sent on to your home, didn't you? A. I don't remember of it; no, I did not.

Redirect examination by Mr. Reynolds.

Q. At the time of Mrs. Crouch's death some representative, some of your family came on to the funeral here, didn't they? A. Yes, sir.

Q. Who were they? A. It was Mrs. Scott Sturgeon who is here.

Q. Anybody else? A. No, she came alone. She had Edward Kiefe there, she came on a telegram and took care of her till she died.

Q. How long was that?

Mr. Ward: Objected to as calling clearly for hearsay.

Objection sustained.

Eliza Slater—For Defendant—Direct.

ELIZA SLATER, sworn as a witness on behalf of defendant, testifies as follows:

Direct examination by Mr. Reynolds.

Q. Where do you live? A. No. 451 Preakness Avenue.

Q. Did you know Mrs. Crouch? A. Yes, sir.

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Q. Where was your house with reference to Mrs. Crouch's place? A. Right across the street.

Q. How long have you lived there? A. I have lived there since 1887.

Q. Were you and Mrs. Crouch friendly? A. A. Yes, sir.

Q. Did you have many conversations? A. Yes, sir.

Q. And did you visit each other? A. Yes, sir.

20

Q. Do you know Sylvester Messenger, the plaintiff in this suit? A. Yes, sir.

Q. How was he known? A. He was known as Lester Crouch.

Q. Have you seen them together, Mrs. Crouch and Mr. Messenger? A. Oh, yes.

Q. What did Mr. Messenger call Mrs. Crouch, when he was addressing her? A. He always called Mrs. Crouch, "Ma."

Q. How old was he when you first knew him? A. I could not say how old he was, but he was quite a boy, going to school.

30

Q. Did Mrs. Crouch ever say anything to you about Lester?

Mr. Ward: Objected to unless Mr. Messenger was present.

The Court: Was Mr. Messenger present?

The Witness: No, sir. She never said much to me about Lester.

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Eliza Slater—For Defendant—Direct.

Q. You saw him very frequently, didn't you? A. Yes, sir.

Q. How was he dressed? A. Well, as a boy, he was dressed the same as any other boy going to school, he was always dressed respectable, but when he was working around the farm, of course, he was like other men, he was just wearing ordinary clothes.

Q. You have seen him working about the farm, I suppose, haven't you? A. Yes, sir.

Q. What did he do? A. All kinds of farm work.

Q. Such as what? A. Such as plowing, harrowing, planting potatoes; such as that.

Q. How long did he continue to live with Mrs. Crouch? A. Until the time he was married.

Q. That was about 1911, was it? About five years ago? A. About that, about five years ago.

Q. Do you know anything about his leaving that place at that time? A. No, sir, I don't know as he ever left the place.

Q. Do you know anything about his having any business in New York? A. Well, Mrs. Crouch told me he was in business, and I used to see him go up and down to New York and back.

Q. Since 1896 did he still continue to work on the farm? A. Yes, he still continued to work around the place.

Q. Did Mrs. Crouch ever tell you she had hired Lester Crouch to work for her?

Mr. Ward: Objected to.

The Court: How do you think that is admissible?

Mr. Reynolds: It bears on the question of whether there was any arrangement with Mrs. Crouch.

The Court: Isn't it in the nature of a self-serving declaration?

(Question withdrawn.)

Eliza Slater—For Defendant—Direct.

Q. Did Mr. Messenger work on that farm all the time after 1896, do you remember? A. Until he was married.

Q. Was there any interval at all, was he ill, or anything of that sort? A. Not to my knowledge.

Q. Did you ever know anything about Mr. Messenger living by himself anywhere? Leaving this property and going off and living by himself? A. Well, no, I cannot say that I know it for a fact that was to say—

Mr. Ward: I object if she don't know it as a fact.

Q. You have the place opposite there; do you do some farming, too? A. A little, yes, we only have a small place though.

Q. How much did you usually pay the men for working on your farm? A. When I hired men to do my work I paid them a dollar a day and their dinner.

Q. What do you consider good wages for a man, a farm hand?

Mr. Ward: Objected to; she has not shown herself qualified to state.

The Court: What were the prevailing wages paid around there?

The Witness: Well, from a dollar to two dollars a day, but this man what I had he used to come for a dollar a day and his dinner.

Q. What were the prevailing wages in regard to farm hands employed by the month? A. I could not tell you, because I never hired one by the month.

Q. Did you have a talk with Mrs. Crouch at the time of her first stroke which has been mentioned here? A. Yes, sir.

Eliza Slater—For Defendant—Direct.

Q. Did she say anything about her property at that time?

Mr. Ward: Objected to.

The Court: How do you think that is admissible?

10 Mr. Reynolds: As showing what was in Mrs. Crouch's mind at the time in regard to the disposition of her property, that there was nothing in her mind at the time she was suffering from this stroke, that she was saving this money for Mr. Messenger.

20 The Court: Doesn't it come in under the head of self-serving declarations? A person may be absolutely obligated to do a thing and yet may make statements around to the effect that she was not. Of course, I understand the estate is in a very difficult position in this case, or in any case of this kind, but that does not change the rule.

Objection sustained. Defendant excepts.

Q. Were you at the funeral of Mrs. Crouch? A. Yes, sir.

Q. Did you see Lester Crouch there? A. Yes, sir.

30 Q. Did you have a talk with him? A. Yes, sir, we did have a talk, on the back stoop, not me personally, but Mrs. Sturgeon and me and Mr. Messenger, and I won't say whether his wife was there or not.

Q. What was said at that time?

Mr. Ward: Objected to.

The Court: On what ground do you object?

40 Mr. Ward: I withdraw the objection.

Eliza Slater—For Defendant—Direct—Cross.
Amelia Slater—For Defendant—Direct.

A. Mrs. Sturgeon was talking to him and in the way of speaking they brought up about Mrs. Crouch and he said if Mrs. Crouch had left him anything, all right. If she had not, there would be no further trouble.

Q. Did he say at that time that he had any claim, that there was any claim? Did he suggest any claim? A. No. He never mentioned any claim at all. 10

Cross-examination by Mr. Ward.

Q. Where was this conversation? A. On the stoop coming out of the house.

Q. So he did mention the fact about Mrs. Crouch leaving him something? A. Yes, he said if she had left him anything it was all right. 20

Q. And he did act as though he had a claim? A. Well, I suppose he thought he had a claim.

Q. Did he state there would not be any trouble about his claim; that is what he said? A. That is what he said.

AMELIA SLATER, sworn as a witness on behalf of the defendant, testifies as follows: 30

Direct examination by Mr. Reynolds.

Q. Where do you live? A. On Preakness Avenue, Number 451.

Q. Mrs. Slater who was on the stand is your mother? A. Yes, sir.

Q. You have lived there all your life? A. No, I came there when a small child.

Q. Ever since your mother moved there? A. Yes, sir. 40

Amelia Slater—For Defendant—Direct.

Q. Do you know Lester Messenger? A. I do.

Q. The plaintiff in this suit? A. Yes, sir.

Q. When do you first remember seeing him? A. When I was fifteen.

10 Q. How was he dressed at that time? A. Well, at that time he went to school and that is as far back as I can remember.

Q. How was he dressed at that time? A. The same as any ordinary school boy.

Q. Did you see him do work on the farm there? A. Yes, I have.

Q. What kind of work was it? A. For a while there he did the farm work, for a couple of years, ran the farm; after that he did the chores.

Q. Did you ever talk very much with him? A. About his personal business? No, sir.

20 Q. What occasions were there when you saw him oftenest, what did he do, did he bring anything to your house? A. Yes, he served us with milk there for a time.

Q. Did you have any talks with him at those times? A. Well, once in a while he would complain just a little.

Q. What did he say? A. Well, I cannot remember all that he said.

30 Q. Complaining about Mrs. Crouch? A. He did one time complain about her, yes, sir.

Q. What did he say then, do you remember? A. At that time he complained because she would not buy him a pair of shoes.

Q. Did he ever say anything about not getting paid? A. Well, I said to him at that time, that was about the only time that I can remember—

The Court: When was this?

The Witness: Why, that was long before he was married.

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The Court: How long before?

Amelia Slater—For Defendant—Direct—Cross.

The Witness: Well, I just can't remember.

The Court: A year or two years or ten years?

The Witness: It was not ten years, perhaps about two or three years before.

The Court: What did he say?

The Witness: Well, he complained about his shoes, and I said to him, "Well, Lester, why under the sun do you stay there? Why don't you get out and do for yourself?" He answered me and he told me that that was his business, he had his reasons for staying there. That is the only time I ever talked to him about Mrs. Crouch's affairs. 10

Cross-examination by Mr. Ward.

Q. You say that he always dressed like the other school boys at that time? A. Yes, sir. 20

Q. How old was he when you first knew him? A. I could not tell you.

Q. About? A. Well, I was a child; I should judge he would be about fifteen. I won't swear to that, but I judge so.

Q. How long did you live there? A. We have lived there, I guess, nearly thirty years, going on there, something around there anyway. 30

Q. For how many years did you see him dressed as a school boy? A. Oh, I cannot remember.

Q. As school boys ordinarily are dressed? A. I cannot remember that; I can remember better when he went to business.

Q. Did you see him go back and forth to school? A. Did I?

Q. Yes, as a child? A. Yes, sir.

Q. For how many years? A. Well, I cannot tell you, because I don't just remember. He went to 40

Amelia Slater—For Defendant—Cross.

college, and how many years he went to college I could not tell you.

Q. Was it more than one year? A. I could not tell you. I was only a child at that time.

Q. And you have only seen him doing the farm work around there for two years during all the years he was there? A. Superintending the place and doing work of the whole place, two or three years he did that. Other times he did as an ordinary boy would do.

Q. When you had this talk with him you asked him why he stayed there and he said he had his reasons? A. Yes, sir.

Q. Did he tell you his reasons were because she had promised to pay him? A. No, sir, he did not say anything about that to me, no, sir.

20 Mr. Reynolds: I object to the counsel putting words in the witness' mouth.

Objection overruled. Defendant excepts.

Q. Did he tell you it was because she had promised to pay him? A. No, he did not.

Q. Did you say anything about his pay to him? A. No, sir, I did not think that concerned me in the least.

Q. You knew he was not getting paid there? A. I did not know anything about that.

Q. He did not even have money enough to buy a pair of shoes for himself? A. Well, I don't know anything about that.

Q. Did he say he could not get a pair of shoes? A. He said she would not buy him a pair of shoes.

Q. And didn't he say he did not have the money to get them? A. No, sir, he did not. Not to me.

Sophie Peterson—For Defendant—Direct.

SOPHIE PETERSON, sworn as a witness on behalf of the defendant, testifies as follows:

Direct examination by Mr. Reynolds.

Q. Where do you live? A. No. 447 Preakness Avenue.

Q. Do you live near where Mrs. Crouch's place is or was? A. Yes, sir, I live right across.

Q. How long have you lived there? A. For ten years.

Q. Do you know Lester Messenger, the plaintiff in this suit? A. Yes, sir.

Q. Have you seen him do any work there? A. Yes, sir, for the first five years I was there he worked on the farm.

Q. What did he do? What was the nature of his work? A. Well, ordinary farm work, not so much of it at that time.

Q. Did they have any trees? A. Yes, and they had one cow.

Q. Did you ever have any talk with him at any time at all? A. No, sir.

Q. Did he deliver milk at your house? A. He did.

Q. He did the ordinary chores around the place there? A. Yes, he took care of the cow and the horse and the chickens.

Q. Do you remember whether he lived as a member of the family or not? A. When I first knew him I thought he was the son; they always called him Lester Crouch.

NO CROSS-EXAMINATION.

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Charles Slater—For Defendant—Direct.

CHARLES SLATER, sworn as a witness on behalf of the defendant, testifies as follows:

Direct examination by Mr. Reynolds.

10 Q. How old are you? A. Past sixty-seven years old.

Q. Do you live in the City of Paterson? A. Yes, sir.

Q. Whereabouts? A. I live on Preakness Avenue just at present, number 451.

Q. How long have you lived there? A. Since 1887.

Q. Did you know Mrs. Crouch? A. Yes, sir.

Q. Did you know Lester Crouch or Sylvester Messenger? A. Yes, sir.

20 Q. Have you seen him around the place? A. Yes, sir.

Q. What did he do around there? A. Oh, just the same as any other farm hand does.

Q. Do you know what relation he occupied in the family? A. I could not tell you that.

Q. Did you ever have any talks with Mr. Messenger? A. Only just mere talk, that is about all.

Q. Anything about his employment by Mrs. Crouch there? A. No, I don't think I did.

30 Q. Do you farm your place? A. Well, sometimes; sometimes I hire it farmed.

Q. Are you familiar with the price of farm labor in that neighborhood? A. Well, when I was working down in Brooklyn there, away from home, I paid a dollar a day and the dinner.

Q. Do you know what the general run of wages at that time would be for employment by the month on a farm? A. Well, I should judge from ten to twenty-five dollars.

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Charles Slater—For Defendant—Direct.

Mr. Ward: I object. He is asked if he knows. I have no objection to his answering that, if he knows.

The Court: Do you know? Just answer yes or no.

The Witness: Yes. I told him yes.

10

Q. How much?

Mr. Ward: Objected to. I don't think the witness has shown any knowledge at all.

The Court: Show his knowledge first. Show how he gets his knowledge or he knows, or whether he has any knowledge at all.

Q. How do you know? How did you get your knowledge in regard to that? A. Well, being acquainted with farmers around.

20

Q. Did you ever employ any farm hand yourself for a month at a time? A. No, sir, not by the month. By the day I did.

Q. By the day only? A. Yes, sir.

Q. Do you know what the rate of wages was at that time? A. Yes, sir.

The Court: Don't you think he has shown some knowledge of the amount of wages paid currently up there?

30

Mr. Ward: No. I don't think so, unless he has been present when the men were hired or knows something definite about it. I don't suppose it matters very much because the jurors themselves are perhaps familiar with the matter.

The Court: You may ask the question.

Q. How much would the fair wages be? A. Well, between fifteen and twenty-five dollars a month.

40

Charles Slater—For Defendant—Direct.
Belle Sturgeon—For Defendant—Direct.

- Q. And board? A. Yes, sir.
- Q. Are you familiar with the nature of the farm of Mrs. Crouch? A. No, sir.
- Q. You have seen it, haven't you? A. Yes, sir.
- Q. You have lived there thirty-two years? A. Yes, sir.
- 10 Q. Do you know about how much of the farm was in pasture? A. Well, I could not hardly say, pasture, about, well, I guess it would be a couple of acres anyway in pasture, if not more.
- Q. Do you know how much was used for hay? A. Well, the biggest part of it was in hay.
- Q. Was any of it planted in corn? A. Yes, sir.
- Q. How much was that, do you know? A. I could not say.
- 20 Q. Did they raise potatoes there? A. Yes, sir.
- Q. Did they raise any small fruits? A. Well, such as apples and pears and currants and raspberries and blackberries, such as that.
- Q. And any grapes? A. Yes, sir.

NO CROSS-EXAMINATION.

30 BELLE STURGEON, sworn as a witness on behalf of the defendant, testifies as follows:

Direct examination by Mr. Reynolds.

- Q. Where do you live? A. At Fairview, Erie County, Pennsylvania.
- Q. Are you a relative of Mrs. Crouch? A. I am the wife of W. F. Sturgeon, her brother.
- Q. Did you visit Paterson, visit Mrs. Crouch in 1915, just before her death? A. I did. And I had
- 40 visited her before that.

Belle Sturgeon—For Defendant—Direct.

Q. Did you come to the funeral of Mrs. Crouch?

A. I came to care for her. I received a telegram that she was very ill and to come down and I came and on a Monday morning, just the day a week, and I was there one week before she died. I cared for her with the help of Mr. Kief, George Edward Kief, he was the man who was doing her work at that time. 10

Q. You were there for a week? A. Yes, sir, she had been ill three weeks, but he did not send for me——

Mr. Ward: I object to that and ask that it be stricken out.

Motion granted.

Q. You took care of Mrs. Crouch during the last week of her illness? A. Yes, sir, I did. 20

Q. And you attended the funeral? A. Yes, sir, we had a funeral in Paterson for the friends that were here and then we had her, at her old home, at her brother's, we had another service and she was buried as she wished in the family lot in Fairview, her father bought a——

Mr. Ward: I object to this.

Q. That is in Fairview, Pennsylvania? A. Yes, sir. 30

Q. Did you know Sylvester Messenger, the plaintiff in this suit? A. I met him the day of the funeral. We had difficulty in finding him, we did not know where he lived——

Mr. Ward: We object to that.

Q. Did you have any conversation with Mr. Messenger? A. Yes, sir, I did. 40

Belle Sturgeon—For Defendant—Direct—Cross.

Q. Did he mention anything about a claim for labor performed for Mrs. Crouch? A. He said to me that unless the heirs saw fit to do something for him he would not get anything. "Unless the heirs see fit to do something for me I won't get anything."

10 Q. Did he say anything else about that? About his relations with Mrs. Crouch? Did he mention the note? A. Yes, he said that it worried him, he had given a note for forty dollars and he was afraid they would come on him for that claim with compound interest, and I told him not to worry about it, that they would not do that.

Q. Was there anything else said at that time about this matter in connection with Mrs. Crouch by Mr. Messenger? A. No, sir. There was something else, yes.

20

Cross-examination by Mr. Ward.

Q. What else was said? A. Well, I cannot recall all that was said, because there was a great deal said and I was gathering up garments that we had laid out in the yard and I had to get through to go to the train.

Q. Was this at the funeral? A. No, sir. It was the day of the funeral.

30

Q. You were there before Mrs. Crouch died? A. I was, yes, sir.

Q. And burned up considerable paper? A. We burned nothing but what we examined and the papers that were——

Q. Just answer the question. You burned a number of papers? A. No, we burned newspapers, but not papers of any value. We looked over everything.

40 Q. You sent a trunk full of papers back to your

Belle Sturgeon—For Defendant—Cross.

home, didn't you? A. No, sir, we did not. We sent the papers, the trunk and the papers to the bank and they took the custody of them there.

Q. What about this trunk you sent home? A. They were garments that were sent home, they were not papers.

Q. At this conversation that you had, was that at the time the funeral was had? A. No, sir, it was after the funeral. 10

Q. How long after? A. I could not tell you.

The Court: The same day?

Q. The same day? A. It was the same day, yes, sir.

Q. And you say Mr. Messenger said to you that he would not get anything unless— A. The heirs saw fit to give it to him. 20

Q. What did you say to him? Didn't you say to him then, "Lester, you have always been considered as a son by Mrs. Crouch and she will probably leave you something"? A. I did not say he had been that, but I said I felt that the heirs would do something for him.

