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**Notice of Appeal.**

[Filed February 26, 1927]

**Supreme Court of State of New Jersey** 10

**Essex County**

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BARBARA GLASER,  
*Plaintiff,*

vs.

ANNA ERHARD, Executrix of the  
Estate of Julius Erhard, de-  
ceased,  
*Defendant.*

ACTION  
AT LAW.

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20

*To Paul G. Roder, Esq., Attorney of Plaintiff:*

TAKE NOTICE that the defendant 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.

Dated, February 17, 1927. 30

HUGO WOERNER.  
Attorney of Defendant.

Service of the within notice of appeal is acknowledged this 25th day of February, 1927.

PAUL G. RODER,  
Attorney of Plaintiff.

40

**Grounds of Appeal.**

[Filed March 26, 1927]

**NEW JERSEY COURT OF ERRORS  
AND APPEALS.**

10

BARBARA GLASER,  
*Plaintiff-Appellee,*

vs.

ANNA ERHARD, Executrix of the  
Estate of Julius Erhard, de-  
ceased,  
*Defendant-Appellant.*

Action at Law.  
On Appeal from  
New Jersey  
Supreme Court.

20

The appellant states the following grounds of appeal:

1. The trial court refused to direct a judgment of nonsuit against the plaintiff and in favor of the defendant when thereunto moved by counsel for the defendant.

30

2. The trial court refused to direct the jury to return a verdict in favor of the defendant and against the plaintiff, when thereunto moved by counsel of the defendant.

40

3. The charge of the court to the jury as follows: "The act (The Statute of Limitations) also provides in case of death 'that if any person against whom there is or shall be any such cause of action \* \* \* shall have died or shall hereafter die before the expiration of the times of limitation therein mentioned the space of six months next succeeding the death of such person

*Grounds of Appeal*

shall not be computed as part of the limited period within which such action or actions is or are acquired to be brought by the previous provision.' "

10

4. The charge of the court to the jury as follows: "The deceased died January 27, 1925, and then for six months thereafter the statute did not run because of the provision as to death. This is put in the statute so that time will be given for the executrix to close the estate or become familiar with it. The suit was started December 19, 1925."

20

5. The charge of the court to the jury as follows: "Of course, you will figure it yourselves, but as I figure it, she cannot recover back of June 19, 1919, up to September 25, 1921, a period of two years, three months and six days. At two dollars a day it would be \$1,632.00."

30

6. The refusal of the court to charge the jury the defendant's request to charge as follows: "Plaintiff cannot recover for any services not performed within six years next before December 19, 1926, the time of the commencement of this action."

The following question was admitted to the witness, Frank X. Keiling.

7. "The reasonable value of the services per day?"

The following questions were admitted to the witness, Barbara Glaser:

8. "Did you ever work at bartending?"

40

*Grounds of Appeal*

9. "Did you ever ask him for money?"

10. "You have heard Mrs. Erhard testify that she discovered you and Mr. Erhard in an act of intimacy?"

10 11. "Mrs. Glaser, did you have any conversation with Mr. Erhard in regard to your pay?"

12. "How many times?"

13. "What did he say?"

14. "You asked while you worked with him?"

15. "After you discontinued work for him did you have any conversation with him?"

20 16. "Where?"

17. "What did he reply to that?"

18. "Did he pay you?"

HUGO WOERNER,  
Attorney of Defendant-Appellant.

Service of the within ground of appeal is hereby acknowledged this twenty-fifth day of March, 1927.

30 PAUL G. RODER,  
Attorney of Plaintiff-Appellee.

**Summons.**

[Filed March 5, 1926]

*The State of New Jersey to Anna Erhard, executrix of the estate of Julius Erhard, deceased.*

You are summoned to answer the annexed complaint of BARBARA GLASER 10  
in an action at law in the New Jersey Supreme Court. AND TAKE  
[L. S.] NOTICE that unless you file your answer to said complaint with the Clerk of the New Jersey Supreme Court, at Trenton, within TWENTY DAYS after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you. 20

WITNESS, WILLIAM S. GUMMERE, Chief Justice of said New Jersey Supreme Court, at Trenton, this 19th day of December, Nineteen Hundred and Twenty-five.

EDWARD J. KELLEHER,  
Clerk.

PAUL G. RODER,  
Attorney.

Complaint.

NEW JERSEY SUPREME COURT,  
ESSEX COUNTY.

10

BARBARA GLASER, <i>Plaintiff,</i>  vs.  ANNA ERHARD, Executrix of the Estate of Julius Erhard, de- ceased,  <i>Defendant.</i>	}	ON CONTRACT.
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20

The plaintiff, Barbara Glaser, residing at No. 436 South 17th Street, Newark, New Jersey, says:

1. From January 1, 1917 to September 25, 1921, a period of 1775 days, the plaintiff rendered services to Julius Erhard, during his lifetime, at his request, as servant, nurse and housekeeper, at his residence and business, No. 465 South 18th Street, Newark, New Jersey.

30

2. That for said services the said Julius Erhard undertook to pay the plaintiff what the same were reasonably worth.

3. That the same were reasonably worth the sum of \$2.00 per day for a period of 1775 days from January 1, 1917 to September 25, 1921, making a total sum of \$3,550.00, which sum was due for said services aforesaid, on the date last above mentioned.

40

4. That on or about January 27, 1925, the said Julius Erhard died leaving a last will and testament in which he appointed the defendant, Anna Erhard, as executrix.

Complaint

5. That on or about February 19, 1925, the said will of Julius Erhard was admitted to probate by the Surrogate of Essex County and letters testamentary were issued to Anna Erhard, who accepted the same.

10

6. That Julius Erhard during his lifetime has not paid the claim of the plaintiff, and demand was thereupon made upon Anna Erhard, the executrix of the estate of the said Julius Erhard, but payment has been refused.

Plaintiff demands as damages \$3,550.00 with interest thereon from September 25, 1921.

PAUL G. RODER,  
Attorney for Plaintiff.

20

Answer.

[Filed January 14, 1926]

NEW JERSEY SUPREME COURT,  
ESSEX COUNTY.

BARBARA GLASER, <i>Plaintiff,</i>  vs.  ANNA ERHARD, Executrix of the Estate of Julius Erhard, de- ceased,  <i>Defendant.</i>	}	ACTION AT LAW.
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FIRST DEFENSE.

The defendant residing at Secaucus, N. J., says that:

40

Answer

- 1. She denies paragraphs 1, 2 and 3.
- 2. She admits paragraphs 4 and 5.
- 3. She admits that Julius Erhard did not pay the alleged claim of the plaintiff during his life time, and admits that a demand was made upon her, as the executrix of the estate of Julius Erhard, and that she refused to pay the said alleged claim.

SECOND DEFENSE.

- 1. The cause of action stated in the complaint did not accrue within six years next before the commencement of this action.

THIRD DEFENSE.

- I. Part of the alleged services sued for by the plaintiff were not performed within six years next before the commencement of this action.

HUGO WOERNER,  
Attorney of Defendant.

