

New Jersey Court of Errors and Appeals.

Jane Voorhees,
vs.
Joseph Combs and Lyman H. Atwater, Executors of Jno N. Woodhull, dec'd. } In Error: to Mercer Circuit Court.

Writ of Error returned March 10, 1868.

The Declaration was in Case, containing several counts—Indebitatus Assumpsit, for special and extra services, care and labor, to the deceased in his life time, during his sickness: special count: also on Promissory Note for \$500, given by said Woodhull to Plaintiff. Plea, General Issue. 10 sue. Pro ut the Pleadings.

JOHN F. HAGEMAN, Att'y of Pl'ff.
RICHEY & EMERY, Att'y of Def'ts.

STATE OF THE CASE.

Mercer Circuit Court.

Jane Voorhees,
vs.
The Executors of John N. Woodhull, dec'd. } In Case.

This cause coming on to be tried before the Circuit Court of the County of Mercer at the January Term, (1868) Eighteen hundred and sixty-eight, at which time before the said Court, came as well the said Jane Voorhees, as the said Joseph Combs and Lyman H. Atwater, Executors of John N. Woodhull, deceased, by their respective attorneys aforesaid; and the jurors of the said jury whereof mention is within made, being called likewise came and were sworn to try the issue in manner aforesaid joined. And thereupon to maintain the issue above joined the said Jane Voorhees offered the following named witnesses who were severally sworn and testified on her behalf to the said jury, as follows: 20

1. JAMES SCHENCK, being duly sworn saith: Dr. Woodhull got sick the first part of July, 1866, and died in January, 1867. I went to nurse him on the 26th of August and remained with him ten weeks. He was very sick. When I went there I found him sitting on the side of the bed, he could not lie down either day or night. Sylvester Martin and Mrs. Voorhees were in the room when I went there. While I was there two or three persons were there to help wait on him, and sometimes Mrs. Voorhees was there also. The Dr. was a very heavy man, and it required two to lift him and another to wait on him. Mrs. Voorhees was his housekeeper—was there before he got sick, and until I left. She did all the work about the house. It was a two story house, brick, with garret rooms—and had a basement. The Dr.'s room was up stairs, the dining room was in the basement. Mrs. Voorhees was the only white woman in the house. She was the cook and housekeeper—had no chambermaid to assist her. I ate there; so did Martin and Duryee. We who nursed had a lunch brought up at night, and the Dr. would have roast oysters through the night. Mrs. Voorhees' bed room was just on the other side of the entry up stairs—near the Dr.'s room. She would come when called during the night, and sometimes she would come without being called—when she would hear the Dr. struggling. She would generally go to the front door when any one came to the house. There were many calls every day, to see how the Dr. was. He had things prepared for him by Mrs. Voorhees, such as birds, pigeons, squirrels, chickens, beef tea, &c. She prepared beef tea every day. She always attended to this for him. Hannah Salter did the washing, but Mrs. Voorhees did everything else. Ques. State whether you ever heard Dr. Woodhull say anything about compensating Mrs. Voorhees for her attentions? Ans. Yes. I heard Dr. Woodhull say, previous to the time of the gift to her: I suppose I must tell the beginning of the whole matter. About a week before the gift to her, he said to me one day, that he wanted to give me something for my kindness and faithfulness to him. He spoke about giving me a lot in Wither-
 spoon street, but then he said that would give me trouble—but he would give me money. I had been there three or four weeks. He said I had been so true and faithful to him, so honest; he had watched me, often pretending to be asleep, and he never found me going to sleep or neglecting him, but so honest and kind to him always. Well, then about a week after this, he spoke of it again and said he did not know what might happen to him—but he wanted to give me \$300. He wanted me to go for Mr. Duryee. I said I did not like to leave him alone. He said Mrs. Voorhees would sit by him while I was gone. I went for Duryee, and he came. He then said, I have found James trusty and true, and so ready to wait on me, such a good nurse, I can recommend him as nurse for Gov. Olden or any other person, and for it I am going to give him \$300. I want you

to write it down. Duryee took his pen and paper and wrote as directed, it was that he promised to give me \$300 for my kindness to him in his sickness—and then after it was written he signed his name to it.