Q. You thought then that it would be necessary for the heirs to do something for Lester? A. I thought it would be perfectly nice. 30

Q. You did not think Mrs. Crouch had done anything for him? A. I knew very little about what had been done.

Q. You did not think she had done anything then? A. I knew nothing about it.

Q. You did not think Mrs. Crouch had regarded him as a son then, did you? A. I never met him until that day. I visited there three years ago and did not meet him at all.

Q. And during all these years that Mrs. Crouch lived here in Paterson how often were you here? 40

Belle Sturgeon—For Defendant—Cross.
Harold M. Sturgeon—For Defendant—Direct.

A. I was here twice. I came to take care of her when she died and——

Q. All right, that is all.

By Mr. Reynolds.

10 Q. How long have you been married to Mr. Scott Sturgeon? A. I was married in 1895.

HAROLD M. STURGEON, sworn as a witness on behalf of the defendant, testifies as follows:

Direct examination by Mr. Reynolds.

20 Q. Where do you live? A. In Erie County, Pennsylvania.

Q. Are you a relative of Mrs. Crouch? A. I am a nephew of Mrs. Crouch.

Q. How old are you? A. I am fifty-three years old.

Q. Are you acquainted with Sylvester Messenger? A. I am.

30 Q. When do you first remember seeing him? A. I think the first time I saw Sylvester Messenger was in 1892. He was then known as Lester Crouch. He lived in my aunt's home.

Mr. Ward: I object and I ask that that be stricken out that he was then known as Lester Crouch.

Motion denied. Plaintiff excepts.

The Court: Just confine yourself to answering the question.

The Witness: I have answered it.

Harold M. Sturgeon—For Defendant—Direct.

Q. What was he employed at then, do you remember? A. Well, I was in business in New York City——

The Court: Counsel wants to know what Messenger was employed at?

The Witness: I am going to tell him that.

The Court: Just answer the question. 10

The Witness: —and he was in some employment in New York City and we rode, frequently rode back and forth from Paterson to New York together. It was some store, I don't know the name of it now, but it seems to me, as I recall it, it was silk or some kind of fabric was sold there.

Q. What position did Mr. Messenger occupy in the household of your aunt, Mrs. Crouch? A. A member of the family, he called my aunt mother. 20

Q. Did you visit your aunt in 1905? A. Yes, sir. I was there at least once in 1905, I arrived about 5 o'clock, I should imagine now it was in November, and there was,—I found my uncle, Mrs. Crouch's husband there and an old gentleman who was taking care of him. They did not know me and refused, at first, to let me in, but I insisted and after I was there a while——

The Court: Had we not better have a question rather than this dissertation? 30.

Q. Did you go down with Mr. Messenger to the car to meet Mrs. Crouch? A. Mr. Messenger came to me after I was there, and after supper——

Mr. Ward: I object to all this.

The Court: Just answer the question.

The Witness: Yes, we went to the car to meet Mrs. Crouch after supper. 40

Harold M. Sturgeon—For Defendant—Direct.

Q. Was there any conversation about money at that time? A. No, sir.

Q. When did you see your aunt next? A. The first I recall, I did not see my aunt again until the August before she died, as I recall it now.

Q. Was Mr. Messenger there then? A. No, sir.

10 Q. Was Mr. Messenger married at that time? A. My aunt so informed me.

Q. Were you at the funeral in 1915? A. I was not at the funeral at Paterson, but I attended the funeral at Fairview.

Q. Did you come on again after her death? A. Yes, sir, I came in company with my uncle, Henry C. Sturgeon, at the request of the rest of the family.

Q. What was the object of that?

Mr. Ward: Objected to.

20 Objection sustained.

Q. Did you arrange about the letters of administration at that time? A. I did, or we did. We had the bank appointed administrator. We first, of course, made a search——

Mr. Ward: I object.

The Court: You have answered the question.

30

Q. Did you have any talk with Mr. Messenger at that time? A. I did.

Q. Did he at that time make any claim against the estate or say that he had any claim? A. No, sir.

Q. Did he talk to you about wages at all? A. No, sir.

Q. Did he talk to you about wages at any other time? A. No, sir.

40 Q. Did he say anything about that note that has been put in evidence, Exhibit D-2? A. Yes, sir.

Harold M. Sturgeon—For Defendant—Direct.

Q. What did he say about that? A. He explained that there was a note that he had given to my aunt sometime or other, and he was afraid it would be found and he would be compelled to pay it. He said he had taken the money during my aunt's absence and had placed the note in the place where the money was. That my aunt had been angry about it, and charged him with stealing the money. He explained further about the circumstances of why he needed the money and all of that. 10

Q. Did he say anything else at that time, as to his anxiety about that note and having to pay interest? A. Yes, sir.

Q. Why was he anxious about it? A. Well, he said he had saved up money and owned a lot and was afraid if they proceeded on the note it would eventuate in a levy upon his lot and that he could not afford to lose it. 20

Q. Afterwards, did you make any arrangement with Mr. Messenger to take care of the property? A. Yes, sir.

Q. What time was that? A. Why, it was in November, 1915, I think we left that to him about the day before Thanksgiving, in 1915, and it was between the time we arrived, the early part of November and Thanksgiving some time, I cannot give you the exact date. Yes, I can, too. It was the day after that receipt which is in my bundle of papers there. November 19th, 1915. I find the agreement is dated November 23, 1915, but we talked it all over with them on November 19th. 30

Q. What is that agreement?

Mr. Ward: That speaks for itself and I have not had a chance to see it.

Mr. Reynolds: It is not in evidence.

Mr. Ward: Then we object to it.

Mr. Reynolds: Then we will offer the agreement in evidence. 40

Harold M. Sturgeon—For Defendant—Direct.

Mr. Ward: I would like to see it.

(The agreement is exhibited to counsel.)

The Court: Who are the parties to this agreement?

The Witness: There are a number of them.

The Court: Is Mr. Messenger a party?

10 Mr. Ward: Sylvester Messenger and Johanna Messenger.

The Witness: It is simply an agreement we made between them.

Mr. Ward: I don't see what relevancy that has in this case.

Mr. Reynolds: I was simply asking what arrangement he made about taking care of the property, whether Messenger was employed, and that is all, and he said they had an agreement.

20 The Court: Was this the agreement for taking care of the property for six months?

The Witness: Yes, sir, not only for six months, but as long as they wanted to stay.

The Court: I will admit it. It is already in evidence, if that is all it is.

The Witness: That is all it is.

Mr. Ward: We object to it.

30 The Court: You brought that out yourself on your examination. The plaintiff said he stayed there under some arrangement.

Mr. Ward: No, I did not ask for that, that was brought out on cross-examination.

The Court: The fact that he stayed there and took care of the property came out, so that I think we ought to have the whole agreement.

40 Mr. Ward: I don't think this agreement is relevant. I don't think there is any use beclouding the issue by having a lot of

Harold M. Sturgeon—For Defendant—Direct.

papers that are not in the case and not relevant. I believe in keeping the issues as clear as possible.

Mr. Scott: The witness was asked about this arrangement and it turns out this arrangement was in a paper, and Mr. Ward objects because the paper is the proper thing to show the arrangement and the paper is offered in evidence. 10

Mr. Ward: Now, I object to the relevancy of the paper.

The Court: How does it throw any light on the issues here? The issue here is whether Mr. Messenger is entitled to be paid for his services or is not.

Mr. Reynolds: It is simply to show the relationship between the heirs of Mrs. Crouch and Mr. Messenger for the six months after the letters of administration were issued. 20

The Court: That is conceded. Everybody concedes that Mr. Messenger stayed there and was entitled to thirty days' notice to terminate his stay. Is there anything more you want to prove?

Mr. Reynolds: Nothing at all.

The Court: Then there is no use putting that in. 30

By Mr. Reynolds.

Q. When was your next conversation with Mr. Messenger? A. Well, I cannot fix the dates of all these conversations, because there is nothing to fix them all by, but we had a number of meetings and one of the times when he came up to the house he invited us to his place for Sunday dinner.

Harold M. Sturgeon—For Defendant—Direct.

10 Q. Was that after the funeral? A. Oh, yes, it was when we were here to have the administrator appointed. I could not come but my uncle did, and so I was not there at that time, but afterwards my uncle called at his house of an evening and when that receipt here from Mrs. Messenger was being prepared, she, Mrs. Messenger, made the remark, Mr. Messenger was writing the receipt and she made the remark——

Mr. Ward: I object.

The Court: Was it in his presence?

The Witness: It was in his presence, they were all present there together.

Mr. Ward: This witness goes on, there are no questions asked and I cannot object.

The Witness: That is true.

20 Mr. Ward: Everything that is true is not always relevant.

The Witness: I cannot just remember all this time, but I meant that it is true what you have just stated and I must give you a chance to object. I forgot myself.

Mr. Reynolds: I asked the witness what the conversation was at that time when this receipt was given.

The Court: Yes, that is proper.

30 The Witness: Well, that was part of it, Mrs. Messenger remarked to me, while Lester was writing the receipt, that Lester had done some work up there, too, and I said, "If that is true he should make us an account of that, of what he thought was his due and that we would consider, and if we considered it was proper we would see that it was paid." That is the only conversation referring to any money due to Mr. Messenger between us.

40

Harold M. Sturgeon—For Defendant—Direct.

Q. What did Mr. Messenger say in regard to that proposition? A. Well, I don't recall that he made any comment on it. There was a suggestion of somebody, perhaps his wife, as though it was too trivial to talk about, but I cannot say that he made any audible comment.

Q. At any other time did he make any claim in your presence or to you? A. No, sir. I received a number of letters from him during the time he occupied the place, not one of them— 10

Mr. Ward: I object.

The Witness: They are here if you want to look at them.

Q. When was the first you knew about the claim Mr. Messenger filed against this estate? A. I received a newspaper from the Paterson Savings Institution, with a marked article in it concerning the fact that the firm of Ward & McGinnis had entered suit for Messenger. That was the first I knew of it. 20

Mr. Ward: I object to that, and ask that it be stricken out.

Motion denied.

Q. How long did Mr. Messenger stay in charge of the property? A. Until the last day of June or the first day of July, 1916. 30

Q. When did you know that he was going to leave? A. The first I knew that he was going to leave, I arrived at 452 Preakness Avenue and he opened the door and let me in the place, and the place looked all torn up and I—

The Court: That is not necessary in order to answer the question which was put, that the place was all torn up. Counsel asked you when you learned about it. 40

Harold M. Sturgeon—For Defendant—Direct.

A. (Continued) I cannot fix the date; it was in May, the last of May or the first of June, I cannot give you the exact date. And he informed me then at that time that they had completed their contract, they had complied with their contract and would move on the 1st of July.

10 Q. Who did you move in after that to take care of the place, or who did you employ? A. Mr. Charles Slater.

Q. Did you stay to supper with Mr. and Mrs. Messenger, that night? A. I did.

Q. That was in the Crouch house, was it? A. Yes, they invited me to stay to supper.

Q. What happened then? Was there any arrangement made about chickens, the sale of chickens or a table? A. Oh, that chicken arrange-
20 ment was made back when we made the arrangement for them to live on the place, we sold them those chickens that were on the place, about \$22 worth, something like that.

Q. Did they buy anything else? A. Not when they moved in. But, while—I don't recall now, but afterwards, Mrs. Messenger, or just before that, just before they moved out, when I arrived there, or found they were getting ready to move out, Mrs. Messenger bought the carpet, a Brussels carpet,
30 and paid me \$5 for that, which I turned in to the administrator.

Q. You were familiar with this place of Mrs. Crouch's, weren't you? A. Yes, sir.

Q. Did you ever live there? A. I did. I lived there, a year and a half, immediately prior to 1876, I lived there as a member of her family.

Q. Then you were familiar with the lay of the land there and the nature of the ground? A. Yes, sir.

40 Q. How much of that land was in pasture? A. Well, there is at least one-third of it in pasture.

Harold M. Sturgeon—For Def't—Direct—Cross.

Mr. Ward: That is, in 1876?

The Witness: No, I have been there a number of times since.

Mr. Ward: When?

The Witness: A year and a half.

Mr. Scott: At the present time.

Mr. Ward: I object to the present time, 10
that has nothing to do with it.

Q. Were you familiar with the property from 1896 to 1911? A. I did not see it in 1896, I saw it in 1892, and the same field was——

Mr. Ward: I object.

Q. Did you see it at any time between 1896 and 1911? A. In 1905 I saw it.

Q. What was the situation then? 20

Mr. Ward: Objected to as not within this period of time.

Objection overruled. Plaintiff excepts.

A. The same piece of land was in pasture in 1902 and 1905, that was in pasture when I lived there and which is in pasture now, and it is about one-third of the whole thing.

Q. How much was in hay? A. Well, now, I cannot answer that question for the period over which this suit is brought, because I did not see it. I don't know how much hay she had. 30

Cross-examination by Mr. Ward.

Q. You are a practising attorney? A. I am.

Q. And you have been for a number of years?

A. I have been for a number of years.

Q. How long? A. I should imagine for about thirty or thirty-five years. 40

Harold M. Sturgeon—For Defendant—Cross.

Q. The first time you ever saw Lester was in 1892, as I understand? A. Yes, sir.

Q. Do you remember how old he was at that time? A. I don't know his age, no.

10 Q. When was it that you lived there? It was in 1875 that you lived there? A. Yes, prior to the time he lived there. He did not live there when I lived there.

Q. Whereabouts were you living in 1892? A. At Erie, Pennsylvania.

Q. Did I not understand you to say that during the period of time, or part of the period of time, Lester was engaged in business in New York, you travelled back and forth with him? A. No, you did not understand it that way. I did not say it that way.

20 Q. Did you ever travel back and forth with him on the trains? A. I have travelled to New York with him a number of times, in 1892, in September.

Q. That was in 1892? A. Yes, sir.

Q. He had a position in New York at that time? A. Yes, sir.

Q. Do you know how long he continued to work in New York at that position? A. I do not.

Q. In any position? A. I do not, but he was there when I was there.

30 Q. Between 1892 and 1905 did you visit the Crouch home at all? A. I do not recall that I did.

Q. After 1905, or in 1905 you came there at the time Mr. Crouch was ill? A. Yes, he was feeble.

Q. You had been to New York and came out to see him at Paterson, did you? A. I came out here to see my aunt, as I always did when I came to New York.

40 Q. And do you mean that between the years 1892 and 1905 you did not visit New York at all? A. No, sir.

Harold M. Sturgeon—For Defendant—Cross.

Q. You had not been to New York once during all those years? A. Between what dates?

Q. Between 1892 and 1905? A. No, sir.

Q. So, for a period of thirteen years you had not been to New York? A. No.

Q. In 1905, when you found Mr. Crouch ill, did you know at that time that Lester had given up the position in New York? A. I did not. He was there around the house there, helping, and, what was it you asked me, if I knew he had to go to his position in New York? 10

Q. Yes, or any place? A. I understood that he was working in Paterson at some position.

Q. Did you know that he had given up his work to stay there at Mrs. Crouch's home? A. No, sir, I did not know that.

Q. Was he working there at the time you were there? A. He came home from downtown after I arrived there. He took off his good clothes and put on his farm clothes and did the evening chores at the barn. After supper, who got the supper I don't know, we went to meet my aunt, as I testified originally, and walked home with her from the Preakness car. The next morning I talked with them a little bit about some other business, we talked a little bit—— 20

Q. Did you understand my question? A. I did, but he did not—— 30

Q. Wait a moment. I asked you if you knew that he was working there at that time? A. And I say now I did not.

Q. Won't you answer yes or no? A. I did not know that he was working on the farm further than I have stated.

Q. How long were you there on that occasion? A. One night.

Q. Mr. Crouch had had a stroke of paralysis? A. I don't know whether he did or not. 40

Harold M. Sturgeon—For Defendant—Cross.

Q. He was confined to his bed at the time? A. He was not, he was up.

Q. Wasn't he? A. No, he was at the table with us.

Q. What time of the year was that? A. In November.

10 Q. Then from 1905 until 1914 you never saw her again, as you testified on your direct examination? A. I was here the August of 1915.

Q. You testified that from 1905 when Mr. Crouch was ill, that you never saw her again until 1914, I understood you to say? A. Oh, I did not say I never saw her. I said I did not visit there.

Q. You did not visit them here in Paterson? A. No. She came up to Erie, to Fairview during that time.

20 Q. It was 1914 or 1915 when you again visited her? A. The August before she died.

Q. When Mr. Crouch died you did not come on to the funeral then? A. No. They brought him to Fairview.

Q. You did not come to Paterson when Mr. Crouch died? A. I did not.

Q. And, during the ten years from 1905 to 1915 did you visit New York on business or otherwise? A. I don't know whether I did or not. What is that? Give me that over again?

30 Q. From 1905 when you came to the Crouch home, when Mr. Crouch was ill, up to 1915, had you been to New York at all on business or otherwise? A. I do not now recall whether I had or had not.

Q. You don't remember whether during those ten years you ever visited New York? A. I don't remember such trivial things as that.

40 Q. Do you consider a trip from Erie, Pennsylvania, to New York City a trivial affair? A. Very, yes.

Harold M. Sturgeon—For Defendant—Cross.

Q. So trivial you do not take it for ten years? A. I do not take it unless I have business.

Q. I ask you again to think whether during those ten years you made a visit to New York? A. From 1905 to 1915?

Q. Yes, whether during those ten years you visited New York? A. I do not recall whether I visited New York during that period or not. 10

Q. But you did not come to see your aunt during that time? A. I came to see my aunt whenever I came to New York.

Q. You did not come to see Mrs. Crouch during that time? A. If I did not come to New York during that period, I did not come to see my aunt during that period.

Q. You knew that your aunt was sick before she died? A. I did not. 20

Q. You did not know about that at all? A. No, sir, she did not tell us.

Q. Wasn't there a telegram sent to your uncle? A. The first I knew we got a telegram that they had gone; I think two or three days afterwards I got a telegram, not a telegram, a telephone message from up there.

Q. So then, you did not know that she was ill? A. Not when they came down, no.

Q. Your aunt came on here and 'tended her for a week before her death? A. My aunt was on here, on her way before we knew anything about it. 30

Q. All right. But after two or three days, after your aunt left, you knew that she had gone, didn't you? A. I knew she had gone and I knew she was perfectly capable of performing all the duties that might be necessary.

Q. And you knew that she had gone to see your aunt, Mrs. Effie Crouch, who was that day dying? A. I did not know that she was that day dying. 40

Harold M. Sturgeon—For Defendant—Cross.

Q. You knew she was seriously ill? A. I did not know she was seriously ill. I did not know anything about it.

10 Q. She was seriously enough ill for your aunt to go on there? A. Well, the second time she telegraphed there we did not know but it was the same as the first time, the second time she telegraphed, she telegraphed the fourteenth and then telegraphed again on the fifteenth and we did not know anything about it, she did not telegraph to me.