Judgment.

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">BARBARA GLASER, <i>Plaintiff,</i></p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">ANNA ERHARD, Executrix of the Estate of Julius Erhard, de- ceased, <i>Defendant.</i></p>	}	<p>Judgment Record. Action at Law. On Posteo. Paul G. Roder, Attorney.</p>	10
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This case was tried before Judge William A. Smith to whom the same was referred for trial with a jury at the Essex County Circuit on January 25, 1927. 20

The jury rendered a general verdict against the defendant in favor of the plaintiff for \$2207.04/100.

Whereupon it is adjudged that the plaintiff, Barbara Glaser, do recover of the said defendant, Anna Erhard, executrix of the Estate of Julius Erhard, deceased, the sum of two thousand two hundred and seven dollars and four cents damages, together with her costs, which have been taxed at the sum of fifty-six dollars and sixty-two cents, making in the whole the sum of two thousand two hundred 30

Damages	\$2207.04
Costs	56.62
	\$2263.66

*Judgment*

and sixty-three dollars and sixty-six cents.

Judgment entered January 31, 1927.

WM. S. GUMMERE,  
C. J.

10

A true copy

EDWARD J. KELLEHER,  
Clerk.

**Testimony.**

NEW JERSEY SUPREME COURT,  
ESSEX COUNTY.

20

BARBARA GLASER,	}	ACTION AT LAW.
<i>Plaintiff,</i>		
vs.		
ANNA ERHARD, Executrix of the Estate of Julius Erhard, de- ceased,	}	ACTION AT LAW.
<i>Defendant.</i>		

30

Before Hon. WILLIAM A. SMITH, J., and a jury.

For the plaintiff appears PAUL G. RODER.

For the defendant appears HUGO WOERNER.

(A jury is called and sworn.)

Mr. Roder opens for the plaintiff.

Mr. Woerner opens for the defendant.

40

*Barbara Glaser—Plaintiff—Direct*

BARBARA GLASER, plaintiff, sworn in her own behalf.

*Direct examination by Mr. Roder.*

Q. Mrs. Glaser, are you the lady who is bringing this suit? A. Yes, sir. 10

Q. Did you know Mr. Erhard during his lifetime? A. Yes, sir.

Q. What business was he in? A. Saloon business.

Q. Where? A. Eighteenth street and Fourteenth avenue, Newark.

Q. Did you ever work up there?

Objected to on the ground that she cannot testify to that under the act. 20

Objection sustained.

Q. Did you ever go to that business of Mr. Erhard's? A. Yes, sir.

Q. When did you first go there? A. On the 25th of January, 1917.

Q. How often did you go there? A. Every day.

Q. And what time of the day did you go? A. Different hours: nine o'clock, ten o'clock; sometimes twelve o'clock. Sometimes I went in and stayed to half-past five and then went for my supper and came back and stayed until closing time; sometimes twelve and sometimes after twelve. 30

Q. Until when did you continue to go there? A. To September 25, 1921.

Q. What did you do? A. Tend to customers, clean behind the bar, wash dishes, washed Mrs. Erhard's body and took care of her feet.

Q. Did you ever get any pay for it? A. No, sir.

Q. Did you ever ask for it? A. Yes, sir. 40

*Barbara Glaser—Plaintiff—Cross*

Q. Whom did you ask? A. Mr. Erhard.

Objected to.

Objection sustained and answer stricken out.

10 Q. Did you ask anybody else? A. No, only Mr. Erhard.

Motion to strike out answer.

Answer stricken out.

*Cross examination by Mr. Woerner.*

Q. You started to go there January 1, 1917? A. Yes, sir.

Q. You are married? A. Yes, sir.

20 Q. You live with your husband? A. Yes, sir.

Q. Have you any family? A. Yes, sir.

Q. How many children have you? A. I got five children.

Q. Where did you live January 1, 1917? A. 436 South 17th street.

Q. Did you live there with your family? A. Yes, sir.

Q. How old were the children in 1921? A. They were seventeen and sixteen and thirteen.

30 Y. You were there every day? A. Every day.

Q. From about nine o'clock? A. Whatever the hours; nine o'clock, ten o'clock, eleven o'clock, until they close up twelve o'clock and one o'clock.

Q. And you finally stopped going there September 25, 1921? A. Yes, sir.

*Jennie Miller—For Plaintiff—Direct*

JENNIE MILLER, sworn in behalf of plaintiff.

*Direct examination by Mr. Roder.*

Q. Mrs. Miller, are you acquainted with Mrs. Glaser? A. Yes.

Q. Were you acquainted with Mrs. Erhard? A. 10 I was.

Q. Were you acquainted with Mr. Erhard? A. Yes.

Q. Where did you live January 1, 1917? A. 436 South 17th street.

Q. Newark? A. Newark.

Q. Where did you live on September 25, 1921? A. The same address.

Q. What kind of a business did Mr. Erhard conduct? A. A saloon. 20

Q. Where was it located? A. Fourteenth avenue and Eighteenth street.

Q. Had you any occasion ever to go into it? A. I did go.

Q. Do you know how many times? A. I went coming from the pictures with my husband; we would stop in.

Q. How many times would you say you stopped in? A. Maybe ten or twelve. 30

Q. How many times during that time, January 1, 1917, to September 25, 1921, would you go in there each year? A. I couldn't tell, it was odd times coming in from the moving pictures.

Q. When was it? A. In the winter. I was there New Year's Eve and a holiday eve; I couldn't say the day.

Q. Did you ever see Mrs. Glaser there? A. Yes. 40

*Jennie Miller—For Plaintiff—Direct*

Q. What was she doing? A. She was behind the bar serving refreshments, and receiving money.

Q. Did she serve you? A. Yes.

10 Q. Did you see her serve other customers? A. Yes.

Q. Did you ever see her in the place when you were not in? A. Yes, I would see her inside.

Q. What would she do? A. She had a cloth in her hand like wiping windows.

Q. Did Mr. Erhard ever come into the house? A. Not into the house, but stop on the steps.

Q. What would he do? A. He left a message to tell Mrs. Glaser to come back.

20 Q. How many times would he do that? A. A dozen times they need her I would hear him call her.

Q. How many times? A. I don't know how many times.

Q. What did he say? A. To come over, the lady was alone, or his wife was alone.

30 Q. Did you ever hear any conversation as between Mrs. Glaser and Mr. Erhard as to any pay? A. On one occasion I heard her when she was working he asked her to go and she asked, "Who is going to pay me?" and he said he would, as soon as he sold the house.

Q. How many times did you hear her ask Mr. Erhard for pay? A. I can't remember; I didn't hear that so many times.

Q. About how many times? A. Maybe half a dozen.

40 Q. What was his reply? A. "You will get it—you will get it altogether."

*Jennie Miller—For Plaintiff—Cross**Cross examination by Mr. Woerner.*

Q. You are a friend of Mrs. Glaser, aren't you?

A. I was a tenant in her house.

Q. You are a friend of hers. A. Well, we have acquaintance still.

10 Q. You lived there from 1917 to 1925? A. No, I lived in 1923; I was there seven years.

Q. The only time you went into this saloon was with your husband? A. That's all.

Q. That would be late at night after the show?

A. Well, I went in once on another occasion, but I was sent for by Mr. Erhard. He wanted me for a witness, or something like that, but I wouldn't go.