Then said Mr. Duryee to him. Now Dr. you have have given James something, what will you give to Mrs. Voorhees, she has been very kind to you too. The Dr. said what ought I to give? Duryee said, give what you please Dr. it is all your own. He then said, give her \$500. Then Duryee wrote it down so, and the Dr. signed it. It read in the same way I think : I promise to give to Mrs. Voorhees for her kind attention to me in my sickness, \$500. He was sitting on his chair when he signed it, by 10 the side of the bed. Duryee kept the notes. The Dr. said see that you pay it to them out of my funds. He had had funds in his safe, two packages were there. I understood one had \$5,000 in it, but he had sent the money to the bank, by Duryee. Duryee was his financial agent while I was there. Soon after this was done Mrs. Voorhees came into the room, and the Dr. told her what he had been doing for her, he had given her \$500. She thanked the Dr. for it. Duryee went back to his store I think first one who left. Sylvester Martin was present when this took place. He had been in the office, but came in when Duryee came in. Dr. Woodhull called Martin up and said he wanted him to be a witness of this busi- 20 ness, and he came up to see the Dr. do it, but he did not sign the paper, i. e. Martin. Ques. Did you ever after this hear the Dr. say anything about paying Mrs. Voorhees for her services and kindness? Ans. I never heard the Dr. say anything about it after this except he would sometimes say to her, she must have it—she would get it.

Duryee called the Dr.'s attention to his account. I can't say certainly whether it was the same evening or the next day. But the Dr. said to him I have charged you 50 cts. a visit, but I will make it 25—it was understood that up to that time he was not charging for his services as nurse. Dr. said to Duryee, you must be paid for your services. It is all in your 30 own hands, you can pay yourself. When Dr. told Duryee to draw up the note to me for \$300, Duryee told him that I was getting \$5 a day now. He said, "You are paying James \$5, a day now." The Doctor replied, I don't care what I am paying him. I say he must have it. He wanted him to give it to me. I don't know that I remember anything else that passed.

Being Cross Examined, says:—Before I went to the Dr.'s Martin was nursing him alone. When I was there my duty was everything in regard to waiting upon the Dr. Sometimes we would go to the kitchen for it. We removed things from the room, water, &c. Mrs. Voorhees would send 40 Martin into the town for things she wanted. Neither I nor Mrs. Voorhees asked Dr. to give us anything before that day, when the notes were given. I never heard Mrs. Voorhees ask him. She had been in the

room and went out and sat on the steps after Duryee came in. Martin was in the room when Duryee came in. Mrs. Voorhees before I went for Duryee, did not know what was to be done, as I know of. I don't know that Duryee was spoken to by Mrs. Voorhees as he went into the room. I suppose she could hear the Dr. speaking from the steps. This business of the notes was done between 12 and 2 o'clock, I think. I had been waiting on the Dr. all that morning—I don't know the exact date—it was between three and four weeks after I went there. I had administered brandy to the Dr. every hour that morning as usual. There was no one
 10 else with him all that morning, except Martin coming in and out. Dr. wrote his name to the paper, Duryee first read it. It read that the Dr. promised to give to Mrs. Voorhees \$500 for her kindness and services to me in my sickness. I think that was the whole of it, except the name. I can write some. I can read very plain writing. I think both notes were written on the same piece of paper attached together. I think I have heard Mrs. Voorhees say her monthly wages were about \$13.00. About a month after I came there Duryee came there, and boarded there. He took his breakfast, dinner and supper there—up to the time I went away for some four weeks till my son died. I have settled with the Executors
 20 for my wages, but not for this note of \$300. I settled for my wages \$5.00 a day. I consider I have a claim outstanding yet against the estate. Sylvester and I would sometimes wait on the door.

Mr. Duryee's conversation about his account with the Dr. took place either that evening of the writing the orders, or the next day. I was asked by Duryee to sign as a witness to the paper he drew up about it. I did sign my name to such a paper. Dr. did not sign it. It may have occurred at the same time the notes were given—not positive. All I know about the money is what Mr. Duryee said.

2. SYLVESTER MARTIN was sworn and testified: I have been in the
 30 employ of Dr. Woodhull about 11 years. Mrs. Voorhees was his housekeeper since he came to town about two years. She was housekeeper, washer, cook, and she did all the cooking. There was more cooking after the Dr. got sick than before. She stayed home pretty much all the time. I heard Dr. tell Duryee to write a note to Mrs. Voorhees. Duryee laid a piece of paper on a book and wrote. Dr. said he wanted Mrs. Voorhees to have \$500. He said he wanted James to have \$300. I saw Duryee make some mark on the paper like writing. I had to be going forwards and backwards to the office at that time. Dr. said Dr. Alexander and Mrs. Voorhees must send their bills in. He said Mrs. Voorhees had been so
 40 kind and faithful to him. She had made such good beef tea and sago. Don't recollect anything Dr. said to me while I was there that time.