Q. You say you did not come on at all? A. No.

Q. Until you came on to see about the estate?

A. I was sent on by the heirs to see about the estate, yes, sir.

Q. You did not come on to see about the estate?

A. When?

20 Q. After your aunt's death? A. Sure.

Q. How long after your aunt's death and after the funeral service here in Paterson was it that you came on to see about the estate? A. About one month.

Q. Is your memory distinct? A. About what?

Q. About coming on here? A. Why, it is distinct that I arrived here and I went home again.

Q. Didn't your aunt die on the 31st of October?

A. It seems so.

30 Q. Then it was not a month after that you came on and that you were not in a hurry to come on, was it? A. Well, as soon as my uncle could arrange his affairs to get away.

40 Q. As a matter of fact, you came on a few days after your aunt's funeral, didn't you, and not a month? A. Well, this receipt says, November 19th, and if she died the 31st of October, that would be a few days. I don't want to contradict the evidence or to show that we were unduly dilatory in getting here.

Harold M. Sturgeon—For Defendant—Cross.

Q. When you came on you saw Mr. Messenger, you say? A. He came up to see us, yes.

Q. And he spoke of the note to you? A. Yes, sir.

Q. That is the note that has been marked here in evidence D-2? A. Yes, sir.

Q. When did you find that note? A. When we went to the bank and arranged the deposit books. 10

Q. When was that? A. I think it was the afternoon of the day we arrived. I cannot say. You see we got in here 6 o'clock in the morning and it was quite a while before things—

Q. Was it after that that you saw Messenger and he talked to you about it? A. No, he came in the morning to the house, before we had a chance to open the deposit books or to know where we were at. 20

Q. When did you next see him, after having gone to this depositary? A. Well, now, I cannot tell when it was, one evening, I think, one evening at his house.

Q. Did he speak in an offhand way about it? A. No, sir.

Q. Did he mention it at all? A. No, after talking with us at the house in the morning—

Q. Did you mention it to him? A. I may have, but I cannot recall what was said about it. 30

Q. When did you tell him it had been found? Did you tell him it had been found? A. After that, the day after, I may have done so.

Q. What is your best recollection about it? A. Well, there were so many things talked about, it is pretty hard to be sure of all things.

Q. After you found this note did you ever tell him the heirs would not press him for payment of it? A. I certainly did.

Q. That they would not press him for payment of it? A. Sure, I told him even before I knew of 40

Harold M. Sturgeon—For Defendant—Cross.

the note, before I found the note, when he told me about it.

Q. After you found the note did you tell him that? A. Sure.

Q. Did he seem to be gratified? A. Yes.

10 Q. And appreciative of the kindness that was being done to him by the heirs? A. Well, I don't recall what he said.

Q. Did you tell him that the note was outlawed and that the heirs could not press it anyway? A. I don't remember that I told him that.

Q. Why didn't you tell him that after you found it? A. Because I don't know what I thought about it.

20 Q. As a matter of fact, don't you know that the note was not worth a cent, and don't you know that it was outlawed, don't you know? A. If it was outlawed and it had been called to my attention, I would have known that, but I don't know that I thought anything about it at the time, we had not any intention of bothering him about that at any time.

Q. You knew you could not, didn't you? A. Sure.

30 Q. But you did not tell him you could not, or you knew you could not, did you? A. No. But the note was not in our possession. It was in the bank. We could not take that away from the bank.

Q. When you saw him the first time before you had opened this depositary, do you remember his asking you if you had gone to the safe deposit vault as yet? A. I don't know whether he asked me that question or not.

40 Q. Do you remember his asking you whether or not you had examined your aunt's papers? A. Whether he asked me that question I don't know, but we did tell him when he arrived that we did

Harold M. Sturgeon—For Defendant—Cross.

not know where we were at, that we had not examined any of the papers yet.

Q. Then, the second time you saw him was where? A. I don't recall seeing him until my uncle and I called at his house, in the evening. He might have been up to the house in the meantime, I cannot say.

10

Q. Did you and your uncle call at his house? A. Yes, sir, I think we called several times.

Q. And do you remember at that time telling him that you had made no examination of the papers as yet? A. That we had not found them all.

Q. I am not blaming you. A. I know you are not, but you ask me the question in a way that I can hardly answer it, that is the trouble.

Q. You just stated you had not examined the papers. A. That is right, it took some time.

20

Q. So, I am asking you if you did not tell him that you had not examined the papers? A. I don't know, but it would have been perfectly natural to have told him that.

Q. Did you see him again after that at all, before you went back? A. I cannot recall whether I saw him the morning they moved into the place or not, into the farm house, I cannot recall.

Q. And when you were notified or invited to come to dinner that Sunday night, your uncle went, but you did not go? A. My uncle went and I had a previous engagement and I was very sorry I could not go.

30

Q. Then you went on back to your home? A. After we got the business fixed up here we went back home, yes, sir.

Q. So that, so far as you have a clear and distinct recollection at this time, you saw Lester Messenger twice after your aunt's death before you

40

Harold M. Sturgeon—For Defendant—Cross.

went back? A. So far as I have a distinct recollection, but it seems to me we saw him a number of times, and we naturally would, we wanted to have him move into the place and we had a number of conferences. What that number was I cannot say. It was more than one, it was more than two. How many more I could not tell you.

10 Q. You had one up on the Crouch place? A. The morning we arrived.

Q. The next you had one with him at his home, wasn't it? A. We had an interview at his home after that, I think that was the next.

Q. Where did you have any other interview? A. Well, it was one place or the other.

Q. Don't you know he was not up to the Crouch place more than once while you were there? A. Well, I don't know that.

20 Q. Don't you know you did not have more than one interview with him at his home? A. I have a letter from him in which he says he was at the Crouch house that Sunday when I came there——

Mr. Ward: I object to that and ask that it be stricken out as irresponsive.

Motion granted.

30 Q. I asked you if you did not know that you had seen him on but one occasion at his home between the time you came on and the time you went away? A. I am sure that we saw him at his home on different occasions. There is the receipt that was given, that he wrote at his house, on the 19th of November, and the 23rd of November he signed that agreement, to live in the place, at his house.

40 Q. All right. On two occasions then? A. At his house.

Harold M. Sturgeon—For Defendant—Cross.

Q. Now, is that all? A. That is all that I recall.

Q. At the occasion when he signed that agreement at his house, at that time you had not examined all the papers, had you? A. We had examined them far enough to know that there was no will, and therefore got the administrator appointed. 10

Mr. Ward: I object to that and ask that it be stricken out as not responsive.

Motion granted.

Q. Will you kindly listen to my question? A. We did examine all the papers that we found in the house and all the papers that we found in the deposit box. 20

Q. Do you remember telling him that you had sent a trunk full of stuff home? A. No, we told him that Mrs. Belle Sturgeon, when she took my aunt's body home, packed a lot of clothing and things she found in the house and sent them home in a trunk.

Q. And "things"? A. Yes, but they did not include papers.

Q. Did you state to him specifically that they did not include papers? A. Yes, sir. 30

Q. Why did you do that? A. Well, I don't know as I did that, no.

Q. Then why did you say you did specifically state so to him? A. Well, he understood it at the time.

Q. Were you present when your aunt unpacked those things? A. No, but I helped unpack them.

Q. Do you know what was in the trunk? A. Yes, sir, I know what was in the trunk.

Q. Of your own knowledge, from what you saw 40

Harold M. Sturgeon—For Defendant—Cross.

there? A. Yes, sir, because I unpacked the trunk.

Q. Have you ever seen the trunk since? A. Yes, sir, we unpacked that trunk and took the stuff out and my uncle and I brought the trunk to Paterson when he came. That was my uncle's sole leather trunk and I saw it here then.

10 Q. It had been unpacked then? A. Yes, sir.

Q. And it has been in your uncle's custody all this time? A. Yes, sir.

Q. You, as a lawyer, knew that no one had any right to remove any effects from that place? A. Undoubtedly, but these were personal effects of my aunt.

Q. That made no difference. You, as a lawyer, knew that? A. Certainly.

20 Q. You knew that your aunt was not administrator of that estate? A. Certainly.

Q. You knew those things properly belonged to the administrator? A. Certainly.

Q. Have you ever offered to return them? A. No, sir. The administrator knows they are there. They can be returned on demand.

Q. You do recall that when you were writing out a certain paper which you designate as a receipt that there was something said about a claim that Lester had? A. No, sir.

30 Q. There was something said about Lester having done some work there, wasn't there? A. I think his wife made the remark that Lester had done some work.

Q. You knew that there was a claim as a matter of fact, didn't you? A. No, sir, I did not.

Q. Didn't you know, as a matter of fact, that Lester Messenger had done some work there and that he had a claim against the estate? A. No, sir, I did not.

40 Q. You did not believe that? A. No, sir.

*Harold M. Sturgeon—For Defendant—Cross.
Sylvester Messenger—Plaintiff—Recalled.*

Q. What made you say then that anything he had done he would be compensated for and be fixed up? A. If we considered it a just claim he would get his money.

Q. Then you did think he might have a just claim? A. No, sir.

10

Q. What made you say that? A. Because it was in reply to Mrs. Messenger I answer the question, that if Lester had any claim, if he had any claim he should make us a statement of it and if we considered it a proper claim we would see that he got his money.

Q. Didn't you say that it would be attended to at the proper time? A. Possibly.

Q. Didn't you use those words? A. Possibly. One means the other.

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DEFENDANT RESTS.

SYLVESTER MESSENGER, the plaintiff, recalled as a witness on his own behalf, testifies as follows:

Direct examination by Mr. Ward.

Q. Have you ever called Mrs. Crouch mother? A. No, sir.

30

Q. Did you say on the day of the funeral there at Mrs. Crouch's home, did you say to Mrs. Sturgeon that unless the heirs saw fit to do something for you you would not get anything? A. No, sir.

No cross-examination.

TESTIMONY CLOSED.

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Motion to Direct Verdict.

Mr. Scott: I ask the Court to direct a verdict in favor of the defendant on the grounds stated in the motion for a non-suit and for the further reason that there is no evidence from which the jury can infer the contract that is alleged in this declaration.

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Motion denied. Defendant excepts.

(The Court then took a recess until 2 o'clock this day.)

AFTER RECESS.

(Mr. Scott sums up for the defendant and Mr. Ward sums up for the plaintiff.)

The Court then charged the jury as follows:

20

Charge.

The Court: Gentlemen of the Jury, in this case the plaintiff sues to recover the sum of ten thousand nine hundred and fifty dollars for services which he alleges he rendered to the deceased, Mrs. Crouch, during her lifetime, between the 1st of January, 1896, and December 31st, 1902, and thereafter from May 1st, 1906, to May 1st, 1911; the plaintiff asking for compensation for seven hundred and eighty weeks at \$14 a week, less \$23.60 paid on account.

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There is a presumption in the ordinary affairs of life that, if a person renders service to another and the other person accepts the service, that the service is to be paid for. But there are exceptions to that, and one exception is when there is a family relationship existing between the parties. For instance, suppose a boy is at home with his family

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Charge of the Court.

as a member of the same family, and, after he becomes of age, he renders service, even then there is no presumption that he will be paid for those services, because there is a mutual arrangement of family affairs existing in that case. And that family relationship may extend even to people who are not relatives, if there is a family relation existing between the parties, and there is no doubt here that, at the beginning at least, when Mr. Messenger was nine years of age, there was such a family relation existing. He claims, however, that that was terminated afterward, and the defendant claims that it was not. 10

The plaintiff, however, goes beyond the point of claiming that there was an implied contract to pay for his services, and he claims in this case that there was an express contract made between himself and Mrs. Crouch, in her lifetime, whereby she agreed to pay him for his services what they were reasonably worth, and that the payment was not to be made until after the death of Mrs. Crouch, when she would provide for it to be paid by her will or otherwise. 20

Now there is another rule that comes in there, and that is, that if services are rendered on the mere expectation of a legacy, then, if the person is disappointed in obtaining the legacy, there is no cause of action. Perhaps, to put it another way, suppose a person works for another and the way in which he expects to be paid is the hope that the person for whom he is working will leave him something, and he relies on that entirely. If the party does not leave him anything, there is no cause of action, because he has trusted to the idea that he might get something and if he has trusted simply to that and he is disappointed, he has no right to recover. 30 40

Charge of the Court.

10 But where there is an agreement made between the parties, to pay for the services, and the party who is to pay contracts that the payment shall be made by will, and the will is not made and the payment is not made, why, then, of course the original agreement to pay still remains, because in that case the drawing of the will would be merely the method of paying that for which the party was obligated.

So that, if there was an agreement to pay, and a failure to pay, then, of course, the action would still lie. So you see, gentlemen, that presents your first problem in this case, which is, "Was there an agreement between the parties in this case?"

20 In passing, I might say, gentlemen, that there is a rule of evidence which applies to cases of this kind which ought to be explained to you so that you will understand why certain testimony which was not introduced could not be introduced. Where an executor or administrator of an estate is sued, the person who sues cannot be allowed to testify as to any transaction with or statement by the deceased. And the reason of that is this, as applied to this case: Mrs. Crouch's mouth is closed, she cannot come here and testify at all, and so the law tries to put the two parties on an equality, and it also closes Mr. Messenger's mouth as to any trans-
30 action between them or any statement. So you will see the law tries to put them on a level in that particular, and that is the reason why the testimony that you have heard counsel ask to introduce has been overruled.

40 Now, your first problem, gentlemen, is: Was there a contract? The plaintiff's claim is based upon the theory that Mrs. Crouch agreed to pay Mr. Messenger for his services what they were reasonably worth, and that he would be compensated at the time of her death. Was there such a contract? That is your problem.

Charge of the Court.

The burden of satisfying you that there was is upon the plaintiff. The plaintiff must satisfy you by a fair preponderance of the evidence that there was such a contract.

There has been a great deal of testimony on both sides. There is no direct testimony, that I recall, of any conversation between the parties that there was a contract, but there has been testimony introduced to the effect that there have been such statements made to others, from which the plaintiff insists that you may find there was a contract. For instance, the testimony of, I think, the plaintiff's wife, who testified that certain statements were made, and the statement of the deceased that "a bargain was a bargain," implying that there had been a bargain or contract arrangement between them. And other witnesses have testified that the deceased told them that he would be compensated for his services and paid his wages when she died.

I am not going to review all of this testimony, gentlemen, because both counsel have done so quite elaborately.

On the other hand, you will remember the testimony of Mrs. Sturgeon, who testifies that Mr. Messenger said to her that unless the heirs did something for him that he would not get anything, or words to that effect—you will remember what it was. From which the defendant asks you to find that if Mr. Messenger said that, why there could not have been any contract between the parties to pay. So you see, your problem is to take all of this testimony and weigh it and see what you find is the truth between the parties to ascertain whether there was a contract between them or whether there was not.

If you find that there was no contract between the parties, then, of course, your verdict must be,

Charge of the Court.

no cause of action; because, if there was no contract, the plaintiff cannot recover. You see, we have no right, you and I, sitting here, to make Mrs. Crouch's will. We have not any right to say what should have been in her will, or that she should have made a will, or how she should dispose of her property. That was for her to say. We have no right to do that. No power gives us the right to do that. Our only power here is to determine whether there was a contract between the parties.

If you find that there was no contract, then that is the end of this case. On the other hand, if you find that there was a contract, then, of course, you have got to go one step further. If there was a contract between the parties, and the contract was as the plaintiff's witnesses ask you to believe, then the contract was to pay to the plaintiff a reasonable sum for his services, and your second step then would be to determine what is a reasonable sum. And on that, gentlemen, you are the sole judges. It is for you to say what is a reasonable sum, if you come to that part of the case. You are not obliged to take the testimony of any particular witness. You may take the testimony of all; you have a right to consider the circumstances of the parties, how they lived, what they did, what they were, what they had. Because you can very readily see that a man who rendered service for a very wealthy man might get more pay than the man who worked for somebody who was very poor. So that the circumstances of the people may make a great deal of difference, because, as I have said to you before, it is not for us to give away Mrs. Crouch's money; it is for us to be fair between the parties. And, if you come to that part of the case, determine what is reasonable and fair in that, taking into consideration the fact that she was a music teacher, ap-

Charge of the Court.

parently worked for her living, that they had this little farm of ten acres; you have a right to consider what state of cultivation it was in, how much work would be required, how much a person in those circumstances would be likely to pay for the services that were rendered or whether the pay consisted in the board and feeding of the man who was rendering the services. 10

All of these things you may take into consideration when you come to that part of the case.

The burden of proof is upon the plaintiff to satisfy you that there was a contract. If you find that there was no contract, your verdict should be no cause of action. If you find that there was a contract, then you fix such sum as you find to be reasonable for the services which were rendered.

I think I have covered all the requests submitted, haven't I, Mr. Reynolds? 20

I will charge you:

First: The burden is on the plaintiff to show a specific contract, according to the statement in the declaration. It is not sufficient for him to show that the deceased had promised to leave him something in her will. If the plaintiff fails to show a specific contract, the verdict must be for the defendant.

I so charge you. 30

Second: If the evidence satisfies you that the services rendered to the decedent by the plaintiff in her lifetime and the services rendered by decedent to the plaintiff were mutually beneficial and it is apparent that no pecuniary consideration was expected or intended, the verdict must be for the defendant.

I so charge you.

Are there any exceptions to the charge, before the jury retire? 40

Mr. Ward: The plaintiff excepts to that part of the Court's charge where the Court stated that there was no dispute that up to a certain time the family relation existed, or words to that effect.

The Court: Isn't that true?

Mr. Ward: No. I think there was a mere relationship of apprentice there, or something similar to that.

10 The Court: There was a family relationship?

Mr. Ward: I don't think so, sir.

The Court: The exception will be allowed.

Mr. Ward: I don't know whether I am right about this or not, but I understood the Court to say if Mr. Messenger said that the only thing that he could expect was from the heirs, that then he could not prevail; I did not quite catch the last; your Honor will recall the incident of the conversation.

20 The Court: How can you except if you don't know what you want to except to?

Mr. Ward: I wanted to be on the safe side. I will except to that part of the Court's charge wherein the Court stated that if Mr. Messenger said to Mrs. Sturgeon that all that he might expect would be from the generosity of the heirs, and what was said immediately after that.

30 The Court: Yes. Gentlemen of the jury, what I referred to is the testimony of Mrs. Sturgeon. You will remember what she said and what I said, which was this, and if I did not say it, I will say it now, that if you believe from the evidence that the plaintiff said to Mrs. Sturgeon that he had to rely upon the generosity of the heirs, and that he was not relying upon the fact that there was an agreement between them, and you are satisfied of that, then he cannot recover.