20 Q. Did you sit around in the evening and have refreshments? A. Yes.

Q. At that time you say she would be serving drinks? A. Yes, any time I was there she was back of the bar.

Q. Did Mr. Erhard serve, too? A. Mrs. Erhard wasn't able.

Q. I said Mr. Erhard. A. Mr. Erhard wouldn't be there.

Q. You say you saw her in passing the place?

30 A. Oh, yes, I saw her in there when I was passing the place.

Q. You say Mr. Erhard came to the house and left word for you to come over? A. Yes, if she wasn't home he would call to me to tell her to come right over.

Q. How many times would that happen? A. I know it was several times, I didn't count them. He would be at the store and he would say, "Tell her to come right over when she gets back."

40 Q. How many times did you go there with your husband? A. Maybe twice—maybe once a week.

*Jennie Miller—For Plaintiff—Redirect**Redirect examination by Mr. Roder.*

Q. You say Mrs. Erhard was not able to do anything? A. No, she couldn't.

Q. Was she ill? A. Well, I think there was something wrong with her limbs.

10 Q. Couldn't she walk? A. Well, I often saw her use a chair; I don't know what she did.

NOBLE HEINOLD, sworn in behalf of plaintiff.

*Direct examination by Mr. Roder.*

Q. Mr. Heinold, where do you live? A. 57 Boston street.

20 Q. Where did you live in January 1, 1917, if you know? A. Corner Fourteenth avenue and Eighteenth street.

Q. How long did you live there? A. Five years.

Q. When did you move out? A. February, 1922. 1922.

Q. Did you know Julius Erhard? A. My landlord.

30 Q. What kind of a business did he conduct? A. Saloon.

Q. Do you know Mrs. Glaser? A. Yes, sir.

Q. Where did she live? A. Seventeenth street.

Q. Did you ever see her in Erhard's place? A. Almost every day.

Q. Did you see her in the morning? A. About eight o'clock until about twelve some nights.

Q. Did you work days or nights? A. Some weeks days and some weeks nights.

40

*Noble Heinold—For Plaintiff—Direct*

Q. The weeks you worked nights, did you see her in the daytime in that place? A. I did.

Q. And during the weeks you worked days did you see her at night? A. Yes.

Q. How often did you see her? A. Every night I went in. 10

Q. When you worked night times did you go in during the day? A. Very near every day—not every day.

Q. What was she doing there? A. Tending bar, cleaning floors, and windows, and wiping up; if she wasn't doing that she was in the back room doing something else.

Q. Did you ever hear any conversation between Mr. Erhard and Mrs. Glaser concerning pay? A. I did. 20

Q. What did she say to him? A. "I would like you to settle up with my pay." He would say, "As soon as I sell the lots next door."

Q. What would Mr. Erhard say to Mrs. Glaser in response to her? A. As soon as he sold the lots next door he would settle up with her.

Q. Approximately how many times did you hear Mrs. Glaser ask Mr. Erhard for some money? A. A dozen times or more. 30

Q. Over what period, if you know? A. Different periods; sometimes two or three weeks apart.

Q. You never saw him give her any? A. No.

Q. Did you ever have a conversation with Mr. Erhard in your living apartment? A. I did.

Q. What was the conversation about? A. He was putting holes in to put up the fire escape. He knocked on my door and he asked me if I could get Mrs. Glaser. He said he couldn't leave his wife alone; he had to drive holes. He said, "You can 40

*Noble Heinold--For Plaintiff--Direct*

tell her as soon as I can get rid of the lots, I will pay her." He said he had to pay the expense to putting up the fire escapes, and had to leave somebody with the old lady.

10 Q. Did he ever send you down to get Mrs. Glaser? A. Two or three dozen different times.

Q. Did you go down? A. I did.

Q. Do you know that Mrs. Glaser came in response to those requests? A. A couple of times she came in with me.

Q. Do you know about when Mrs. Glaser left? A. Around the latter part of 1921.

20 Q. Did Mr. Erhard ever ask you to go down the latter part of 1921 to ask her to come back? A. He told me to go down and see how she was; she was sick.

Q. What else did he say? A. He wanted to see her.

*Cross examination by Mr. Woerner.*

Q. What part of 1921 was that? A. The latter part.

Q. Around December? A. No, a little before December.

30 Q. Around November? A. I can't remember when it was.

Q. He asked you to go down and see how she was? A. Yes.

Q. Did you go down and see how she was? A. Yes.

Q. He said he wanted to see her? A. He said he would like to see her.

40 Q. When you were working daytimes you wouldn't know what was going on? A. Not in the daytimes.

*Noble Heinold--For Plaintiff--Cross*

Q. When you were working nights you wouldn't know what was going on nights? A. No.

Q. Could you see what Mrs. Glaser was doing without going into the place? A. A good many times when they were washing the windows you could see in the place. 10

Q. You would have to go in? A. Yes.

Q. Did you go in often? A. Almost every day.

Q. When did this conversation take place about wanting to know when he was going to settle up? A. Sometimes on the corner, sometimes in the saloon, and sometimes in my rooms.

Q. On what corner was the conversation? A. Corner Fourteenth avenue and Eighteenth street.

Q. In your presence? A. Yes, sir. 20

Q. About how many times did she ask for her money? A. A dozen times or more.

Q. He said he would pay her as soon as he could sell the lots? A. Yes, the lots next to the shoe shop.

Q. Did Mr. Erhard put you out of the house for the non-payment of rent?

Objected to.

Objection overruled. 30

A. My rent was paid. He claimed it was not; he found out down the second district court that it was paid.

WILLIAM SCHREIBER, sworn in behalf of plaintiff:

*Direct examination by Mr. Roder.*

Q. Mr. Schreiber, what business are you in? A. Newsdealer. 40

*William Schreiber—For Plaintiff—Direct*

- Q. How long have you been a newsdealer?  
 A. Ten years.  
 Q. Did you know Mrs. Glaser? A. Yes.  
 Q. Did you know Mr. Erhard? A. Yes.  
 Q. Where did you meet Mrs. Glaser? A. I seen  
 10 her up in the saloon now and then.  
 Q. Whose saloon? A. Erhard's.  
 Q. Was Erhard a customer of yours? A. Yes,  
 sir.  
 Q. Did you collect money from him? A. Yes,  
 sir.  
 Q. When did you see Mrs. Glaser? A. Satur-  
 day mornings when I collected.  
 Q. Did she pay you? A. Sometimes she did  
 and sometimes Mr. Erhard.  
 20 Q. Did you serve papers to Mr. Erhard from  
 January, 1917—did you serve him at that time?  
 A. Yes, sir.  
 Q. Did you serve him papers September 25,  
 1921? A. Yes, sir.  
 Q. Did you serve him from one date to the  
 other? A. Yes, sir.  
 Q. How many times a week did you go around?  
 A. Well, on Saturday when I collected.  
 Q. How many times a year or during the month  
 30 did you see Mrs. Glaser in that place? A. Some-  
 times two times a month; sometimes three times  
 a month.  
 Q. During that whole period? A. Yes, sir.  
 Q. What was she doing there? A. She served  
 me what I asked for.  
 Q. Did she pay you more times than Mr. Er-  
 hard? A. I wouldn't say that on account of what  
 do you call it—this time before that—ten years  
 40 I have been going there. See what I mean?