Cross Examined.—Mrs. Voorhees did the cooking, washing and everything else when he was well—don't know how many weeks washer-woman

was there after Dr. got sick. Mrs. Voorhees sent for her when she wanted her. I have brought suit for extra services.

3. MRS. LAVINIA STELLE. I have lived eight years next door to where Dr. Woodhull lived and died. I was in there almost every day during his sickness. Mrs. Voorhees was his housekeeper. She did all the work—all the cooking. She was known as a good cook. She was always busy when I was in there. Sometimes carrying food to the Dr. Before she came to the Dr. he had two hired colored women, besides having the washing done by another. Mrs. Voorhees did what those both did. She was very faithful and kept things well. It was a large house. She had a person to wash and iron for her. ¹⁰

4. MRS. GEN. PERRINE. Sworn says: I often visited Dr. Woodhull's—was there while he was sick, saw Mrs. Voorhees. She was always busy—a good housekeeper. Her cares were increased by the sickness of the Dr.

5. HANNAH SALTER, sworn says: I was washer and ironer for Dr. Woodhull—was there the last seven days before his death, had always before his sickness and during it, been employed to wash and iron for the Dr. We had a great deal more to do after he got sick—there was extra washing done for him while sick. Mrs. Voorhees was always busy, sometimes waiting on the Dr. and doing all kinds of house work. I was there more after he was taken sick—was generally there one day a week, sometimes two when he was sick. ²⁰

6. DR. ELLIAS C. BAKER, sworn says: There was a great deal of extra work to do in consequence of Dr. Woodhull's sickness. I was there from the 29th July to Jan. 12th: he had extra nurses. Mrs. Voorhees was very kind and attentive in preparing Dr. things—various dishes. She would come when called for at nights. She complained of being lame. She did the cooking and would go to the door and was generally busy. ³⁰

Being Cross Examined, says: Sometimes James or Martin would be sent down for oysters. The family became larger before he died. Spafford Woodhull was there several weeks, Dr. Alfred Woodhull was there for about two weeks before the Dr. died. He was there two or three different times during the sickness of the Dr. He helped nurse the Dr. He had two colored nurses all the time from when he was taken sick.

7. HENRY B. DURYEE, sworn, says: I was subpoenaed to bring the paper or note left with me, given by Dr. Woodhull to Mrs. Voorhees for \$500, and produce it, that the Plaintiff might offer it in evidence. I have not got the note. Cannot produce it.

Plaintiff here rested.

It was admitted on the trial by the counsel of the plaintiff that the Plaintiff's claim was for extra and special services and note, over and above her monthly wages. Pro ut the Bill of Particulars.

And the said Circuit Judge did then and there give his opinion and decide that judgment as of non suit should be entered against the said plaintiff, and did then and there order judgment of non suit to be entered against said Plaintiff accordingly; and to which said opinion and decision of the said Circuit Judge, the said plaintiff by her counsel did then and there except and pray that such exceptions may be sealed: and therefore
 10 on the prayer of said plaintiff by her counsel, the said Judge hath to said exceptions set his seal, according to the statute in such case made, this 22nd day of January, A. D. Eighteen hundred and sixty-eight.

MERCER BEASLEY, [L. S.]
 Chief Justice.

ASSIGNMENT OF ERRORS.

N. Jersey Court of Errors & Appeals.

Jane Voorhees,	}	Assignment of Errors.
vs.		
Joseph Combs and Lyman H. Atwater, Executors of John N. Woodhull, dec'd.		

Afterwards, that is to say on the tenth day of March, A. D. Eighteen
 20 hundred and sixty-eight, before the Court of Errors and Appeals, came the said Jane Voorhees by her Attorney, John F. Hageman, and says that in the record and proceedings aforesaid there is manifest error in this to wit:

That, by the record aforesaid, it appears, that judgment of non suit was given against the said Jane Voorhees, after she had offered her evidence and rested her cause, Whereas by the law of the land such judgment ought not to have been given, but the case should have been submitted to the jury for their verdict. That the said judgment in other respects is erroneous and contrary to law.

30 And the said Jane Voorhees by her said attorney, prays that the said judgment aforesaid, for the causes aforesaid and for other errors in the record and proceedings aforesaid may be reversed, annulled and altogether for nothing holden, and that the said Jane Voorhees may be restored in all things which she has lost by occasion of said judgment.

JOHN F. HAGEMAN,
 Attorney for and of Counsel with Plaintiff.

Common Joinder in Error by

RICHEY & EMERY, for Defendants.

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