Mr. Ward: That is the part which I wish to except to.

40 (Exception allowed.)

(The jury then retire.)

Exhibit D-2.

Paterson, N. J., February 16, 1897.

\$40.00

Six months after date I promise to pay to Mrs. E. J. Crouch Forty Dollars with interest at 6% per annum. Value received.

10

LESTER M. CROUCH.

Grounds of Appeal.

NEW JERSEY SUPREME COURT.

SYLVESTER MESSENGER,
Plaintiff-Appellee,

vs.

PATERSON SAVINGS INSTITUTION,
Administrator, etc., of the Es-
tate of Effie J. Crouch, de-
ceased,
Defendant-Appellant.

Action-at-Law.
Grounds of
Appeal.

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The appellant sets forth the following grounds of appeal in this cause:

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1. Because the motion made by the defendant to non-suit the plaintiff was refused notwithstanding the evidence justifies a non-suit.

2. Because the trial Judge upon the trial of said cause refused to direct a verdict in favor of the defendant and against the plaintiff notwithstanding the evidence justified and called for such a direction.

40

Grounds of Appeal.

3. The following question to the witness, Sylvester Messenger, was allowed although objection made, objection overruled: "Q. Was the business that you were in at that time profitable or not? A. It was."

10 4. The question to the witness, Sylvester Messenger: "Q. What did you do it for? A. She made a promise to me that I was to work for her and she would settle— Mr. Scott: I move to have that stricken out. I object. Motion denied. Defendant excepts."

20 5. The question to the witness, Sylvester Messenger: "Q. From the time that you were ten years of age, when you entered that family, up to the time that you were twenty-one, when you went to New York to work for yourself in business, were you ever taken to a single place of amusement, or a picnic, or did you ever go to any place? A. No, sir." Defendant objects, objection overruled. Defendant excepts.

6. Question to the witness, Sylvester Messenger: "Q. Were you ever taken to church by Mrs. Crouch? A. No, sir." Objected to, objection overruled. Defendant excepts.

30 7. The question to the witness, Sylvester Messenger: "Q. Were you ever taken to Sunday School by Mrs. Crouch? A. No, sir." Objected to, overruled. Defendant excepts.

8. The question to the witness, Sylvester Messenger: "Q. Were you ever sent there by her? A. No, sir." Objected to. Objection overruled. Defendant excepts.

40 9. The question to the witness, Sylvester Messenger: "Q. When you gave up this work for \$2 a day did you or not expect to be paid that contin-

Grounds of Appeal.

ually? A. I did. Q. And was it because of anything that Mrs. Crouch said to you at that time that you gave up your work? A. Yes. Mr. Scott: I object to that and move to strike it out." Motion denied. Defendant excepts.

10. To the witness, Sylvester Messenger, questions and answers, which were objected to, attempting to show that John O. Benson, an attorney, was an associate in Judge Scott's office at the same time had a claim against the estate of Effie J. Crouch, deceased. 10

11. Question to the witness, Sylvester Messenger: "Q. What was the occasion of the giving of that note? A. She had my building and loan book which I had given her to take care of—" Objected to. Objection overruled. Defendant excepts. 20

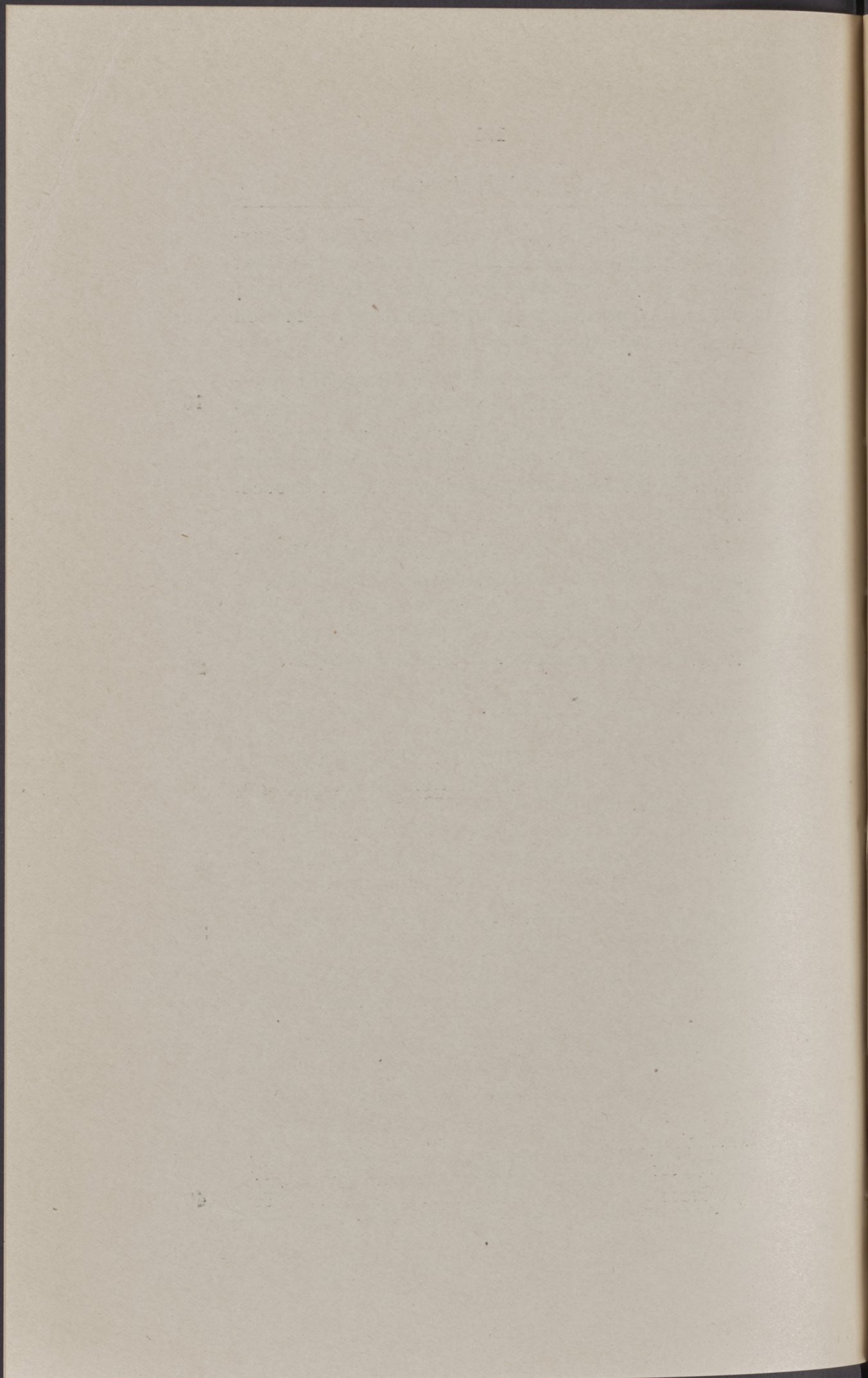
Dated, January 6, 1917.

JOHN H. REYNOLDS,
Attorney of Defendant-Appellant.

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[10885]

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NEW JERSEY SUPREME COURT.

February Term, 1917.

SYLVESTER MESSENGER, Plaintiff-Respondent, vs. THE PATERSON SAVINGS INSTITU- TION, a Corporation, Adminis- trator, &c., Defendant-Appellant.	}	Appeal from Passaic Circuit.
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OPINION OF SUPREME COURT

Argued February 23rd, 1917. Decided June 6th, 1917.

On Appeal from Passaic Circuit.

Before Justices Trenchard and Black.

For Appellant, John H. Reynolds, Esq., and Francis Scott, Esq.

For Respondent, Messrs. Ward & McGinnis.

Per Curiam.

This suit was brought to recover compensation for services rendered by the plaintiff, Sylvester Messenger, to Effie J. Crouch, the defendant's intestate, during her lifetime, for which it is alleged she agreed to pay him. The services rendered were from the first day of January, 1896, to December 31, 1902, and from May 1st, 1903, to May 1st, 1911, in all seven hundred and eighty weeks (780) at fourteen dollars (\$14.) per week, amounting to ten thousand nine hundred and fifty dollars (\$10,950.). The case was tried at the Passaic Circuit, resulting in a verdict for the plaintiff, for the sum of eight thousand one hundred and ninety dollars (\$8,190.). The case is brought to this Court by an appeal. The defendant al-

leged eleven trial errors, as grounds of appeal, for reversal of the judgment. The first two grounds of appeal, viz: because the trial court refused to non-suit the plaintiff or direct a verdict in favor of the defendant, in view of the evidence need no discussion; it was not error to refuse these motions. The other nine grounds relate to the rulings of the trial court on evidence. The fifth, sixth, seventh and eighth were abandoned at the argument; they are without legal merit; however, the same may be said of No. three. "Q. Was the business that you were in at that time profitable or not? A. It was." No. four was an objection to an answer made to a question put to the plaintiff by the defendant's counsel; clearly the rules of evidence do not permit a question to be asked for the purpose of speculating with the answer. No. nine, there is no objection to the first question and to the second the objection was too late; it was not illegal, however. Tenth and eleventh were abandoned on the argument, there is no legal merit to these grounds of appeal; on the merits of the case, there was legal testimony from which the jury could find that Mrs. Crouch in her lifetime promised to pay for the services rendered, "I *would pay* him," "I *would pay* him at my death," "a bargain is a bargain, I will pay you when I die," "I have agreed to pay you at my death for what you have done for me." "I won't give you any money until then." "No, a bargain is a bargain." "I won't give you any money until I die. Then you will have it." This testimony was for the jury and manifestly the trial court could not non-suit the plaintiff or direct a verdict in favor of the defendant.

Finding no error in the record, the judgment of the Passaic Circuit Court is affirmed with costs.

defendant, for the sum of \$8,190, with interest from the 5th day of December, 1916, together with costs to be taxed.

It is further ordered that the appeal be hereby dismissed, with costs to the plaintiff to be taxed.

On motion of

WARD & McGINNIS,

Attorneys of Plaintiff-Respondent.

New Jersey Court of Errors and Appeals

SYLVESTER MESSENGER,

Plaintiff-Appellee,

vs.

THE PATERSON SAVINGS INSTI-
TUTION, Administrator of the
Estate of Effie J. Crouch,
Dec'd,

Defendant-Appellant.

Action-at-Law.

On Appeal from

New Jersey

Supreme Court.

BRIEF OF DEFENDANT-APPELLANT.

FACTS.

Plaintiff sues the defendant, administrator of the Estate of Effie J. Crouch, deceased, on an express contract made on or about January 1, 1896, whereby Effie J. Crouch was to pay him for his services at the rate of \$2 a day (par. 3 of Complaint, Book, p. 3).

Under this *express* contract, he performed work from January 1, 1896, to December 31, 1902, a period of seven years. After an interval of four months he began again, on May 1, 1903, and worked until May 1, 1911, a period of eight years, working in all fourteen years or 780 weeks;

which at \$14 a week makes	\$10,920.00
There is a credit allowed of	23.60

\$10,896.40

The second count is also upon the *express* contract set forth in the first count.

In the complaint there is no charge of an implied contract. Plaintiff determined to stand or fall up-

on this express contract. The jury found a verdict of \$8,190 for plaintiff and thereby declared that there was evidence in the case from which they had a right to infer that the express contract alleged, had been made. The only question therefore is this, to wit: Is there any legal evidence, of a character to justify the inference that the express contract alleged was made?

A GENERAL REVIEW OF THE TESTIMONY.

Plaintiff went to live with Mrs. Crouch when he was nine years old, in 1877 (Book, p. 8). He lived with her until he was forty-three, up to 1911, when he got married and left. He was married in May, 1911. Mrs. Crouch died in 1915, so that he was away for four years before she died.

She was childless and a widow, and gave music lessons, while he worked on the farm and around the house. She fed him and clothed him, gave him music lessons, sent him to a business college for one year, so that when he left her in 1911 he was fairly well educated. He was a poor waif in 1877 when he was left there by his father, his mother having just died (Book, p. 8). His father lived for seven years after, until 1884, and left him nothing (Book, p. 21). His father never gave him anything and he was entirely dependent upon Mrs. Crouch for his support and education, which covered a period of thirty-four years and until he was forty-three years of age. He was always called Lester Crouch, was supposed to be her son and called her mother, although he takes pains to deny this.

The evidence shows that he, going by the name of Lester Crouch, was treated as her only son and heir and expected to inherit the farm, worth about \$10,000, and whatever other estate she might leave.

He was disappointed when he discovered she left no will, and as he was not legally adopted, her estate goes to her collateral relatives, who lived at Fairfield, Conn., where she was buried. The case was one that particularly appealed to the jury and they made Mrs. Crouch's will for her, practically giving to plaintiff all of her estate (see Book, p. 135).

He worked most of his life about the place, from the age of nine to forty-three, and probably should have been made her heir, but we cannot say what private knowledge she had of his character, and besides, he left her when she was old, before her death, which may have embittered her. Plaintiff sets up a plainly trumped up and ridiculous contract. In the first place, a contract of this kind is suspicious on the face of it. On January 1, 1896, when it is alleged to have been made, he was about twenty-six years old. He had been with her since he was nine, and he had his eyes wide open. He was fairly intelligent and educated. Yet he made a contract to work all of her life or for an indefinite time for \$2 a day, not to be paid until she died, and this was nineteen years after the contract was made. After her death he never made any claim. The first intimation of any claim was when suit was brought (Book, p. 167). He admits he never made any claim until suit was brought (Book, p. 3). Yet after her death he was put in charge of the farm and homestead from November, 1915, to July, 1916 (Book, p. 167).

He could not give any evidence as to this express contract, his mouth being closed by the rules of evidence, although he slipped in some evidence, as the record and grounds of appeal show. He is not a truthful witness, as is shown by his testimony in regard to the payment of his schooling at Lattimer's

Business College. (See his direct testimony, Book, p. 9, and the cross-examination, Book, p. 27.)

At page 9 he says he paid for his own schooling at Lattimer's. At page 27 he admits, and the vouchers show, she paid. After her death he was at the homestead for seven months and frequently saw Mr. Sturgeon, a lawyer, an heir and nephew of Mrs. Crouch, with whom he made the bargain to take charge of the place, and yet he did not present any claim.

He says (Book, p. 36) he *intimated* to Mr. Sturgeon that "I had an understanding with Mrs. Crouch several times," but he did not tell him what about (Book, p. 36). He gave Mrs. Crouch a renewal note of \$40 on February 1, 1897, after his service was supposed to have commenced.

He admits he knew she had made no will as early as Thanksgiving, 1915 (Book, p. 36). While he could not testify to this express contract, a reading of his cross-examination plainly shows that there was no contract, express or implied, but that he took a gambler's chance of being made her heir, because of his being like an only son for thirty-four years, and that the alleged contract was an afterthought.

THE TESTIMONY OF PLAINTIFF'S WIFE, JOHANNA MESSENGER, ANALYZED.

He relies upon his wife to make out the contract. It seems that Johanna Messenger, the wife of the plaintiff, was up at the farm at Mrs. Crouch's for nine weeks in the year 1910 (see Book, p. 62). She is the only witness who undertakes to make out the contract, and being the wife of the claimant and necessarily interested in the result, her testimony must be scrutinized very carefully. The law shuts his mouth but permits her to testify as to any-

thing she may have heard Mrs. Crouch say. The law ought to close her mouth too in a suit of this kind, but it does not. She says (Book, p. 64) as follows: When asked if Mrs. Crouch had any conversation or talk with her about Lester and his work: A "Yes; there was one afternoon I remember very distinctly, I came home from work. 'It is hard. Why, there is Lester; when I die he will have a tidy little sum. I am not giving him his wages now, but I am going to remember him when I die. I have promised him so and I will do it'; I remember that distinctly."

This is not proof of an express contract made on or about January 1, 1896, fourteen years before. Such a statement as this is not proof of a contract which, to enable the plaintiff to succeed, must be proved with precision and certainty. Let us presume that the jury may have believed this statement. She says, "When I die he will have a tidy little sum," which looks to the idea that at that time she may have intended to make him her heir. And further, "I am not giving him his wages now, but I am going to remember him when I die. I have promised him so and I will do it." This rather imports the idea, considering their relationship, of her making a will in favor of the plaintiff. Much more clearly is this an inference of an intention upon her part to remember him in her will than proof of any express bargain. It repudiates the notion of an express bargain.

On the same page (64) this witness says further that Mrs. Crouch said to her as follows:

"I told him if he would stav out of business and help me for a while, I would make

it right for him, I would pay him. I had to have some one, that is all about it."

This language imports rather a *promise to remember him when she died* in her will, than proof of an express bargain.

When this witness says that Mrs. Crouch said:

"I had no one here to help me and I told Lester he should stay home and help me at the home and I would pay him at my death. And since," she added, "he has been with me ever since,"

This language imports, if true, not an express bargain to pay him wages as alleged in the complaint, but the intention, if she did not change it, to leave him something by will.

Again, at page 65, this witness says that she heard Mrs. Crouch say to the plaintiff as follows:

"I won't give you any clothes, you have got enough to eat. A bargain is a bargain. I will pay you when I die."

We submit that the use of the words, "A bargain is a bargain," is the only thing indicating that the bargain alleged in the complaint was ever made. This is the one solitary sentence in the entire case which would indicate that any bargain was ever made. This is not proof of the contract alleged. And this scintilla of evidence is not sufficient to make out a contract, the result of which is this large verdict in favor of the plaintiff. What was the bargain, if there was any? Plainly to make him her heir, and not to pay him \$2 a day.

Again, on page 66 of the book, this witness says that Mrs. Crouch said:

“I have agreed to pay you at my death for what you have done for me and I won’t give you any money until then.”

Again this witness repeats, page 66, as follows:

“No, a bargain is a bargain. I won’t give you any money till I die, then you will have it.”

When she says, page 66:

“She was always remarking that Lester was going to be paid, *she would make everything right over to him.*”

That is, she was not going to pay him wages at \$2 a day, for so many days, *but she was going to make everything right over to him.* Again:

“Oh, he is a good boy. He has always been right here. He is always taking care of me and the house. *I will remember him in my will.* I will pay him. He knows that.”

I submit that even if the jury believed this interested witness, with these loose remarks, repeated over and over again, this is not proof of the express contract alleged in the complaint.

After Mrs. Crouch’s death, this witness, the wife of the plaintiff, bought from Mr. Sturgeon, from the effects of the deceased, a parlor carpet for which

she paid \$5; she said she and her husband also bought some chickens (Book, p. 74).

This witness does not hesitate to go even beyond her husband when she said she spoke to Mr. Sturgeon about her husband's wages, as follows:

"I asked Mr. Sturgeon, 'What have you done about Lester's wages? Mrs. Crouch always promised to pay him.'"