*William Schreiber—For Plaintiff—Direct*

*By the Court.*

Q. You mean you went there a longer period of  
 time than that? A. Yes, sir.

*By Mr. Roder.*

Q. Would you say every time you went in once  
 10 a week you saw Mrs. Glaser? A. I wouldn't say;  
 sometimes once a month, sometimes twice a month.

Q. Would you see her at nights there? A. Some-  
 times I would and sometimes I wouldn't.

CROSS EXAMINATION WAIVED.

DANIEL H. LEARY, sworn in behalf of plaintiff.

*Direct examination by Mr. Roder.*

Q. Mr. Leary, where do you reside? A. 74 Oak-  
 land terrace.

Q. Where did you reside in 1917? A. 86 Isa-  
 bella avenue.

Q. At that time did you know Julius Erhard?  
 A. Yes, sir.

Q. Did you know Mrs. Glaser? A. Yes, sir.

Q. What business was Mr. Erhard in? A. The  
 30 saloon business, Fourteenth avenue and Eigh-  
 teenth street.

Q. Did you meet Mrs. Glaser there? A. Yes.

Q. What was she doing? A. Behind the bar.

Q. How many times did you go in from January  
 1, 1917, until September 25, 1921? A. I pretty  
 near went in every night in the week, pretty near;  
 sometimes four or five nights a week.

Q. Did you see Mrs. Glaser there? A. Yes.

Q. She always served you? A. Most of the 40

*Daniel H. Leary—For Plaintiff—Direct*

time; sometimes Mr. Erhard served me, but mostly she did.

Q. Was Erhard there all the time? A. No, sometimes he was there and a couple of times a week, sometimes, he was down at the movies. Only Mrs. Glaser and Mrs. Erhard would be there.

Q. Did she ever do any work there? A. No, she was crippled up.

Q. Did she ever do any work? A. I don't know what work she done; she was only in there nights.

*Cross examination by Mr. Woerner.*

Q. You said you only got in only in the evening? A. That's all.

Q. I suppose you went in there to get a drink? A. Yes, sir.

Q. How many days a week would you get in? A. Sometimes every night and sometimes four or five nights a week.

Q. You had seen Mrs. Glaser tending bar sometimes? A. Every time I went in there, pretty near.

Q. And sometimes Mr. Erhard? A. Very seldom.

Q. You are not related to Mrs. Glaser, are you? A. No, sir, I am not related to any of them.

*Redirect examination by Mr. Roder.*

Q. Did you ever hear any conversation between Mr. Erhard and Mrs. Glaser as to pay or money? A. No, sir.

40

*Barbara Glaser—Plaintiff—Direct*

BARBARA GLASER, the plaintiff, recalled.

*Direct examination by Mr. Roder.*

Q. Mrs. Glaser, what do you consider the reasonable value of the services that you performed per day?

10

Objected to on the ground that she cannot testify to any transaction with the decedent.

Objection sustained.

The Court: Ask her what is the reasonable value of the character of work she did there; the reasonable value of the work per day.

*By Mr. Roder.*

20

Q. What is the reasonable value per day of the character of work that you did in that saloon?

*Cross examination by Mr. Woerner.*

Q. Did you ever work for anybody else? A. Yes, sir.

Q. Did you ever work at bartending? A. Only Erhard's I was bartending; I went out washing and then tending Erhard's bar, nowhere else.

30

Mr. Woerner: I object to the question on the ground that she has not qualified herself to testify on the reasonable value of the services, and secondly, she is excluded from testifying under the Evidence Act.

Objection overruled.

Defendant's counsel prays an exception to this ruling of the court.

Exception noted as ground of appeal.

Witness: \$2 a day.

40

*Frank X. Keiling—For Plaintiff—Direct**By Mr. Roder.*

Q. What work did you do up there?

The Court: That has already been testified to.

10 Mr. Roder: My expert witness was not here to hear it and I thought we could save time.

The Court: You may ask him a hypothetical question.

FRANK X. KEILING, sworn in behalf of the plaintiff.

20 *Direct examination by Mr. Roder.*

Q. Mr. Keiling, where do you reside? A. 110 Walker Road, West Orange.

Q. What business are you in? A. None at the present time.

Q. You are retired? A. Yes, sir.

Q. Before you retired, what business were you in? A. Cafe and restaurant.

Q. For how long? A. Forty years.

30 Q. Where did you conduct your business? A. 175 Halsey street, 105 Market street, and 405 Roseville avenue; all Newark.

Q. Did you have occasion to hire help around the kitchen to do washing and hire bartenders? A. A great many of them.

40 Q. What would you consider the reasonable value of services for a party who would come to your place of business at anywhere from nine o'clock, ten o'clock, or eleven o'clock in the morning, and stay until noon, go home to dinner, come back after lunch, work until supper, go home for

*Frank X. Keiling—For Plaintiff—Cross*

supper and come back after supper, and stay until closing, which was until twelve or one o'clock?

The Court: Per day.

Q. The reasonable value of the services per day.

10 Mr. Woerner: I object to the question on the ground that it does not cover the facts in the case, we have no evidence that she worked in the kitchen. We have some evidence that she worked at the bar—

The Court: That is a matter as to how much she would be entitled to. Mr. Roder figured she did full service. It is for the jury to figure how much she should get. I will allow it.

20 Defendant's counsel prays an exception to this ruling of the court.

Exception noted as ground of appeal.

Q. What would you consider the reasonable value of that service per day? A. From \$2.50 to \$3.00.

*Cross examination by Mr. Woerner.*

30 Q. What would you expect for that \$2.50? A. Tending bar, housework, and kitchen work—anything that came along. That would be a reasonable price if she tended bar all day long from ten in the morning to eleven at night; she would be entitled to more money. I always say a woman is a greater asset behind the bar than a man.

Q. Would you expect her to do kitchen work? A. In ten or eleven hours, I do.

40 Q. What would you expect her to do? A. To tend bar, and if there was any kitchen work, to do that.

*George Schilling—For Plaintiff—Direct*

GEORGE SCHILLING, sworn in behalf of plaintiff.