And that Mr. Sturgeon in reply said:

"We are considering that. We have not found any papers, but we are thinking about that."

And when asked why she didn't mention that when she first told her story, she said, "I was not asked." And yet she followed her husband on the stand as a witness and heard him questioned very closely.

This witness' testimony is not only incredible but does not come from a credible source, and if believed, does not in the law make out the contract alleged in the complaint. A number of other witnesses were sworn, who testified to having heard Mrs. Crouch speak of this question of wages or compensation to be paid to the plaintiff.

**THE TESTIMONY OF ALL THE OTHER WITNESSES
SHOWS STATEMENTS BY THE DECEASED THAT SHE
WOULD PERHAPS REMEMBER PLAINTIFF IN HER
WILL AND JUST AS PLAINLY SHOWS THERE
NEVER WAS A CONTRACT.**

Freda Meyers, the next witness (Book, p. 77), says, and this is all she says on the subject, in answer to a statement by the plaintiff, as follows:

“Well, if you paid me like those two men I would be down there one o'clock too.’ So I heard her say, ‘Well, you are getting your pay.’”

The next witness, Mary A. Scott, says, and this is all she says on the subject (p. 82), that Mrs. Crouch said as follows:

“Well, I have not made a will yet, but I intend to, because I have to look out for Lester. We never took out adoption papers for Lester and I mean to make it all right for him. I intend to make a will and provide for him, to see that he gets his rights.”

Further on:

“All I have got is Lester and a niece in Erie, Pennsylvania. I don't know why I should leave her anything, she never comes to see me. Lester is all I have got. He has been a son to me and he has been more than a son to me.”

There is nothing in this language which imports the bargain alleged in the complaint. On the con-

trary, it indicates what was in her mind at the time, no doubt—that she meant to remember him in her will and make him her heir.

On cross-examination (p. 85) she changes her story a little and says that Mrs. Crouch said as follows:

“She says she was going to provide for Lester and see that he got his wages.”

Josiah Conklin was the next witness and all he says about any bargain is found on page 89 of the book. This witness heard her say:

“Well, he keeps bothering me all the time, pestering me for a dollar now and a dollar then. I won't do it. I won't give it to him. I told him I would pay him. The more work he done in this place, the more improvement that would be for him, for his own benefit.' *By that I took she was to leave him, remember him in her will.*”

This testimony is not evidence of a bargain, but, on the contrary, is evidence of her intention at the time to remember him in her will, not because he was earning wages, but because he was like her only son. *This is the way the witness understood her.*

The next witness, David Conklin, testifies (Book, p. 93) that he heard Mrs. Crouch use this language:

“Well, it is for his own benefit, *because he will get it all paid back to him at the close of my life.*”

When asked if anything had been said about wages, he said he could not tell that.

The next witness to say anything about a bargain is Keuren Keys (Book, p. 99). This witness heard Mrs. Crouch say:

"Whenever I die I will be good to him and leave him something."

The next witness, Charles E. Downes (Book, . 102), says:

"Q. Was there ever anything said to you by her about his pay? A. Well, not any more than she always said she would remember him when she died."

George W. Scott says (Book, p. 104), as follows:

"Why, she used to come over once in a while and sit there and talk to us, and one time there she says that after she was gone she was going to leave Lester so that he would get his wages; she says Lester would have his wages, but I don't know whether he got anything out from them or not."

The next witness to testify upon this point is Anna Messenger, a witness who married the plaintiff's brother, and interested on this account; she says on page 111 as follows:

"That Lester wanted wages and she says she was not going to pay him any wages now. She says, 'But I have made a promise with him, *if he would keep on working*

around the place, that I would leave him enough to cover his wages after my death.' "

Here is another interested witness plainly stretching the truth. However, what she says imports the idea that Mrs. Crouch might leave the plaintiff something in her will. If these words indicate an express contract, its efficacy was to depend upon his keeping on working around the place, which he did not do.

The next witness, August Winan, Jr., testifies (Book, p. 116) that

"Because Lester had been such a good boy to her when he was there that she wanted to pay him for his work what he done when she died";

and again on the same page speaking of other relatives, Mrs. Crouch said as follows:

"They are going to get fooled because Lester will have everything when I die."

This testimony is repeated on cross-examination on page 118 and opposes the idea of any bargain for a certain sum.

The next witness, John Suitor, on page 120, says as follows:

"And she says, 'Lester is a good boy and I will be good to him some day.' That is all."

The next witness, Lucy A. Jeffries, on page 122, says she heard Mrs. Crouch say:

“Well, money is tight and Lester knows he will get his.”

She said further that Lester was satisfied to have his money at any time, but strangers would have to have the money right away.

This witness, on page 124, says as follows:

“She said she had always promised, *if he would only stick to her*, he would have what she had. She said, ‘I have promised Lester time and again what little I had would be Lester’s.’”

This language is opposed to the idea of any bargain and plainly indicates that it was her intention at the time to make him her heir, if he would only stick to her.

I have gone over the evidence of all the witnesses upon this question of a bargain and have endeavored to quote all that they have said, and we urge that outside of the testimony of the plaintiff’s wife and his sister-in-law, which is unbelievable, there is no evidence of a bargain as alleged in the complaint, and even this evidence can be construed as a gratuitous promise to remember him because of the relationship.

The testimony of the defendant’s witnesses shows very plainly why Mrs. Crouch had changed her mind about remembering him in her will.

The witness Henry C. Sturgeon (Book, p. 139) says that Mrs. Crouch told him as follows:

“She said that he was not using her right. I suggested that she remember him in her

will and she said that she could not. She had no use for him, she had lost confidence in him and that he took some money and left a note for it. That is what she said."

This witness (Book, p. 142) says that the plaintiff called Mrs. Crouch "Mother"; Eliza Slater says that he always called Mrs. Crouch "Ma" (p. 145).

This witness, on page 149, says she heard the plaintiff say that if Mrs. Crouch had left him anything, all right; if she had not, there would be no further trouble, and that he never mentioned any claim at the time. This was after the death of Mrs. Crouch.

The witness Amelia Slater (Book, p. 151) says that she said to the plaintiff, when he complained about his shoes:

"Well, Lester, why under the sun do you stay there? Why don't you get out and do for yourself?" He answered me and he told me that that was his business, he had reasons for staying there."

The witness Sophie Peterson (Book, p. 153) says as follows:

"When I first knew him (the plaintiff) I thought he was the son. They always called him Lester Crouch."

The witness Belle Sturgeon (Book, p. 158) says as follows:

"He (the plaintiff) said to me that un-

less the heirs saw fit to do something for him he would not get anything."

That he further said, speaking about the note:

"Yes, he said that it worried him. He had given a note for \$40 and he was afraid they would come on him for that claim with compound interest, and I told him not to worry about it, that they would not do that."

Harold Sturgeon, the lawyer (Book, p. 164) says that the plaintiff was a member of the family and had always called Mrs. Crouch "Mother."

This witness (Book, p. 163) says that in all his talks with the plaintiff he never said anything about any claim for wages.

At page 163 this witness says that the plaintiff explained to him that there was a note he had given his aunt some time or other and he was afraid it would be found and he would be compelled to pay it. And he said that he had taken the money during his aunt's absence and had placed the note in the place where the money was; that his aunt had been angry about it and charged him with stealing the money; that further, he owned a lot and he was afraid that if they proceeded on the note it would eventuate in a levy upon his lot and that he could not afford to lose it. That was in November, 1915, just after Mrs. Crouch's death.

This witness, in contradiction of Mrs. Messenger, says (Book, p. 166) that the only talk that he ever had with Mrs. Messenger about Lester's claim was while Lester was writing a receipt, and she made a remark that Lester had done some work up there too, and the witness said that if that is true he

should make an account of what he thought was his due and they would consider it, and if they considered it was proper they would see that it was paid.

This review of facts is made to show principally that there was no express contract and no legal evidence from which the jury could infer an express contract.

Inasmuch as this appeal is based upon the old writ of error and this Court will not go behind the verdict of the Jury as to the facts and inference from facts, yet we contend there must be evidence to prove the express contract or evidence from which the express contract can be inferred; there must be legal evidence and not evidence forbidden by the statute. And there must be evidence from which a jury is justified in inferring the express contract.

A reading of this case cannot but leave the impression that the Jury made up its mind that Mrs. Crouch had promised the plaintiff to remember him in her will; *not* that on January 1, 1896, she agreed to pay him \$2.00 a day for seven days in the week, for an indefinite time, which in this case is alleged to be fifteen years.

The Supreme Court in its opinion says,

“There was legal testimony from which the jury could find that Mrs. Crouch in her life time promised to pay for the services rendered: ‘I would pay him’; ‘I would pay him at my death’; ‘a bargain is a bargain’; ‘I will pay you when I die’; ‘I have agreed

to pay you at my death for what you have done for me'; 'I won't give you any money until then'; 'No, a bargain is a bargain'; 'I won't give you any money until I die, Then you will have it.'"

We have analyzed this testimony above and we repeat that this language does not make out the express contract alleged in this complaint, such as the law requires.

With the mouth of Mrs. Crouch closed by death and with the wife of the plaintiff apparently willing to swear to anything to make out a case, all that could be produced is the few loose declarations quoted in the opinion of the Supreme Court, from which the jury, under the law, had no right to infer the express contract alleged in the complaint.

Every one of the expressions quoted above in the opinion of the Supreme Court, is from the testimony of Johanna Messenger, the wife of the plaintiff. Not only do these expressions, separated from her other testimony, as they are, fail legally to make out the express contract alleged, but all her testimony, interested and false as it is, leaves the impression that Mrs. Crouch simply meant to remember the plaintiff in her will.

Seventeen other witnesses are sworn by the plaintiff for the purpose of proving the contract alleged. Ten of them testify to conversations with the deceased about this contract and what Mrs. Crouch said. As the above review of their testimony shows, there was a promise to remember him at her death but not a word from which could be inferred a bargain; and the opinion of the Supreme Court fails to

quote from this array of witnesses produced for this one purpose, a single sentence of their testimony.

THE LAW.

NEW JERSEY CASES.

Grandin v. Reading, 10 N. J. Eq., p. 370.

The principle applicable to the present suit is stated in this case, as follows:

“Where a person renders service to another relying solely upon his generosity and expecting to be compensated by a legacy, he cannot, when disappointed in such expectation, maintain an action at law for the value of his services.”

In Prickett v. Prickett's Administrators, 20 N. J. Eq., p. 478:

“When a child renders services to a parent, after the child is of age, but while he is a member of the parent's family, and no arrangement or agreement has been made as to payment for such services, and no circumstances are shown from which such understanding can be fairly inferred, the child cannot recover compensation for such service.”

In the *Prickett* case (p. 480) the decedent had told the claimant, a son, who had previously been working for himself, that there was a home for him on the farm, that he must help to take care of it,

that he could earn as much on the farm as anywhere else, and that his help was needed there; but no account had ever been presented to the decedent during the period of several years that the claimant spent at home. It was held that the evidence was not sufficient to support the claim (p. 480).

Disbrow v. Durand, 54 N. J. Law, p. 343.

This case is a Court of Errors case, reversing the Court below by a unanimous vote.

“Ordinarily where services are rendered and voluntarily accepted, the law will imply a promise on the part of the recipient to pay for them, but where the services are rendered by members of a family living as one household to each other, there will be no implication from the rendition and acceptance of the services. Where there is a household relation, it will embrace not only remote kindred, *but also those who stand in the place of kindred.*”

See *Waldron v. Davis*, 70 N. J. Law, 788.

The law in New Jersey seems plainly to be that from the service rendered in this case no contract would be implied; that there must be proof of an express contract or of *circumstances from which an express contract could be fairly inferred.*

OTHER CASES.

“The terms of the contract must be definite and certain and clearly proved.”

Segers v. Segers, 14 L. R. A., p. 62

In *Hodge v. Hodge*, 11 L. R. A., N. S., p. 873, there is a note making a very comprehensive brief upon this question. Page 882 of this note says as follows:

“The following cases also emphasize the fact that membership of the same family, and not the degree of relationship by consanguinity or affinity, is the ultimate criterion.”

Among other cases, the case of *Disbrow v. Durand*, 54 N. J. Law, 343, is quoted; also the case of *Waldron v. Davis*, 70 N. J. Law, p. 788. On page 887 are quoted all the cases under paragraph IV, which is as follows:

“Implication where the parties are members of the same household but not related by blood or marriage.”

Under this paragraph is quoted the case of *Graham v. Stanton*, 177 Mass., 321, as follows:

“a claim for services rendered by a child, who, when eight years old, was taken from an orphans' home into the decedent's family and was treated and spoken of as an adopted daughter by decedent and supported and educated by him, was held not to be maintainable.”

And also, as follows:

“The fact that a child, not a relative, was taken into a family when six years old, and remained there rendering services for twen-

ty-five years, was held to rebut the presumption that there was a mutual intention that the services should be paid for, notwithstanding the fact that she was indentured, and was not in all respects treated by the rest of the family as an equal. *Cous-ty's Estate*, 12 *Phila.*, 98."

A number of cases are quoted where claims for services by persons who, when children, were taken into families not of kin to them, were held not to be maintainable.

A number of cases are quoted on page 888 where judgments for services rendered after majority by persons taken, when children, into families to which they were not related, were reversed.

It is necessary to prove a specific agreement in a case like the one under consideration.

Under paragraph Nine (11 *L. R. A., N. S.*, p. 893) are collected the cases which show that proof of an express contract is necessary to entitle a claimant to recover.

Under this paragraph is quoted the case of *Haggerty v. McCanna*, 25 *N. J. Eq.*, p. 48, where the right to recover is declared to be conditional upon the proof of an "express" contract.

This New Jersey case, on page 52, says as follows:

"In the absence of an express promise, made by the child after obtaining majority, to repay the step-father, no compensation can be recovered by him at law or in equity

for such support." Quoting a number of cases.

The proof required to support an express contract must not be of any lower degree of probative force than that which is indicated by the following epithets:

"Clear"—*Perkins v. Hasbrouch*, 155 Pa., 494; 26 Atl., 695.

"Clear and distinct"—*Leidig v. Coover*, 47 Pa., 534.

"Clear and unequivocal"—*Hinkle v. Sage*, 67 Ohio St., 256; 65 N. E., 999.

"Positive and direct"—*Bach v. Bach*, 9 Pa., 260.

"Clear, direct, and positive"; "Clear and satisfactory"; "So clear, direct, and explicit, as to leave no doubt as to the understanding and intent of the parties"—*Jackson v. Jackson*, 96 Va., 165; 31 S. E., 78.

In *Bach v. Bach*, 9 Pa., 260, it was held that an agreement to devise property to a son was not proved by evidence that the decedent had told his son that he should be made his heir and had subsequently declared that he had made a contract with him to leave him a farm.

In *Zimmerman v. Zimmerman*, 129 Pa., 229; 18 Atl., 129, the *ratio decidendi* was that no contract was established by loose declarations that the claimant should be paid without stating how much and for what services.

In *Barhite's Appeal*, 126 Pa., 404; 17 Atl., 617, it was held that a declaration that the claimant was useful and should be well paid merely referred

to future intentions and was not enough to establish an express contract.

“A statement by a father to a third person that his daughter would get good wages for working for him, but that she would have to wait until after his death, was held to be insufficient evidence to support a claim for compensation. *Murphy v. Corrigan*, 161 Pa., 59; 28 Atl., 947.”

“The fact that decedent had promised to pay the claimant, if he would stay and continue to work as before, was held to negative the existence of an agreement with respect to the remuneration of services theretofore rendered.”

Jackson v. Jackson, 96 Va., 165; 31 S. E., 78.

This case last noted contains the following:

“Expressions of commendation or gratitude, or of an intention to remember him (the claimant) in his will, cannot, unless brought home to the knowledge of the claimant and shown to have been the consideration upon which the services were rendered, be made the basis of a contract.”

In *Bixler v. Sellamn*, 77 Md., 494; 27 Atl., 137, it was laid down generally that mere declarations of intention to pay for services are not enough to prove a contract.

Claims have been objected to under the following circumstances:

Where a father had merely made some loose declarations relative to his intention to leave property to his daughter.

Louder v. Hart, 52 Mo. App., 377.

Where a father had made various declarations to third persons that his daughter should be paid for certain services already terminated.

Ridgway v. English, 22 N. J. Law, 409.

Where a father had made some general statements to third persons that the claimant, his child, should be paid.

O'Kelley v. Faulkner, 92 Ga., 521.

Where the father of the claimant, who had left a situation at his request and came home to take care of him, had stated to one friend that she should never lose anything by being good to him, and to another friend that, if it were not for her, he did not know what he should do.

Lawrence v. Bailey, 84 Mo. App., 107.

Where an aunt had expressed to several persons her intention to make a testamentary gift to her niece.

Collar v. Patterson, 137 Ill., 403; 24 N. E., 604.

In *O'Kelly v. Faulkner*, the Court adopted the statement in *Wood on Master and Servant*, par. 72, p. 117, that:

“Expressions of commendation or gratitude (by a relative) or of an intention to remember him (the claimant) in his will, cannot, unless brought home to the knowledge of the claimant, and shown to have been the consideration on which the services were rendered, to the knowledge of the deceased, be made the basis of a contract obligation.”

“It is manifestly requisite for the claimant to prove that it was his intention at the time when he undertook the services in question, to charge for them, and that the beneficiary accepted them with the knowledge that he entertained such an intention. An intention in this regard, which was subsequently formed and not disclosed to the beneficiary, is not sufficient. *Murdock v. Murdock*, 7 Cal., 511, and other cases cited.”

11 L. R. A., N. S., 911.

The two following cases show clearly, the principles of law, governing the kind of evidence necessary, to make out a contract.

Ridgway v. English, 22 N. J. Law, page 409, at page 417:

“By other witnesses it was proved that the testator said ‘his daughter had been a good housekeeper: she had never been paid, but he intended she should be.’ Are these acknowledgments, standing alone, sufficient to raise the presumption of a contract between the father and daughter?”

There is no admission of a debt due, or of an obligation to pay it. There is no promise to pay. There is a simple declaration of an intention, on his part, to remunerate his daughter for services, which any father might naturally make respecting a dutiful child, without the existence of any contract or obligation. Indeed, the expressions used by the father, on more than one occasion, that he intended to have given his daughter an outfit, (that he was going to furnish her parlor), but that things had turned out differently, and now he intended she should be well paid, would seem, of necessity, to exclude all idea of contract or obligation. If there had been previous evidence of a contract and of an obligation to pay, this evidence might raise a fair presumption that the debt had not been discharged. But if it proves any contract, and shows the existence of any obligation, what contract and what obligation does it show? The plaintiff claimed for the services of his wife from the death of her mother; but if he had claimed from the time that the wife came of age, the evidence would have been precisely as applicable to the one case as to the other. No previous contract having been shown, no definite period to which the evidence was to apply having been made out, it is obvious that the evidence is in the last degree vague and indefinite. If there be no express promise, but a promise is to be raised by implication of law from the acknowledgment of the party, such acknowledgment ought to contain an unqualified and direct admission of a previous

subsisting debt, to which the party is liable and willing to pay." *Bell v. Morrison*, 1 *Peters* 362, 411.

Bash vs. Bash, 9th Pennsylvania State Reports, Pgs. 260-61.

In error from the Common Pleas of Westmoreland.

"The plaintiff in this action declared specially on a contract with his father, the defendant's intestate, whereby he agreed, in 1823, that if the plaintiff would continue to live with him, work on his farm, make improvements, etc., he would leave plaintiff the farm, stock, grain, etc. The common counts were added.

"The main questions were, whether the evidence was such as authorized the charge of the court on the subject of the contract; and whether the charge was correct as to the nature of the evidence required to prove the contract.

"A witness for the plaintiff proved, that when they were at work on the farm, in 1821, plaintiff said, 'We have more hard work than we are able to get through with.' His father replied, 'Don't be discouraged; you shall be paid for all the hard work you do for me; I will leave you this place; I hope you will live to see the day you will enjoy it.' A number of witnesses proved declarations by the father, at various times, in the absence of plaintiff, that he would leave him his farm. Some of them proved his declarations that he had given plaintiff the farm, except a small portion that was to

be his at his father's death; and others, that he had given him the whole. One proved that he had said, '*I have made a contract with (plaintiff) which shall stand till death takes place between me and (plaintiff).*' After my death he shall have all what I own, if (plaintiff) lives longer than I live.' There was evidence the plaintiff continued to live with his father and work for him until his death."

The answer of the Court, which was to the 7th assignment for error, was:

"7th. If the son relied on the bounty of his father, and there was no *direct or positive* evidence of a contract on which the services were rendered, he could not recover. *Answer*:—This is correct, substituting the words 'clear and satisfactory' for 'direct and positive.'"

"Nov. 10. Gibson, C. J.—A majority of us concur that there is error in the instruction on the defendant's seventh point. It is settled by the decisions quoted, that a contract for testamentary compensation of work done for a father by a son after his majority, can be proved only by direct and positive evidence of it; yet, for 'direct and positive,' the judge substituted in his charge, 'clear and satisfactory,' and thus put such a contract, as to proof of it, on the footing of a contract between strangers unaffected by any personal relation. The course of this court has been to hold a tight rein over it by making the quality, if not

the sum of the proof, a subject of inspection and governance by the court, and by holding juries strictly to the rule prescribed, instead of suffering them to be led away by considerations of hardship or paternal injustice. Every sane man must be allowed to make his own contract as well as his own will, and to prevent jurors from making it for him according to their peculiar notions of fitness and propriety, we have held that the evidence of a contract to compensate the services of a child, must be positive and direct. But evidence, clear and satisfactory in the estimation of a jury, may be neither. It may be no more than presumptive and inferential; and if that were sufficient, it would be easy to see how every case of the sort would go. To an unpracticed eye loose and inconsiderate expressions, such as make up the mass of the evidence in this case, and presumptions or probabilities resting on circumstances, may seem perfectly clear and satisfactory; but they constitute not the proofs by which a contract is to be established in conformity to the judgments of this court. In the case before us, there was scarce a particle of any other evidence, and the relaxation of the rule by the Judge, had an immediate tendency to give the conversations of the father with strangers a controlling influence. Bair, the only witness who spoke of any communication between the parties, face to face, or apart, testified that the father told Henry, who was complaining of the hardness of the work, not to be discouraged, but to stay with him, for he should

be paid for all his hard work—that he would leave him the farm. No other witness spoke of having been present at the making of a contract between them; nor did any one else speak of a contract at all, except Auckerman, who testified that the father had said to him in the absence of the son, ‘I have made a contract with Henry, after my death he shall have all that I own, if Henry lives longer than I live.’ If the case stood on this declaration alone, it would scarce be held a legal foundation for a recovery; for what the father supposed to be a contract, may have been a naked promise without condition or terms, and without these, the evidence of a contract imposing a legal obligation, would be neither positive nor direct. The question of proof must therefore depend on the testimony of Bair, corroborated by this and other parts of the evidence; and it is proper to say that neither to my brother Rogers, nor to myself, does it appear sufficient to support the action, for though he spoke of terms and conditions, the promise seems to have been so commonplace, so like a transient and casual expression of present intention, and so unlike a deliberate and direct proposal to incur an obligation, as to be without the solemnity of a contract, or any one quality of the *aggregatio mentium* which is necessary to constitute one.

X X X X

“The other witnesses spoke of loose and indeterminate declarations of the father, that he had *given* Henry the place, that he *should have* all he possessed; and more of

the sort, which, though competent for the purpose of corroborating the direct evidence, was barely so, and worthless for everything else. But leaving the father's promise to the jury on the testimony of Bair, thus corroborated, the plaintiff's case ought not to have been assisted by a direction that the proof of it need not be positive and direct.

"Judgment reversed, and *a venire de novo* awarded."

GROUNDS OF APPEAL.

(Book, p. 190.)

I

The first ground of appeal, the claimant was asked the following question (Book, p. 33): "Q. What did you do it for? A. She made a promise to me that I was to work for her and she would settle——" Over defendant's objection this was allowed, which was clearly testimony forbidden by the rule and testimony which Mrs. Crouch, if alive, could have contradicted. Enough of the answer was obtained from the witness to indicate to the jury that an express contract had been made.

II

The second ground of appeal is where the following questions were objected to (Book, p. 49): "Q. When you gave up this work for \$2 a day, did you or not expect to be paid that continually? A. I did." This question is objectionable for many reasons. A question of the claimant's expectation was not a matter of evidence. It also assumes that there was a contract for \$2 a day. It also assumes that a contract was made, which this witness is forbidden to tell about.

And the following question: "Q. And was it because of anything that Mrs. Crouch said to you at that time that you gave up your work? A. Yes." In these two questions and answers it is clearly apparent that the witness was permitted, in a cunning way, to testify to the existence of an express contract.

III

The third ground of appeal is because the Court refused to non-suit the plaintiff.

IV

The fourth, because the Court refused to direct a verdict for the defendant.

We think the evidence clearly shows that each of these requests, in its order, should have been granted.

JOHN H. REYNOLDS,
Attorney for Appellant.
FRANCIS SCOTT,
Of Counsel.

New Jersey Court of Errors and Appeals

SYLVESTER MESSENGER,
Plaintiff-Appellee,

vs.

THE PATERSON SAVINGS INSTI-
TUTION, a corporation, Ad-
ministrator of the Estate of
Effie J. Crouch, deceased,
Defendant-Appellant.

On Appeal.

BRIEF ON BEHALF OF SYLVESTER MESSENGER, PLAINTIFF-APPELLEE.

Plaintiff recovered a judgment for \$8,190.00 in the Passaic Circuit Court. Defendant appealed to the Supreme Court, alleging as error the refusal of the trial judge to non-suit or to direct a verdict, and for rulings on the admission and objection of evidence. The Supreme Court sustained the rulings of the trial judge and accordingly affirmed the judgment. The defendant now appeals.

The judgment recovered by the plaintiff, Sylvester Messenger, represented about 780 weeks' work for decedent, on her farm, situated on the outskirts of Paterson. Mr. Messenger went to live with deceased when about ten years of age, and worked from the moment he went upon the farm. He received no schooling, but devoted his entire time to work for Mrs. Crouch, excepting for a period of one year, at the age of sixteen, he went to school, paying for the tuition out of his own earnings acquired by picking berries, water cress, etc., and gifts from neighbors. As he grew older he gradually assumed the complete control of the place, while the deceased engaged in the profession of teaching music, from which, together with

the earnings of the farm, she and her husband obtained a livelihood.

That when twenty-one years of age he commenced to work in New York for Ashley & Bailey Co., a silk concern, and remained with them four years, during which time he paid Mrs. Crouch board (P. 10, L. 12-18). He then went to work for another concern in New York and remained in it until it failed in business (P. 10, L. 20-24). He then engaged in business for himself, following the same line as that with which he had been engaged in with his former employer—foundry and metal supplies. He remained in this business for a year and a half (P. 10, L. 22-34). The business was profitable, although he was not permitted, on objection of counsel for defendant, to state the amount of such profits (P. 11, L. 20-24). During all this time he paid Mr. Crouch \$5.00 a week board. This situation continued until about January, 1896, when the contract was made upon which this action is founded.

The situation which brought about the making of this contract was the illness of Mrs. Crouch's husband, who received a stroke of paralysis, by which both of his arms and part of his body was paralyzed to such an extent as to wholly incapacitate him (P. 12, L. 10-26). During this illness the plaintiff was requested by Mrs. Crouch to stay at the farm and care for it, and for Mr. Crouch, and therefore temporarily absented himself from his business for about three weeks, during which time he was unable to earn anything (P. 12, L. 14-20). Mrs. Crouch was then engaged as she had been for years before in the business of giving music lessons, and therefore unable to work about the farm.

After the expiration of the three weeks, with no prospects of Mr. Crouch's recovering, a situation had arisen when the plaintiff felt that he could no

longer neglect his profitable business, and accordingly he desired to give up further work on the farm. Mr. Crouch, with his illness, was absolutely helpless, and the plaintiff, who had been years about the place, understood it thoroughly, was a faithful workman, absolutely trustworthy, was in a position to take charge. Accordingly, the contract was entered into, as set out in the second count of the complaint.

The time of the making of the contract was on or about the 1st day of January, 1896; the terms of the contract were that the plaintiff should work about the farm, give it his care and attention, serve Mrs. Crouch, the decedent in any capacity she should desire, and as long as she should desire, she to pay him for such work and labor, but the payment to be made at the time of her death. Mrs. Crouch at this time possessed the farm unincumbered, and considerable personal property; she had no children nor any relatives, other than brothers and sisters who resided in the western part of Pennsylvania, and whom she scarcely ever saw.

The contract was of particular advantage to the decedent, as she thereby practically secured for her life the work and labor of the plaintiff without paying him one penny until at the time of her death, when her estate would be of absolutely no value to her, while if plaintiff died, she would have had his services for nothing.

The contract was not reduced to writing, nor was there anyone present, but there is ample evidence from which the jury could draw the inference that a contract substantially above stated was entered into between the parties, and was fully performed by the plaintiff.

The defendant's whole serious contention on appeal against the legality of the verdict is found in his motion for non-suit, and directed verdict.

The plaintiff in support of his case produced seventeen witnesses. The defendant produced seven witnesses, several of whom corroborated the plaintiff's case in many important details.

POINT I.

Why the Contract Was Made.

In January, 1896, when we claim the contract was made a situation was present which made it absolutely necessary for Mrs. Crouch to enter into this contract with the plaintiff. The situation was this:

The decedent was a music teacher, who devoted all her time to giving music lessons, from which she derived a good income (P. 12, L. 24-30); that Mr. Crouch, her husband, with his body and both arms paralyzed, was absolutely helpless (P. 12, L. 22-26). Mr. and Mrs. Crouch, therefore, could do nothing on the farm, and it was absolutely necessary to have someone to care for the place. The soil of the farm was rather poor; this appears from the testimony of a number of witnesses, but it was all tillable (P. 13, L. 18-24). There were cows, horses and poultry to be looked after as well as care to be given to Mr. Crouch, care usually given by a male nurse. The character of this care must be apparent itself to the court; that Mrs. Crouch's absence from home prevented her from doing her house-work.

The question then before Mrs. Crouch was whom could she get who would understand the working of the farm and the caring of the horses,

cattle and poultry, and who would look after her household, and who would give conscientious care to her helpless husband. The court must be cognizant of the unreliable character of farm help generally, and the situation required a person who would be entirely reliable, trustworthy and faithful as well as to thoroughly understand the conditions. Turn where she would, could she have found anyone who would have more fully and completely filled the bill than the plaintiff, who up to that time had spent years on the farm and thoroughly understood conditions and was absolutely faithful and trustworthy? There can scarcely be any argument in denial of our contention that the plaintiff was the most available man that she could possibly have secured for any price or under any terms.

Conceding, therefore, for the purpose of argument that at this time (January, 1896), the decedent had asked the plaintiff to remain on the farm with them and take charge of affairs, would it not be likely that it would be necessary to offer some inducement? Again we may look into the situation for the answer.

The situation we find at this time was that the plaintiff was a young man of twenty-eight years of age; that he had worked for four years in New York for one concern and a year and a half for another; that he had acquired a special knowledge of the foundry and metal business and actually possessed at that time a lucrative business of his own (P. 10, L. 24 to bottom; P. 11, L. 1-24). The question of the profit derived from the business, counsel for the defendant barred inquiry into. Is it reasonable to suppose then that unless some strong inducement was offered to the plaintiff by the decedent that he would deliberately give up this lucrative business in the city of New York, with its possibilities of future growth, give up all

his ambition, that must necessarily have been with him at this age, and go back on the farm to live with this (as we shall show later) eccentric and miserly woman, and act as farm-hand, house-keeper and male nurse? There was no relationship between the parties by either blood or marriage, nor the slightest evidence showing any love or affection on the part of either party, nor a single act of kindness on the part of deceased for which plaintiff should have had any feelings of gratitude towards her. When we consider that the actions of every rational man is governed by a motive, was it not fair for the jury to ask the motive which brought about such a complete change in the life of the plaintiff.

If we keep in mind the situation present in January, 1896, and the conduct of the plaintiff from that time forward up to the death of Mrs. Crouch, we can then understand more fully the declarations which the decedent made from time to time, as testified by the various witnesses produced. A situation which does show the absolute necessity for the making of the contract gives added force to the testimony of the witnesses as to conversations had with deceased, and these conversations plus the situation, we contend clearly justified the jury in finding the verdict they did.

POINT II.

The Contract Was Performed.

It cannot be seriously contended that if a contract was made that the plaintiff did not fully perform it. The testimony of every witness for the

plaintiff, and for the defendant all bear out the fact that Mr. Messenger gave his entire time and attention to the farm of the deceased. He not only attended to the farm but for years acted as nurse to the invalid husband of the deceased.

Counsel for the defendant in his brief frankly admits in substance, the performance of the contract if any in fact was made; he relies not on non-performance, but that the plaintiff devoted his time to deceased merely in expectation of a legacy.

His own view of the case was "that it particularly appealed to the jury and they made Mrs. Crouch's will for her, practically giving him all of her estate." (brief P. 3).

POINT III.

There Is Ample Evidence to Show Formation of Contract.

We have pointed out to the court the facts and circumstances which showed clearly the reason why the contract was made (Point I). If, therefore, there was clear reason why the contract should have been made, plus the fact that the plaintiff did do certain work and labor covering a period of years indicating the performance of the contract, it is reasonably inferable that a contract must have been made. It is this situation as it existed in 1896, showing an absolute necessity of Mrs. Crouch making a contract with the plaintiff, that throws so much light upon the various declarations, statements and acts of the deceased.

“Actions speak louder than words,” and actions of the parties coupled with the numerous declarations of the deceased made to a score of witnesses show beyond all question that the decedent did hire the plaintiff to work as alleged, payment to be made at the time of her death.

We shall further on submit to the court citations of authorities in support of this view, but at this time will review the evidence of the witnesses on the one point under discussion.

Sylvester Messenger, plaintiff, could not testify as to the making of the contract. We have already referred to his evidence, practically uncontradicted, showing the situation as it existed in 1896, when he gave up his business at the time of Mr. Crouch's illness, and came back to live and work on the farm. This evidence is set forth at length on pages 11 and 15.

Johanna Messenger, wife of the plaintiff, testified that she had been married to him five years; that she knew Mrs. Crouch in her life time, knew her for a number of years; that she lived with Mrs. Crouch for a period of nine weeks in the year of 1910 (P. 62); that during this period of nine weeks she had a conversation with Mrs. Crouch, and in the course of it Mrs. Crouch said to witness: “There is Lester; when I die, he will have a tidy little sum. *I am not giving him his wages now, but I am going to remember him when I die. I have promised him so and I will do it.*” (P. 64, L. 12-20). Also, “Q. Was there anything said about Mr. Crouch?” A. “Yes, she did; she referred to one time, the time when Mr. Crouch was stricken with paralysis; she had no one on the place to help her; Lester was in business and had a good business. *I told him if he would stay out of his business and help me for a while I would make it all right for him. I would pay. I had to have someone; that is all about it.*” Then she told

me he did go back to her for three weeks, and she said he gave up his chances to help her, because he knew his business would go, and he helped her for about three weeks and then finally he went back to his business, and then she said, '*I had no one here to help me, and I told Lester he should stay home and help me at the home, and I would pay him at my death. I have promised to pay him, and since then,*' she added, '*he has been with me ever since*'" (P. 64, L. 25-40) (P. 65, L. 1-5). About three weeks after this when plaintiff was coming in from the chicken house with a pan of eggs, witness heard he and Mrs. Crouch engaged in a talk, in which the plaintiff made some complaint about his clothing and food, in the course of which Mrs. Crouch said, "*A bargain is a bargain. I will pay you when I die.*" (P. 65, L. 15-20).

About six months after this witness became engaged to be married to the plaintiff, and shortly after she became engaged she visited Mrs. Crouch and had a talk with her in the presence of the plaintiff (P. 65, L. 20-30). In the course of the conversation witness said that the plaintiff had asked for some money to enable him to get married, and that Mrs. Crouch had refused, that she said "a bargain was a bargain," and that she would not give him his wages until she died, and that he had better postpone his marriage for a while (P. 65, L. 35-40). That the witness and plaintiff did in fact postpone their marriage for a year and two months. Further on in the course of this talk Mrs. Crouch said, "*I have agreed to pay you at my death for what you have done for me, and I won't give you any money until then.*" (P. 65, L. 1-4).

Shortly before their marriage witness again went to Mrs. Crouch with the plaintiff to urge her to give him some money and again she replied,

“No, a bargain is a bargain, and I won’t give you any money until I die, and then you will have it.” (P. 66, L. 14-18). The relations between witness and Mrs. Crouch were so extremely friendly at all times, that when Mrs. Crouch received a stroke of paralysis, she was nursed by the witness, who also attended to the care of the household. Her testimony was that frequently Mrs. Crouch would say: “Oh, he is a good boy; he has always been right here; he is always taking care of me and the house. I will remember him in my will. I will pay him. He knows it.” Those remarks were made almost every day. (P. 67, L. 1-8).

On cross examination she repeated this testimony in substance (P. 71, L. 30-40). “I have promised I would leave him his wages. *I will leave him his pay like any other workman.*” (P. 72, L. 1-8). This is repeated later on in cross examination.