*Direct examination by Mr. Roder.*

Q. Mr. Schilling, did you know Mr. Erhard?  
A. Yes, sir.

10 Q. What business was he in? A. Carpenter.

Q. Did he have any other business? A. Saloon.

Q. Where was the saloon? A. Corner of Fourteenth avenue and Eighteenth street.

Q. Do you know Mrs. Glaser? A. Yes, sir.

Q. Where did you meet her? A. In the saloon when I would go there.

Q. What was she doing there? A. Working around the bar and cleaning house.

20 Q. Did she ever serve you with any drinks in that saloon? A. Yes, sir.

Q. How many times would you say she served you? A. Two or three times a day; at morning and night; sometimes twice a day and sometimes three times.

Q. When did you first see her in there, if you remember? A. Five or six years ago; between five and six years.

Q. That is when you last saw her? A. Yes.

30 Q. When did you first see her? A. That is about the time.

Q. For how long a period did you see her? A. For three years. Often I went there I saw her, but I don't know the date.

Q. You did see her there for three years? A. Yes.

Q. She waited on you? A. Yes, waited and tended round and cleaned the bar around.

40 Q. She waited on other customers? A. Yes, on me and others, and Julius.

*George Schilling—For Plaintiff—Cross*

Q. Who is Julius? A. The boss.

Q. Was he there often? A. Yes, on Sundays I would see him.

Q. Did you see him during the week days?  
A. Once in awhile.

*Cross examination by Mr. Woerner.*

10

Q. Did you go in there every day? A. No, sir, sometimes twice a day and sometimes I would skip and go in three times a day.

Q. How many times did you go in? A. Sometimes four times a week and sometimes more.

Q. What was your business at the time? A. Digger—laborer.

Q. When was the first time you saw her there?  
A. I don't know the date when she started.

20

FRANK MARINELLA, sworn in behalf of plaintiff.

*Direct examination by Mr. Roder.*

Q. Mr. Marinella, did you know Mr. Erhard?  
A. Yes, sir.

Q. What business was he in? A. She was tending bar.

Q. Mr. Erhard. A. He was in the saloon business.

30

Q. Where was his business? A. Eighteenth street and Fourteenth avenue.

Q. Do you know Mrs. Glaser? A. I got acquainted with her there.

Q. Did you ever meet her? A. I met her at Julius Erhard's place.

Q. When did you first meet her there? A. It is between seven and eight years ago.

40

*Frank Marinella—For Plaintiff—Cross*

Q. What was she doing? A. She was tending bar.

Q. Any other kind of work? A. That is all she was doing when I was there nights.

Q. Did she serve you? A. Yes, sir.

10 Q. How many times did you go in, do you know? A. About once or twice a week.

Q. For how long a period? A. About two or three years—three and a half.

Q. Did you see her every day you went in? A. Yes.

Q. Was Mr. Erhard there? A. Very seldom I would see him.

Q. Did you see her there? A. Yes.

20 Q. And she would serve you? A. Yes, every time I went in.

*Cross examination by Mr. Woerner.*

Q. The first time you saw Mrs. Glaser there was about seven years ago? A. Yes, sir.

CARRIE HORNLEIN SWORN in behalf of plaintiff.

*Direct examination by Mr. Roder.*

30 Q. Mrs. Hornlein, where do you live? A. I live 450 Avon avenue.

Q. Did you know Mr. Erhard? A. Yes, sir.

Q. What business was he in? A. He had a saloon.

Q. Where was it? A. Eighteenth street and Fourteenth avenue.

Q. Do you know Mrs. Glaser? A. Yes, sir.

40 Q. Where did you meet her? A. I lived in Seventeenth street and she was a neighbor of mine.

*Carrie Hornlein—For Plaintiff—Direct*

Q. Did you ever see her in Mr. Erhard's saloon? A. Yes, sir.

Q. How many times did you see her there? A. I only seen her twice there.

Q. That is all you ever saw her in the saloon? A. Yes, I moved away from Seventeenth street. 10

Q. When did you move? A. I guess 1921.

Q. How many times were you in the place? A. I only was twice in the place and I seen I wasn't welcome so I never went there no more.

Q. Did you ever pass the place? A. Yes, sometimes I went in the store and I passed the place.

Q. Did you ever see Mrs. Glaser in there when you passed the place? A. Yes, I seen her cleaning windows.

Q. On the inside or on the outside? A. On the outside. 20

CROSS EXAMINATION WAIVED.

MARY VAN HOUTEN, sworn in behalf of plaintiff.

*Direct examination by Mr. Roder.*

Q. Mrs. Van Houten, did you know Mr. Erhard? A. Yes, sir. 30

Q. And was he in business? A. Yes, sir.

Q. What kind of business? A. Saloon business.

Q. Where did he have it? A. Corner of Fourteenth avenue and Eighteenth street.

Q. Did you live in that house? A. Yes, I lived there thirty years.

Q. Do you know Mrs. Glaser? A. Yes.

Q. How long have you known her? A. Several years.

Q. Did you ever see her in Mr. Erhard's saloon? A. Yes, sir. 40

*Mary Van Houten—For Plaintiff—Direct*

Q. What was she doing there? A. Tending bar and working around.

Q. Did she wait on the customers? A. Yes, sir.

Q. How many times did you see her there?

10 A. I went down every evening and kept Mrs. Erhard company.

Q. Would Mrs. Glaser be there every evening?

A. Yes, sir.

Q. Would you see her there in the daytime?

A. I didn't go down during the day.

Q. You saw her there every evening? A. Yes, sir.

Q. For how long a period? A. For several

20

*Cross examination by Mr. Woerner.*

Q. Did you say you saw her every evening?

A. I was down there every evening; I ain't sure she was there every evening, maybe she might miss sometimes.

Q. Did you say she might have missed several times? A. Yes.

Q. Did you go in the place, Mrs. Van Houten?

30

A. I sat in the kitchen with Mrs. Erhard.

Q. And you saw Mrs. Glaser tending bar? A. Yes, sir.

PLAINTIFF RESTS.

Defendant moves that plaintiff be non-suited on the following grounds:

1. That there is no proof just what services the plaintiff performed.

40

2. That there is nothing showing that the deceased requested her services.

*Anna Erhard—Defendant—Direct*

The Court: There is testimony that he sent for her to come over. The mere acceptance of the work raises a presumption. I will deny the motion.

Defendant's counsel prays an exception to this ruling of the court.

10

Exception noted as ground of appeal.

ANNA ERHARD, defendant, sworn in her own behalf.