FRED MEYER, a neighbor of the decedent, testified that he had known her for about thirty years; had lived next door to her; that he remembered when Mr. Crouch had the stroke of paralysis, and that from that time until Mrs. Messenger was married he was around there all the time, doing all kinds of farming work and the like; that he did all kinds of work in the household, even “manicured” Mrs. Crouch’s feet, and did the cooking (P. 76). One day when this witness was present he heard Mrs. Crouch and plaintiff having an argument over the cutting of some hay. In the course of the conversation Mr. Messenger said to her, “Well, if you paid me like those two men I would be down there 1:00 o’clock too.” So I heard her say, “Well you are getting your pay.” (P. 77, L. 5-15).

On cross-examination he repeated this and added something about “Never mind paying him

just now, *but you will get your pay.*” Witness fixed this time as the summer of 1908.

MARY A. SCOTT testified for the plaintiff. She likewise was a neighbor and well acquainted with Mrs. Crouch (P. 80-81). She saw the plaintiff constantly working around the farm all those years while Mrs. Crouch gave music lessons; she had many talks with Mrs. Crouch respecting the plaintiff. She testified:

Q. “Well, you just tell us what she said on those occasions.” A. “Well, on one occasion I was ill, and she came over to see me, and she got talking about property and wills, and she said ‘Well, I have not made a will yet,’ she says, ‘but I intend to, because,’ she said, ‘I have to look out for Lester.’ She says, ‘We never took out adoption papers for Lester and,’ she says, ‘I mean to make it alright for him and’ she says, ‘I intend to make a will and provide for him, *to see that he gets his rights,*’ before she died. On another occasion she said—I said, ‘Why don’t you give him some of it now?’ That was on that same day. She says to me, ‘Well, if I did he would go off and get married.’ ‘Well,’ I said, ‘I did not know that Lester was keeping company with anybody.’ And she says, ‘Oh, yes, he has got a girl.’ That is all was said at that time. Another time she was talking to me and I asked her, ‘Did you make your will yet?’ And she said, ‘No, but I am going to. All I have got is Lester and a niece in Erie, Pennsylvania.’ And then she talked about a will and she said, ‘I don’t know why I should leave her anything. She never comes to see me. Lester is all I have got. He has been a son to me, and he has been more than a son to me.’ ”

Q. “Do you recall anything else?” A. “No, only she has many times said to me, ‘I don’t know what I would ever do without Lester.’ I used to

go there for milk many times; Lester was always working around the house there, morning and night, and she said, 'I don't know what I would do without Lester; he has been more than a son to me. *He is a man servant and a maid servant.*' (P. 82, entire page.)

On cross examination she said that she had known Mrs. Crouch for twenty years. *She fixed this conversation as the October following Mr. Crouch's death, or eight months after the making of the contract.* She was asked, Q. "*She said she was going to remember him in her will?*" A. "*She said she was going to provide for Lester, to see that he got his wages.*" Q. "*That he got his wages?*" A. "*Yes, those are the words.*" Q. "*Did you use that term or did she?*" A. "*She did.*" Q. "*Are you sure about that?*" A. "*Yes, sir.*" Q. "*Have you any memorandum in any book or paper that makes you recall her use of that word?*" A. "*No, I have not.*" Q. "*Has anybody told you that is what she said?*" A. "*No, that is the word she said to me, that she must fix it for Lester; she said, 'I have to make a will because of Lester,' and she stated that she had not taken out adoption papers, and that is why she would have to provide for him and see that he got his wages*" (P. 85, L. 2-40).

JOSIAH CONKLIN, a witness for the plaintiff, testified that he had known the parties for many years; that he remembered the time that Mr. Crouch had the stroke of paralysis; that he knew that Mr. Messenger was working in New York; that after that up to the time the plaintiff was married, he, the plaintiff, worked on Mrs. Crouch's farm. This witness himself had worked there on different occasions (P. 87). He had a talk with Mrs. Crouch during the summer of 1910, which he relates as follows: "I told Mrs. Crouch

that Lester felt kind of bad seeing me get paid, and he did not have any pay." I says, "I was embarrassed. I was always under the impression he was paid." And, "Well," she says, "he keeps bothering me all the time, pestering me for a dollar now and a dollar then. I won't do it. I won't give it to him. *I told him I would pay him. The more work he done on this place the more improvement that would be for him, for his own benefit.*" (P. 89, L. 10-15.) Again: "Lester keeps pestering me for a dollar two or three times, and I told him I did not have the money, that he would get his all in a lump." (P. 89, L. 30-35.) She told this to witness two or three times (P. 90). He repeated this conversation in substance under cross examination.

DAVID CONKLIN, a witness for the plaintiff, testified that he had worked with his father for Mrs. Crouch in her lifetime, and he overheard a conversation between Mrs. Crouch and his father, which he relates as follows: "Father said that Messenger had made quite some improvements on the place, and she said, "*Well, it is for his own benefit, because he will get it all paid back to him at the close of my life.*" (P. 93, L. 28-32.) He fixed this conversation to have taken place in the year 1905 and gave his reasons why (P. 93). Q. "*She said he would get his pay at the close of her life?*" A. "*Yes, sir.*" (P. 94, L. 5-8.) On cross examination he testified that his father was dead.

KEURAN KEYS, a retired police officer, testified that he knew Mrs. Crouch; that Mrs. Crouch in the course of a conversation had said to him: "Whenever I die I will be good to him and leave him something" (P. 99, L. 15); that plaintiff had worked on the farm there.

JOHN G. DONNELLY, superintendent of the poor farm, which is in the vicinity of the Crouch farm, testified to the same effect. He gave in detail the character of the work the plaintiff did, but did not testify to any conversation with deceased.

CHARLES E. DOWNES testified to the same effect and also to the following: Q. "Was there ever anything said to you by her about his pay?" A. "Well, not any more than she always said that she would remember him when she died." Q. "Can you remember just what she said about that?" A. "Well, that is all." Q. "What now? What did she say?" A. "She said she would always remember him after she was gone; that is all" (P. 102, L. 10-18).

GEORGE W. SCOTT, husband of Mrs. Scott, whose testimony has been above referred to, testified that he knew Mrs. Crouch for approximately thirty years; remembered when Mr. Crouch received the stroke of paralysis, and of plaintiff working about the place. He testified respecting certain declarations which the decedent had made as follows: "She used to come over once in a while and sit there, and talk with us, and one time there *she says that after she was gone she was going to leave Lester so that he would get his wages; she says Lester would have his wages, but I don't know whether he ever got anything out from them or not*" (P. 104, L. 35-40).

On cross examination he said: Q. "And she talked to you about repaying Lester?" A. "Yes, sir." Q. "How many times?" A. "Only once that she told me" (P. 108, L. 34-38). Also on cross examination he testified: Q. "She did not say how much she was going to pay him?" A. "No, sir; not a bit." Q. "She simply said she was

going to pay him his wages?" A. "Yes, sir" (P. 109, L. 4-8).

ANNA MESSENGER, a sister-in-law of the plaintiff, her deceased husband being a brother of the plaintiff, testified that she remembered when plaintiff was in business in New York, at which time he was paying Mrs. Crouch board, and of the stroke of paralysis that Mr. Crouch received, and that thereafter that the plaintiff worked around the place, giving up his work in New York (P. 110, L. 5-25). Witness had boarded at the Crouch farm for a short time and was well acquainted with Mrs. Crouch. She testified to a conversation with Mrs. Crouch as follows: Q. "Did Mrs. Crouch ever talk to you about his being paid or about his wages?" A. "Yes, she had told at different times in her home that she had—that Lester wanted wages, and she says, 'I was not going to pay him any wages,' she says, 'now.' She says, 'But I have made a promise with him if he would keep on working around the place that *I would leave him enough to cover his wages after my death*'" (P. 110, bottom P. 111, L. 1-8). Q. "Do you know why Lester gave up his work in New York? Did Mrs. Crouch ever tell you anything about that?" A. "Well, I believe she said that she wanted him to help her." Q. "Did she say why she wanted Lester to help her?" A. "Well, she could not do without him" (P. 111, L. 15-20). On cross examination she testified more particularly of visits Mrs. Crouch made to her home (P. 113), that when plaintiff worked in New York he paid her board (P. 113). She further testified: Q. "What did she say?" A. "She said, '*I promised to pay Lester. I promised to pay him money after my death. I would not give him anything now because I could not afford it.*'" Q. "Did she say how much?" A. "No; she did not; but

she says, 'I will leave him enough; *I promised him to leave him enough to pay for his work while he was here*' " (P. 114, L. 1-11).

AUGUST WINAN, JR., witness for the plaintiff, testified that he was a dairyman, located at lower Preakness, near Mrs. Crouch's farm; that he knew Mrs. Crouch as well as the plaintiff (P. 115, L. 25-35), and she would be talking how she hated like anything to part with money. Well, I said to her, 'You can go to bank and get lots of it. You have got lots of it. You have got lots of money.' Well, she said she wanted to keep what she had a while yet, because Lester had been such a good boy to her when he was there *and she wanted to pay him for his work what he had done when she died*. And so during the time that she was sick Lester and his wife went up there to help quite a few times in the week (P. 116, L. 1-25).

JOHN SUTER, a farmer, testified for the plaintiff that he had a conversation with Mrs. Crouch, which is as follows: She says, "Lester was a good boy," and "I will be good to him some day" (P. 120, L. 18).

LUCY A. JEFFERIES testified for the plaintiff that she was a neighbor of Mrs. Crouch; that she knew her for twenty-five years, also the plaintiff; that she remembered the time that Mr. Crouch had the stroke, and that Mr. Messenger ran the farm constantly; that Mrs. Crouch gave music lessons to the daughter of this witness, and on one occasion she had a conversation in which she said that she "wished Lester would hurry home and help to gather the hay." I said to her, "Mrs. Crouch, get someone else." She said, "Well money is tight and Lester knows that he will get his" (P. 12, L. 20-32); also, "He would be satisfied any time to get his money" (P. 122, L. 40). Q. "What did you

say she said?" A. "He was satisfied to have his money any time, but strangers she would have to have the money right away for them" (P. 123, L. 1-5).

On cross examination she testified that decedent had said, "*She had always promised* if he would only stick to her he would have what she had. She said, "I have promised Lester time and again what little I have would be Lester's" (P. 124, L. 20-25). On cross examination she also said: Q. "The last time you had a conversation with her was after he was married?" A. "Yes, she told me he was married." Q. "She was very much hurt about that?" A. "Well, she seemed to be hurt, and I did not question her about it, because it seemed to hurt her." Q. "You said she said if he would only stick to her he would get what she had?" A. "He would get what little property she had; she said "Lester is the only one." She said, "I have a brother, but he is just as though he was dead to me" (P. 125, L. 15-20).

ROBERT GEHRING, for the plaintiff, testified as to the character of the work that he did for Mrs. Crouch after Mr. Crouch was taken sick (P. 126). This completes the review of the plaintiff's testimony on the point of declarations made by decedent with respect to plaintiff.

ELIZA SLATER, a witness for the defendant, testified that at the funeral, the plaintiff had acted and talked as though he had a claim against the estate (P. 149, L. 15-25). Her daughter, Amelia Slater, Sophie Peterson and Charles Slater, testified to matters of a very unimportant character, other than that they admitted to seeing the plaintiff working on the farm.

BELLE STURGEON, a witness for the defendant, and a sister-in-law of the decedent, whose husband was vitally interested in the estate as an heir and next of kin, testified that between 1882 and 1895, a period of fifteen years, they never visited the decedent (P. 170, L. 28-32), although between those dates her husband (decedent's brother) had been to New York on business (P. 171, L. 1-3). For the benefit of the Court we may add, that the Crouch farm is less than an hour's ride from the City of New York. That decedent's brother, Harold M. Sturgeon, between 1867 and the time of her death, he made exactly five visits to her, and did not come to her funeral (P. 143, L. 30-40). It was on this testimony that counsel for the defendant contends that there was not sufficient evidence for the jury to find that a contract had been entered into.

To summarize the evidence produced, we have from a number of disinterested witnesses admission that the relationship which existed between the decedent and the plaintiff was that of master and servant. What other inference can be drawn from such expressions as "I will pay him," "I will pay him at my death," "I have promised to pay him," "A bargain is a bargain," "I will pay you when I die," "I have promised him I will leave him his wages," "that he gets his rights," "he is a man servant and a maid servant to me," "that she intended to see that he got his money in a lump," "that I would pay him," "that after she was gone she was going to leave Lester so that he would get his wages," "she was going to pay him his wages," "I have made a promise with him that if he would keep on working around the place, I would leave him enough to cover his wages at my death," "that she wanted to pay him for the work he had done when she died," and many other statements of like character.

All of these statements made at different times, plus situation which showed that she practically had to employ him, all exclude the idea that his work was gratuitous, or made in the mere expectation of a legacy, as contended by counsel for defendant. If, as contended by counsel for defendant, that this was a case of a promise to give him property by will, could not an action of such a character have been brought by the plaintiff? The expressions quoted above, all show an intention to regard the plaintiff in the role of an employe. The word "pay" has been construed a number of times.

"Pay, as a noun, a fixed and direct amount given by law to persons in consideration of and as compensation for their personal services."

(30 Cyc., P. 1171.)

Wages has been defined as:

"Compensation for labor or services; compensation agreed upon by the master to be paid to a servant or to any other person hired to do business for him; compensation given to a hired person for his or her services."

(40 Cyc., P. 241.)

"The idea of personal employment and the rendition of personal service is one of the indispensable requisites to the payment of wages. 'Fidelity Insurance Co. v. Shenandoah Valley R. Co., 86 Va. 1, 8, 9, S. E. 759, 19 A, St. Rep. 858; Fidelity Ins., etc., Co. v. Shenandoah Iron Co., 42 Fed. 373, 376.' "

(Cyc. 40, P. 241, note 10.)

When the term "wages" is used, "The law contemplates a hiring, and therefore the relation of master and servant, or of employer and employe must exist between the parties. 'Henry v. Fisher, 2 Pa. Co. Ct. 306, 308.' "

(40 Cyc., P. 241, note.)

See the above quotations together with a number of similar cases holding substantially the same, under subject "wages," 40 Cyc., page 241.

"Rights." "A just claim"; an enforceable claim or title to any subject matter"; "that which a man is entitled to receive or have from others within the limits of the law."

34 Cyc., 1763.

"Bargain." "A mutual agreement; a contract or agreement between two parties."

5 Cyc., P. 615.

We are justified in insisting that the ordinary and usual meaning be given to the terms of "pay" and "wages," and the word "rights," that is to see "that he gets his rights," used by one of the witnesses, also precludes the thought of gratuitous service.

From the foregoing, we therefore contend, (1) The conceded fact that Mr. Crouch had his stroke in January, 1896, and the testimony of Mrs. Johanna Messenger (plaintiff's sister-in-law) that Mrs. Crouch "had referred to the time Mr. Crouch was stricken with paralysis, and that she had no one to help her" and that Mrs. Crouch had stated that at that time she had told Lester that if he would stay out of his business and help her, she would pay him, and that Mrs. Crouch had further stated that at that time (Jan., 1896) Lester had stayed away from his business three weeks and then had gone back to his business, and then Mrs. Crouch had said that if Lester would stay home and help her, she would pay him at her death (P. 64, L. 25-40), and that Mrs. Crouch had stated "since then (January, 1896) he had been with her ever since," points conclusively to the fact that the contract was made in January, 1896, and also the situation as it existed in January, 1896, when

Mr. Crouch received his stroke of paralysis, and the fact that at that time Mr. Messenger, the plaintiff, gave up his work, and thereafter remained on the farm, points conclusively to the fact that the contract was made in the month of January, 1896, and therefore, distinctly meets that allegation in the complaint.

(2) That the expressions "paid" and "wages" and "rights" conclusively show that she recognized the relationship between her and the plaintiff, as that of master and servant, and therefore shows a contract of hire, which meets that allegation in the complaint.

(3) That her statement of "paying when she died," or "leaving his wages in a will" and the like distinctly establishes the *time* when *said* wages were to be paid and meets that allegation in the complaint.

(4) Her expression that "he would have a tidy little sum for his wages" (P. 64, L. 2), and that "she would make it all right for him," all indicated that no specific sum was to be paid to him, but he was to be well paid. This establishes the allegation of *quantum meruit*.

(5) Her expression, "I have made a promise with him, etc.," "a bargain is a bargain," "I have promised to pay him at my death," and the like, all indicated the existence of a distinct understanding or expressed agreement between the parties, along the lines above indicated.

The court, therefore, very properly left all the evidence for the consideration of the jury to say whether or not from the declarations of the deceased and her actions, and the surrounding circumstances, a contract had been entered into between the parties, of the character alleged in the complaint.

The basis of all contracts, between persons able and willing to contract is, the *aggregatio mentium*

—the meeting of the minds. This may be shown by acts of the parties, statements or declarations of the deceased, or anything else which may indicate the understanding that the parties had as the courts have indicated from the decisions in the following cases (similar to the one at bar) :

Ridgeway *vs.* English, 22 N. J. L., p. 416.

De Camp *vs.* Wilson, 31 N. J. Equity, p. 656.

Heinz *vs.* Jacobi, 76 N. J. Law, p. 189.

In the case of Columbus, H. V. & T. Ry. Co. *vs.* Gaffney, 61 Northeastern Rep., p. 152, the Court held:

“Where it is averred in a petition that the plaintiff performed services for the defendant, ‘at his instance and request,’ the averment may be supported *by evidence of the circumstances under which the services were performed tending to show a contract. Evidence of an express request is not required.*”

In Gomm *vs.* Gomm, 79 N. J. L., p. 660; 69 Atl. Rep., p. 198, a case in the Court of Errors and Appeals of this State, the Court held:

“Wherever compensation is claimed in any case by either parent or child against the other for services rendered or the like, the question whether the claim should be allowed must be determined from the particular circumstances of the case. 28 Am. & Eng. Ency. (2nd Ed.), p. 1062. The evidence offered was relevant, and directly touched upon the issue made by the parties in the pleadings and, as urged, came within the test of relevancy as constituting “*a group of facts and circum-*

stances in whole or in part negating the fact of the existence of the contract” (Marsh v. Machine Co., 57 N. J. Law, 36, 41; 29 Atl., 481, 483.)”

We respectfully call the Court’s attention to the latter part of the quotations, viz:

“A group of facts and circumstances in whole or in part negating the fact of the existence of the contract.”

In the case at bar it is precisely from a *group of facts and circumstances*, that the contract stands so clearly proven.

“The question whether the claim should be allowed must be determined from the particular circumstances of the case. There can be no fixed rule governing all cases alike. In the absence of any *direct proof of an express contract*, the question which must be determined is whether it can be reasonably inferred that pecuniary compensation was in the view of the parties at the time when the services were rendered or the support was furnished; and the solution of this question depends on a consideration of all the circumstances of the case.