*Direct examination by Mr. Woerner.*

Q. Mrs. Erhard, you are the defendant in this case? A. I don't know what you mean.

Q. This suit is brought against you, isn't it? 20  
A. Yes.

Q. What was your husband's name? A. Julius Erhard.

Q. How old are you, Mrs. Erhard? A. I am seventy-four.

Q. How old was your husband? A. He was seventy-one when he died.

Q. That was when? A. Two years ago this month.

Q. You never had any children, did you? A. No, 30  
sir.

Q. Where did you live with Mr. Erhard? A. On Fourteenth avenue and Eighteenth street.

Q. Did your husband have a saloon there? A. Yes, sir.

Q. When did you move away from there? A. May is two years; I don't can stand it; I had to get somebody.

Q. How many years did you live there? A. Since 1884. 40

*Anna Erhard—Defendant—Direct*

Q. All the time? A. We lived across the street first.

Q. How long did you live in this place? A. Since 1901.

10 Q. Did he have the saloon before that? A. Yes, we had one on Livingston street.

Q. I mean in this place. A. No, we built that house.

Q. In 1901? A. Yes.

Q. Did you start the saloon business at that time? A. Yes.

Q. How many rooms were on the first floor? A. Three.

Q. What were they? A. A kitchen and a bedroom and a front room.

20 Q. Was there a saloon besides, or was that the front room? A. The saloon was downstairs.

Q. How many rooms were upstairs? A. Three on each floor.

Q. The rooms you lived in were on the same floor as the saloon, weren't they? A. No, sir.

Q. How many did you have? A. I had three altogether, but nothing in it, only my two beds, I had—I had no furniture.

30 Q. And the saloon business was carried on by your husband? A. Yes.

Q. When were you injured the way you are now?

Objected to as immaterial.

The Court: It may have some bearing whether they were before or after the services.

40 Q. How long were you the way you are now? A. About two years.

*Anna Erhard—Defendant—Direct*

Q. From 1917 to 1921— A. I can walk that time.

Q. You could walk? A. Oh, sure.

Q. Who did the housework in your place? A. Myself; I need nobody; I had nothing.

Q. You just lived with your husband there, 10 didn't you? A. Yes.

Q. Who took care of the saloon? A. I was there when he wasn't home.

Q. When he was there, what was he doing? A. He went in the saloon or worked in the yard.

Q. Who took care of the saloon? A. Myself.

Q. You and your husband? A. Yes, sir.

Q. Do you know Mrs. Glaser? A. Yes.

Q. Is she a friend of yours? A. No, sir, never 20 she was a friend.

Q. Did she come into your place? A. Yes.

Q. What did she do there? A. It is too dirty for me to say it; she whored him and he do the dirty work with her.

Objected to.

Mr. Woerner: I consent that it be stricken out.

Q. Did Mrs. Glaser do any work around there 30 tending bar? A. No, nothing, only she sat on the table.

Q. Did you serve beer or drinks at the bar? A. No, sir.

Q. Did she do the housework? A. No, sir, I did the housework myself.

Q. Did she ever do any nursing? A. No, sir, never.

Q. Did you ever hear Mrs. Glaser ask your husband for pay? A. I don't know. Only I see 40

*Anna Erhard—Defendant—Direct*

once he gave her a \$10 bill to buy her shoes and coal and everything. Sometimes I didn't have a cent in the house.

Q. Did Mrs. Glaser ever ask you for money?

A. I don't owe her no money; she didn't do nothing for me.

Q. Did she ever ask you for any money for work she claims she did for Mr. Erhard? A. Yes.

Q. You are the executrix of your husband's will? A. Yes.

Q. And he willed all his property to you? A. Yes.

Q. You are living with your niece now? A. Yes.

Q. Where do you live? A. In Secaucus.

20 *Cross examination by Mr. Roder.*

Q. How many times did you see Mrs. Glaser in this saloon? A. She wasn't much in the saloon; she was only after the old man; not in the saloon.

Q. Where was he? A. I don't know; ask her, maybe she knows better where she found him.

Q. Did she ever tend bar in that saloon? A. No, sir.

Q. Will you say she never served a drink to a customer in that saloon? A. Her drinks she take care.

Q. What did you become crippled from? A. Through her; through Mrs. Glaser. When I say something to her she tell him a couple of lies and he come and beat me; only through her I become a cripple.

Q. How many years ago did you become a cripple? A. Three years ago.

Q. When? A. I can't tell you exactly what month.

*Anna Erhard—Defendant—Cross*

Q. Was Mrs. Glaser there three years ago? A. No, she wasn't there no more.

Q. Did you become a cripple after Mrs. Glaser left or before? A. No, no; she was come there.

Q. Did you become a cripple after Mrs. Glaser left or before? A. Before.

Q. How long before? A. About a year.

Q. When did she leave? A. I don't know.

Q. About how many years ago did she leave? A. Around four years; I don't know exactly.

Q. Is it five years ago? A. Not five years.

Q. Two years ago? A. About four years ago.

Q. She left there about four years ago? A. I put her out.

Q. Did you ever have rheumatism? A. No, sir, never I was sick.

Q. Did Mrs. Glaser ever massage your body? A. No, sir.

Q. Did she ever take care of your feet? A. No, sir.

Q. Did she work in that saloon? A. No, sir.

Q. She never tended bar? A. No, sir.

Q. She never washed windows? A. No, sir.

Q. She never did any housework there? A. I do the housework myself what I got.

Q. You said she did not do anything for you. What did she do for your husband? A. Shall I tell you? Ain't that enough?

Q. Did he give her money? A. Yes.

Q. Did you see it? A. Yes.

Q. Where? A. Once upstairs, through the window I looked through; I want to spit in her face.

Q. What window did you look through? A. In the kitchen window upstairs; the next door was a building was built on the house and was down and there she lived with him.

*Anna Erhard—Defendant—Cross*

Q. You saw that? A. Yes.

Q. When was that? A. I don't remember.

Q. How long ago was it? A. About five years, I guess.

Q. Did you ever see her there in the morning?

10 A. No, never I seen her in the morning.

Q. Did you ever see her in the afternoon? A. Yes, in the afternoon she come and sit on the table.

Q. Did you ever see her there in the evening? A. She don't go before we close up in the evening.

Q. Did you know Mrs. Van Houten? A. Yes.

Q. Did she visit you every evening? A. Not every evening.

Q. Did she come in there? A. Yes, and she went after him to the movies, and Mrs. Van Houten told him to stay home and not run after another married man.

Q. Do you know Mr. Heinold? A. Yes.

Q. Did you see him in there quite often? A. No, once in awhile.

Q. Do you know Mr. Schilling? A. Yes.

Q. Did you see him there often? A. No.

Q. Do you know Mr. Marinella? A. He come a couple of times a week.

Q. Do you know Mr. Leary, the man who testified here? A. Yes.

Q. Did you see him in there? A. Yes.

Q. Was Mr. Erhard in there when he was in there? A. Yes.

Q. Was Mrs. Glaser ever there? A. No.

Q. Was Mrs. Glaser there when Mr. Marinella came in? A. No.

Q. Was she there when Mr. Heinold came in? A. Yes. Mr. Heinold don't come in much, maybe once a week.

40

*Anna Erhard—Defendant—Cross*

Q. Do you know Mrs. Miller? A. I seen her only once.

Q. Was Mrs. Glaser there then? A. Not that day, no.

Q. So you say you were in fit physical condition to take care of that saloon in 1917? A. Yes, sir. 10

Q. There was nothing the matter with you? A. No, sir.

Q. And there was nothing the matter with you in 1918? A. No, sir.

Q. In 1919? A. No.

Q. In 1920? A. No.

Q. In 1921? A. No.

Q. In 1922? A. No.

Q. In 1923? A. Yes, 1923, I got a licking for it only through her. 20

Q. And that made you a cripple? A. Yes.

Q. But there was absolutely nothing the matter with you before that? A. No, sir.

Q. You are the executrix of your husband's estate? A. Yes.

Q. And he left you all of his property in his will? A. He left me all the property and the debts.

Q. But he left you property? A. Yes.

Q. When did he make the will, do you know? 30

The Court: Is it admitted he died January 27, 1925?