21 Am. & Eng. Ency., p. 1063.

In *Petry v. Young*, 43 N. J. Eq., p. 654, a promissory note given by a mother to her daughter was held sufficient evidence to establish a contract; that the services had been rendered upon an understanding that such services should be paid for, although the note was simply one of the usual form, *and contained no terms of the contract.*

Before closing on this subject it would be well to call the court's attention to a remark of the counsel for defendant in his motion for a non-suit, in which he referred to the action as contract to give property by will. We do not know that even in such a contract the proof need be of any different character than proof to be offered in support of any other kind of a contract, but, as a matter of exactness, we would state that this is not a contract to give property by a will, but is a contract for work and services with the usual payment for the same, which payment was to be made at the death of the employer; that said payment could have been made by gift, *dona, causa mortis*, or by leaving the amount of the payment in the hands of some third person to be turned over to the plaintiff when the terms of the contract had been fully performed, as well as by leaving it by will.

The question of law that counsel for defendant raises by his motion for nonsuit and to direct a verdict is as we have said simply as to the character and quantity of proof of the formation of the contract. He recognizes the strength of the general rule of law that when one person permits another to work and labor for them there is an implied promise to pay, but, he may take before this court, the position he took before the trial judge that it is rule "evidence is more stringent than in the ordinary contracts, the terms of a contract to give property by will must be definite and certain and clearly proved" (page 134).

It is true that where the work and labor is performed by one member of a family for another there is no presumption of payment, but rather that the presumption is that the services were gratuitous. This, however, was not the case at bar. There was no family relationship shown in the case. Aside from the fact that the plaintiff had come as a boy to work for the deceased, every

other factor which would go to indicate family relationship was absent. There was no relationship by blood or marriage. He was obliged to work from the instant he came to live with her; he was denied every pleasure; every opportunity to go to school or to church; was poorly dressed, and after attaining the age of twenty-one years was out in the world earning his own living and paying Mrs. Crouch board. He continued this for four and one-half years, then went in business for himself. The only time he had ever received any money from her was before making this contract and then she gave it as a loan and compelled him to execute to her a promissory note, which he paid off in part and gave her a new note for the balance.

This business transaction coupled with the fact that he was working for himself and paid her board, and that neither addressed the other by any endearing terms all clearly indicated an entire absence of family relationship. As we have stated above, it really has no bearing on the case, but in these cases of suits between relatives or persons occupying a family relationship, the courts might naturally be inclined to ask for clearer and positive proof to overcome the presumption of gratuitous services. For the purpose, therefore, of illustrating that in that class of cases the character of proof which the courts have received in support of claims against the estate of decedents, for work and services we refer to the following:

In *Ely vs. Ely*, 50 Atl. Rep., p. 657, the complaint was a co-executor with his brother, of their father's estate. The complaint claimed that his father was indebted to him for board and lodging, and not being able to bring a suit against the co-executor in a court of law filed a bill in the Court of Chancery. Vice Chancellor Reed pointed the rule as to the presumption that the services were

voluntary, and to the effect that there was not a scrap of writing. He stated the rule to be:

“It was necessary to support the complainant’s case, for him to prove—First, an express or implied promise to pay for the services; secondly, to prove that the promises were made on or before the time the services were rendered, so as to create a consideration for the promises; and third, to prove that the payment was to be made at so late a day as to evade the provisions of the statute of limitations.”

(Atl. Rep., 50, p. 657.)

That in this case the son was seeking to recover from the father’s estate on such expressions as, “Now, I have got no home where I can go to stay, and have all the comforts I have been used to. I would like to come and live with you and Addison, if you are willing to have me. I shall come if you think you can get along with me.” “I told him I was willing provided Addison said so.” Again the deceased had said, “You shall be paid handsomely,” also, “you shall be paid when I am dead.” On cross examination, this witness testified that the old man had said, “You must hand in a satisfactory bill when I am dead.” This, with some slight corroborating evidence of the same general character was sufficient for the court to hold, that a case had been made out. These expressions were extremely vague as compared with the declarations which the deceased in the case at bar had made. No terms of the contract were set forth. There was nothing but the fact that board and lodging had been furnished by the son of the father, yet, the court upon these general statements found a contract present.

Ridgway vs. English, 22 N. J. Law, p. 416, also states a rule of law which strongly supports the case at bar. This was a suit brought by a daughter and her husband against the estate of her father. Chief Justice Green after considering the presumption with regard to contractual relations between parent and child said:

“The plaintiffs, therefore, could not rely upon the mere fact of service rendered to entitle them to a verdict. They were bound to go further and to show *either* an express contract, or *circumstances from which a contract might be presumed*” (p. 416).

Said Justice Carpenter in the same case:

“If the child bring suit for pay, it is incumbent upon her to show affirmatively that compensation was to be made, and that it was so expected by both parties, *or that the services were performed by her under such circumstances as that the expectation was reasonable and proper. Andrus and wife v. Foster, 17 Verm. 556; Guild v. Guild, 15 Pick., 129*” (p. 423).

Justice Carpenter after calling attention to the fact that the slight evidence offered which consisted of a declaration of the deceased as to past services said:

“*If these declarations had been proved to have been also made prior to or during the rendering of those services, and to have been the inducement by which he had retained her in his family in the capacity which she assumed, they would go far in making a case entitling the daughter to such compensation*

as her services might be reasonably worth. Such evidence would repel the idea that they were given gratuitously. Jewry v. Burk, 5 Taunt., 302; Jacobson v. Le Grange, 3 John, 199” (p. 424).

It will be noted in this case that the court did not require that all the details of the contract should be set forth, but distinctly stated that recovery could be had “on circumstances from which a contract may be presumed.” In that case there had been a single declaration made of a very vague character by the deceased, after the services had been rendered, to the effect that his daughter had been a good housekeeper, and never been paid, but that he intended to pay her. Yet, the fault the court found with this declaration, was not as to its vagueness or uncertainty, but to the fact that it was made after the services had been rendered. The Court pointed out that if this declaration had been made before or during the rendering of the services, it would have been sufficient to support the contract.

In the case of *De Camp vs. Wilson*, 31 N. J. Equity, page 656, the Court held:

“A daughter and her mother, who was very old and infirm, lived together—held, that the former might recover compensation from the estate of the latter *for services which were indispensable and rendered under such circumstances that raised a presumption that she was to be paid, and that her mother intended to pay her therefor.*”

Said the Ordinary in that case:

“It is urged, by the respondent’s counsel, that this case is within the ruling of the cases in this State, notably *Ridgway v. English*, 2 Zab., 408, and *Gardner v. Schooley*, 10 C. E. Gr., 150, in which it has been held that an emancipated daughter, residing under her father’s roof, and being maintained by him, cannot, in the absence of an expressed contract, recover for her services in the household. *But in such cases a recovery may be had if the circumstances are such as that a contract may be presumed therefrom. Ridgway v. English, ubi supra.*”

“Where there is a request, that which might otherwise be regarded as a voluntary courtesy or benefit, will be considered as having been done in pursuance of the request, and a right to compensation will follow. I Esp. N. P., 87.”

“In *Roberts v. Kidd’s ex’rs*, Yeates 209, 212, a suit by a niece against her uncle’s executors, to recover compensation for services rendered in his family while she was a member of it, and supported by him as such, it was said that if the jury were satisfied, from the whole of the evidence, that the services were done at the request of the testator, no matter what the plaintiff’s expectations were, the action for compensation might be maintained, and the court held that the question of ‘request’ was very properly left to the jury under all the circumstances.”

“In *Guild v. Guild*, 15 Pick, 129, the court were divided in opinion as to whether the law raises an implied promise of pecuniary compensation from the mere performance by an adult unmarried daughter residing in her father’s house, of useful and valuable services, such as it is customary for daughters

to perform; but those of the judges who were of opinion that it did not, were, nevertheless, of opinion that it would be quite competent for a jury to infer a promise from all the circumstances of the case; and that although the burden of proof is upon the plaintiff, as in other cases, to show an implied promise, the jury ought be instructed that if, under all the circumstances of the case, the services were of such a nature as to lead to a reasonable belief that it was the understanding of the parties that pecuniary compensation should be made, then the jury should find an implied promise, and quantum meruit; but if otherwise, they should find that there was no implied promise."

"In *Green vs. Robert's ex'rs*, 47 Barb, 521, where a daughter, after arriving at the age of twenty-one years, continued to be a member of her father's family, rendering services for him and receiving support from him, as before, there was no positive evidence of an express agreement, but the court said that *there being in the case evidence tending to prove a mutual understanding that the plaintiff was to be paid for her services, while at the same time a different construction might be put on that evidence, it was properly left to the jury to say whether such understanding existed.*"

"In *Updike vs. Ten Broeck*, 3 Vr. 105, 115, the Court said, citing *Ridgway v. English*: "Although the law presumes that the relation of parent and child exists, in the absence of any arrangement to the contrary, when the child continues in the service of the parent after full age, as before, yet, that relation ceases when it is shown that compensation was to be made, and that it was so expected

by both parties, or that the services were performed under such circumstances as that the expectation was reasonable and proper" (p. 660).

In that case the Court held:

"An action by a son against the estate of his deceased father, for compensation for services rendered after he became of age, may be maintained, when it is shown that the work was done under an agreement made between father and son, that the son should be satisfied for his services at the death of the father. Such a contract need not be in writing."

The evidence in support of the son's claim was simply made up of declarations made to witnesses, such as, "I can't spare you; you are the only boy who'll work; I can't spare you; I have a large farm; I am getting old; as long as I live, I'll keep the loaf under my own arm; when I die you shall be well paid." "He always said that Van Dyke should have the farm after his death." "I suppose it was because he stayed at home and worked for him and was a good boy" (p. 114). Said the Court:

"This promise to satisfy Van Dyke, and that he should have the farm at his death, was made during the rendering of the service. And it appears fairly, from the evidence of Voorhees, that the services were performed upon the faith of the promise. This evidence repels the idea that the services were gratuitous. *Smith v. Adm'rs of Smith*, 4 Dutcher, 216; *Ridgway v. English*, 2 Zab., 424" (p. 115).

In *Heinz vs. Jacobi*, 76 N. J. Law, p. 189; 68 Atl. Rep., 1069, the court speaks of the necessity

of evidence of an express—promise to pay, or proof that payment was mutually expected to be paid.

The foregoing cases dealt with contracts made between parent and child, and under circumstances which would be subject to far keener criticism than the case at bar. But, as we have stated above, we do not concede that a family relationship existed. All the cases cited above show clearly that no different rule of evidence exists with regard to proving contracts with decedents than in any other case.

Contracts were established by the consideration of evidence from which inferences could be drawn that a contract existed, not as an express contract, but as a contract inferred in law. In these cases family relationship existed. It is insisted that the case at bar is much stronger in all respects than these cited cases, first, in that family relationship did not exist, and therefore the evidence was not subject to such keen criticism; and secondly, even though family relationship had existed, the evidence introduced did not tend to establish merely a contract inferable in law but to clearly prove and establish a contract expressly stated and entered into between the parties.

Before closing the discussion of the evidence, we respectfully call the court's attention to the criticism of appellant's counsel, that all the evidence quoted by the Supreme Court was from the mouth of the plaintiff's wife. Even if this were a fact, it would not constitute a ground for a reversal. While she indeed would be an interested witness, nevertheless as this is a case on appeal, it would still be for the jury to say whether or not they would have a right to take her testimony as true. Counsel for appellant, however, misstates the fact as must be observed by the court in reviewing the evidence, an epitome of which is set

forth under this point. Counsel for appellant in his brief states the law very properly when he said to support the contract there must be proof of an expressed contract, *or of circumstances* from which an expressed contract can be fairly *inferred*. (Brief, p. 19.) A number of cases are cited in his brief commencing at page 18. These cases, however, do not in the slightest degree alter the legal situation in respect to the case at bar. He cites the following:

Grandin v. Reading, 10 N. J. Equity, p. 370, which is not in point, as we do not contend that we were relying solely upon the generosity of the deceased in expectation of a legacy.

Prickett v. Prickett, 20 N. J. Equity, p. 478, is in point in elucidating the principal contended for by us that the contract may be shown by circumstances from which an inference can be fairly inferred.

Disbrow v. Durand, 54 N. J. Law, p. 343. The Court in this case held that the plaintiff must show either an express contract or "that the circumstances under which the services were rendered were such as exhibit a reasonable and proper expectation that there would be compensation." This is exactly the contention we stand for.

Waldron v. Davis, 70 N. J. L., p. 778, is not in point and does not at all deal with the situation.

Haggerty v. McCanna, 25 N. J. Eq., p. 48, is not in point. It simply held that an infant upon attaining the age of twenty-one years could not sue for services rendered during his minority without an express contract.

Ridgway v. English, 22 N. J. L., page 409, we have considered and pointed out as being clearly supporting our case.

The remaining cases are cases from other states and the slight reference made to them by counsel

for appellant makes it difficult to say that they are at all in point. As counsel has not the various cases from other states before him, he is unable to offer any further criticism to the citations. We respectfully submit, however, that the rule of law as laid down so clearly in the case of *Ridgway v. English*, 22 N. J. Law, p. 409; *Updike v. Ten Broeck*, 3 Vr., 105; *Heinz v. Jacobi*, 76 N. J. L., p. 189; *DeCamp v. Wilson*, 31 N. J. Eq., p. 656; *Guild v. Guild*, 15 Pick, 129, all make it unnecessary to seek other fields for a correct statement as to the rule to be applied to the case at bar.

POINT IV.

The Court Committed No Error in Admitting Certain Evidence Against the Objection of Defendant.

In the discussion already had, the 1st and 2nd grounds of appeal which dealt with the question of the refusal of the court to grant a non-suit or direct a verdict has been covered. Eight other grounds, however, appear, all dealing with the court's ruling on the admission of evidence, on behalf of the plaintiff.

3rd ground (p. 190), the objectionable question was Q. "Was the business that you were in that time profitable or not?" A. "It was." This question was asked of the plaintiff for the purpose of showing the condition at the time of the making of the contract. The court will recall, we have already fully discussed it. The object was to show that the plaintiff was giving up a profitable business to work for the deceased. That there

must have been some valuable consideration moving to him to make such a radical change in his life. It was a point for the jury to consider in passing upon the evidence whether or not a contract had been made. The objectionable question will be found at page 11 of the state of case.

4th ground of appeal. The matter objected to under this ground was the question asked the plaintiff by counsel for the defendant on cross examination. Q. "What did you do it for?" A. "She made a promise to me that I was to work for her and she would settle" (P. 33, L. 10-20). This question was asked by counsel for the defend on cross examination. The answer was responsive to the question. Counsel for the plaintiff would have been perfectly justified in insisting upon this answer being made. If the court will read the preceding questions commencing at the bottom of page 32, it will see that plaintiff was cross examined as to whether or not his business was profitable, and the answer brought out was that plaintiff was making more money at his business than he would with Mrs. Crouch. Counsel for the defendant asked, Q. "Do you mean to say that you had a business that you say was profitable, out of which you were making money, a great deal more than \$2.00 a day, and that you deliberately let it go to pieces to work for Mrs. Crouch and Mr. Crouch at \$2.00 a day, do you say that?" A. "No, that is not the case" (Pp. 32-30-40). The next question is a complaint by counsel for the defendant that witness was not answering his question. Then another question still referring to the question quoted from page 32. And then counsel asked (still referring to this question), Q. "What did you do it for?" We submit that the plaintiff would have been justified in giving his entire reasons for giving up his business in New York and taking this position with Mrs. Crouch,

the reason naturally being because she had made a contract with him, and he would have been justified in so stating, in fact, it was precisely the only answer to be given to the question.

5th ground of appeal. The objectionable question under this ground was the question asked of plaintiff by his counsel, as to whether or not from the time he entered the family at ten years of age until he was twenty-one years and went to New York, he had been never taken to any picnic or any place of amusement.

In view of the contention of counsel for the defendant that there was a family relation present, counsel for the plaintiff was entitled to ask every question that would throw light on the relationship of the parties. While of course failure to take a boy or young man to a place of amusement does not conclusively show non-relationship, yet, it is something to be considered along with other evidence, such as their failure to properly clothe him, educate him or to send him to church or Sunday school, failure to use any endearing terms to him; excessive work and burdens imposed upon him and the like. All these were properly for the jury's consideration.

6th ground of appeal. The objectionable question under this ground is, Q. "Were you ever taken to church by Mrs. Crouch?" A. "No, sir." That the 7th ground of appeal is as to whether or not he had been taken to Sunday school, and the 8th ground, as to whether or not he had ever been sent to those places. Comment on the question raised by the 5th ground of appeal is equally applicable to the question raised by the 6th, 7th and 8th ground of appeal.

We submit that there was no error in these questions.

In closing, it may be added that the objectionable questions asked as covered by the 5th, 6th,

7th and 8th ground of appeal, were all asked on re-direct examination, due to cross examination on the subject.

9th ground of appeal. Under this point the following testimony is objected to, Q. "When you gave up this work for \$2.00 a day, did you or not expect to be paid that continually?" A. "I did." Q. "And was it because of anything that Mrs. Crouch said to you at that time that you gave up your work?" A. "Yes" (P. 49).

Then for the first time counsel for the defendant objects. We submit that his objections came too late; that he deliberately stood by and permitted each question to be answered, thereby gambling upon the result of the answer before raising an objection.

Aside from this the questions are not objectionable. There is no attempt made to prove any violation of the statute respecting the conversations and transactions with the deceased. Further, these questions were asked on re-direct examination, and were simply a further explanation of questions and answers on cross examination on the same point. (See state of case, P. 33, L. 30-26.)

10th ground of appeal. The whole soliloquy on this point will be found at page 50 of the state of case. The question was asked whether witness knew that Mr. Benson had an office in the same suite with Judge Scott, and he answered that he did not know; this was all that was said on the subject.

11th ground of appeal. The objectionable question was as follows: Q. "What was the occasion of the giving of that note?" When witness attempted to answer, counsel for defendant objected, and was overruled (P. 54). The court very properly answered the objection by stating to the counsel that he had opened the door on that mat-

ter. That such was the case we refer to the state of case at page 37, line 20 to bottom, and to the fact that the very note was marked for identification by the defendant (P. 38, L. 1-25), after cross-examination concerning it.

CONCLUSION.

It is respectfully submitted that for the reasons pointed out in the opinion of the Supreme Court (P. 193), that no error was committed by the trial judge, and that the judgment entered in favor of the plaintiff should in all respects be affirmed.

November Term, 1917.

WARD & MCGINNIS,

*Attorney and of Counsel with
Plaintiff-Appellee.*

BOND

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