Mr. Woerner: Yes.

Q. Do you know when he made the will? A. He makes the will four years before he die.

Q. That was 1921? A. Yes, sir.

Q. Was Mrs. Glaser working there then? A. No, sir. 40

*Anna Erhard—Defendant—Cross*

Q. So your story is that she never did any work in the saloon? A. No.

Q. She never did any housework? A. I didn't need nobody.

10 Q. She never waited on the customers? A. No, sir.

Q. She never cleaned any windows? A. No.

Q. She never did any housework? A. No.

Q. She never massaged you? A. No.

Q. She never took care of your feet? A. No.

Q. So that is your story? A. That is no story; it is the truth.

20 AUGUSTA SCHAEFFER, sworn in behalf of defendant.

*Direct examination by Mr. Woerner.*

Q. Mrs. Schaeffer, where do you live? A. 18 Columbia avenue, Vailsburg.

Q. Do you know Mrs. Erhard? A. A good many years.

Q. How long have you known her? A. Forty-two years.

30 Q. Did you ever visit her at 480 South Eighteenth street? A. Yes, sir.

Q. About how often? A. Of late years, only maybe around the holidays—maybe two or three times of late.

Q. Between 1917 and 1921, how often did you visit her? A. Maybe twice a year.

Q. Did you see Mrs. Glaser there? A. Only once.

40 Q. What was she doing? A. Sitting and having refreshments.

*Augusta Schaeffer—For Defendant—Cross*

Q. Was she working? A. Yes, sir.

Q. Were you ever there while meals were prepared? A. Yes, sir.

Q. Who prepared them? A. Mrs. Erhard.

Q. Did you ever see who did the housework? A. Mrs. Erhard. 10

Q. What time would you used to get there when you visited her? A. Maybe around four o'clock in the afternoon.

*Cross examination by Mr. Roder.*

Q. How many times did you visit her in 1917? Twice? A. I guess that's about all.

Q. How about 1918? A. That's about all.

Q. About once or twice a year. A. Yes, sir, generally in the spring and fall. 20

Q. Would Mr. Erhard be there when you visited her? A. Yes, sir.

Q. Always? A. I always seen him when I visited.

Q. In those years, 1917 to 1921, you only saw Mrs. Erhard once or twice a year? A. Yes.

Q. What was Mrs. Erhard doing? A. She helped.

Q. Was she able to walk? A. All except the last two years. 30

Q. Did she ever complain at that time? A. Not that I know of.

Q. And she was able to walk at that time? A. Yes, sir.

Q. You never saw Mrs. Glaser in there? A. Only once.

Q. You never saw her do any work on the outside? A. Not when I was there. 40

*Adam Stultz—For Plaintiff—Direct*

ADAM STULTZ, sworn in behalf of the plaintiff.

*Direct examination by Mr. Woerner.*

10 Q. Mr. Stultz, where do you live? A. I lived right across the street, corner Fourteenth avenue and Eighteenth street.

Q. How long did you live there? A. Since last June, June, a year ago; the first of June will be two years ago.

Q. Where did you live from 1917 to 1925? A. Right back of Erhard's saloon for twenty years.

Q. On what street? A. Eighteenth street and Fourteenth avenue.

20 Q. I mean where you lived. A. Right back of the saloon.

Q. What was the street number? A. 471 Eighteenth street.

Q. Did you know Mr. and Mrs. Erhard? A. I certainly did.

Q. Did you ever visit them? A. I was there every time there was something the matter and any one hurt or sick.

30 Q. Between 1917 and 1925 how often did you go there? A. When it was necessary I would go every morning to see how they were making out. Sometimes I would go out to the store and tend them. He come over with help to take care of the people.

Q. How many times did you get there a week? A. Maybe two dozen times.

Q. You helped do errands? A. I did everything for them.

Q. Did you know Barbara Glaser? A. Yes, I know her.

40 Q. Did you ever see her in there? A. I seen her in there.

*Adam Stultz—For Plaintiff—Direct*

Q. What was she doing? A. She wasn't doing much of anything, just butting in around, behind the bar; she would do a little work, not much.

Q. You say she did tend bar? A. Sometimes; very little.

10 Q. Do you know who did the housework there? A. Mrs. Erhard; I helped her many times and he helped her.

Q. Who tended the bar? A. Erhard tended to it himself and when he went away and she couldn't tend bar I would tend bar for them. I used to do everything around that house that was necessary. I took that woman there in the morning and put her shoes on and stockings on and everything else, she couldn't do it.

*Cross examination by Mr. Roder.*

20 Q. When did you put her shoes and stockings on? A. Many a morning.

Q. How many years ago did you start? A. I didn't keep track.

Q. Two years ago? A. Longer than that.

Q. Five years ago? A. I wouldn't swear when it was; off and on ever since I been living there.

30 Q. In twenty years you did that? A. I was right there on the job.

Q. Every morning you put her shoes and stockings on? A. No, whenever it was necessary.

Q. Why did you put her shoes and stockings on? A. She couldn't reach down.

Q. Was she sick? A. She could walk.

Q. But she couldn't stoop down? A. No.

Q. Did she use a cane when she walked? A. Not all the time.

40 Q. Sometimes? A. Lately.

*Adam Stultz—For Plaintiff—Cross*

Q. Did she use a cane for twenty years? A. Not twenty years ago.

Q. Fifteen years ago? A. I don't remember.

Q. Ten years ago? A. Yes, she used a cane then, but she could walk around.

10 Q. Did she have one cane or two of them? A. She had two of them.

Q. Was she using canes ten years ago? A. Yes, but she could walk.

Q. What business are you in? A. In the coal business.

Q. He was a customer of yours? A. He was my landlord.

Q. Was he a customer of yours? A. Yes.

20 Q. Did you sell him ice? A. Yes, anything he wanted.

Q. You were around there whenever anybody was sick? A. I was right there on the job.

Q. You are not a physician? A. No, but I was always there until I could send for him (indicating).

Q. How many times did you send for him? A. I don't know.

30 Q. How many times? Once? A. More than once.

Q. Ten times? A. I didn't keep track.

Q. You sent over for him a great many times? A. Yes.

Q. Did you send for him in 1917? A. I don't know if I did or not; it is hard to keep that in your head—eight or ten times.

Q. In the last ten years you sent over for him many times? A. Well, Erhard was sick.

40 Q. Why did you send for him? A. He is his cousin; he was the first man I sent for.

*Adam Stultz—For Plaintiff—Cross*

Q. Wasn't Mrs. Erhard able to take care of him? A. She couldn't go up and down them steps; it is pretty hard for a woman in that shape to climb them steps.

Q. She was as bad ten years ago? A. Yes, pretty near as bad as she is today. 10

Q. She could tend bar? A. Yes.

Q. And wash dishes? A. Yes.

Q. Did you see her scrub? A. I seen her take the chair and shove it ahead of her and put the stuff on the chair.

Q. Did you see Mrs. Glaser there? A. Yes.

Q. Did you see her tend bar? A. Not much.

Q. Did you see her tend the bar? A. Yes.

Q. Did you ever see her carry out any drinks to any customers? A. No drinks were carried out that I know of. 20

Q. Did you ever see her hand drinks over the bar to a customer? A. Yes, I seen her do that.

Q. Did she ever serve one to you? A. She might have, I don't know.

EDITH ENGBRETSSEN, sworn in behalf of defendant. 30

Q. Mrs. Engebretsen, where do you live? A. 63 Hillside terrace, Irvington.

Q. Do you know Mr. and Mrs. Erhard? A. Yes.

Q. How long have you known them? A. Since 1913.

Q. Did you visit Mrs. Erhard from 1917 to 1925? A. I have visited her ever since I knew her, maybe once or twice a week, maybe once a month.

Q. How long is it that you know her? A. Since 1913. 40

*Edith Engebretsen—For Defendant—Direct*

Q. Do you know Barbara Glaser? A. I seen her once in my life.

Q. Where did you see her? A. Mrs. Erhard's.

Q. What was she doing? A. Sitting in the back room with her two daughters.

10 Q. Did you ever see the meals prepared at the Erhards? A. Yes, many times.

Q. Who prepared them? A. Mrs. Erhard.

Q. Who did the housework there? A. She is the only one I ever seen do anything, that is, seen her do what was done. There wasn't a whole lot done.

Q. They didn't have many rooms? A. No, she had the saloon and the back room downstairs. She didn't use the rooms upstairs much.

20 Q. Do you know who took care of the saloon? A. I never seen any one but Mr. Erhard.

Q. Did you ever see her serve any drinks? A. I never seen her but once.

Q. What was Mrs. Erhard's condition physically from 1917 to 1925 so far as you could see? A. Well, she always got around pretty good. I would be in on Sundays with my husband and she did her own washing.

30 Q. Did she use a cane to get around? A. Once in awhile, but she could get around without it. When I first knew her she could get around without it.

*Cross examination by Mr. Roder.*

Q. How many times did you visit her in 1913? A. Well, I couldn't say that. I used to go in once in awhile with my husband and once in awhile alone.

40 Q. Once a week? A. Sometimes more.

*Edith Engebretsen—For Defendant—Cross*

Q. And sometimes less? A. Sometimes less.

Q. How many times did you get in at least? A. Five or six days.

Q. What time would you get there? A. I lived across the lot and I would run in in the morning and across the lot. 10

Q. Do you know Mrs. Glaser? A. No.

Q. Did you know she lived in the neighborhood? A. No, I seen her once. I didn't even know who she was until I seen her here this morning.

Q. How long were you there from 1917 to 1921? A. I couldn't say how many times, but at least once a week, sometimes twice a week.

Q. Sometimes less? A. No, seldom less than that.

Q. Did you ever see Mr. Heinold? A. No. 20

Q. Mr. Schilling? A. No.

Q. Mr. Leary? A. No.

Q. Mr. Marinella? A. No.

Q. Did you ever see Mrs. Van Houten? A. Yes.

Q. But Mrs. Glaser was never there when Mrs. Van Houten was there? A. No.

Q. You will say from 1917 to 1921 Mrs. Erhard used a cane? A. I didn't notice her, I suppose she did use it, but I have seen her get around without it. 30

Q. But when she had to get around without it she would use different objects like the table, to support her? A. I didn't notice that much.

Q. So you didn't pay particular attention if you didn't notice that. A. No.

*Redirect examination by Mr. Woerner.*

Q. How long did you live near them? A. 413 South Seventeenth street, one block from them, 40 from 1916, then in Peshine avenue.

*Eophil Miller—For Defendant—Direct**Recross examination by Mr. Roder.*

Q. How often would you go after you moved to Peshine avenue? A. My husband used to like to go in and see her and we went once a week anyway.

10 Q. During those visits did you ever see Mr. Leary? A. No.

Q. Mr. Heinold, Mr. Schilling, Mr. Marinella, Mrs. Miller, or Mrs. Glaser? A. No, I seen Mrs. Glaser the once.

Q. Did you ever get out in the evening? A. Lots of times in the evening, lots of times in the day time.

20 EOPHIL MILLER, SWORN in behalf of defendant.

*Direct examination by Mr. Woerner.*

Q. Mr. Miller, where do you live? A. Fifteenth avenue.

Q. Where did you live in 1917? A. I lived in 1917, I was back from the old country only 1920; from this time I lived near her by Stultz.

30 Q. What part of 1920 did you come over? A. Middle of February—the 12th of February on Lincoln's Birthday.

Q. You moved into Mr. Erhard's house? A. Yes, 473 is the number where I lived, in a little house from Mr. Erhard.

Q. How long did you live there? A. I lived there again when he died.

Q. Up to the time of his death? A. Yes.

40 Q. Did you visit Mr. and Mrs. Erhard? Did you go in and see them? A. I saw him every day; sometimes three or four times a day.

*Eophil Miller—For Defendant—Cross*

Q. Where would you see him? A. In the saloon or in the yard.

Q. Who tended the saloon there? A. Mr. Erhard and Mrs. Erhard tended the saloon what I see.

Q. Did you know Mrs. Glaser? A. Sure I 10 knew; oh, yes, pretty good.

Q. Did she tend the saloon? A. She was sometimes behind the bar when a man comes in that is what she likes, sometimes to have a drink.

Mr. Roder: I ask that that be stricken out as a conclusion.

(Answer stricken out.)

Q. Do you know who cooked the meals? A. 20 Mrs. Erhard. She walks with a stick around the kitchen, she washes everything and cleans the floor with a brush and a stick.

Q. Did you ever see Mrs. Glaser do any work? A. No, she was always there with a nice brown dress in the saloon.

*Cross examination by Mr. Roder.*

Q. She had a nice brown dress? A. Yes, a nice brown dress. When a man comes in she jumps behind the bar. 30

Q. When a man comes in would she serve him drinks? A. Yes, and she drinks with the man, too.

Q. Erhard was there? A. Sometimes.

Q. And he let her do it? A. Sure she do it before he say anything.

Q. And she did it sometimes when Mrs. Erhard was there and Mr. Erhard wasn't? A. Mr. Erhard was all the time there. 40

*Eophil Miller—For Defendant—Cross*

Q. How often did you go into that saloon? A. Every day once or twice, sometimes two times and three times. I stay home in the winter time. I have nothing to do and I have company with that place.

10 Q. Did you go in there every night? A. Yes, sir, every night.

Q. How long did you stay? A. Sometimes nine o'clock, sometimes ten o'clock, or eleven o'clock.

Q. How many times did you see Mrs. Glaser in there? A. Two or three times in a week, maybe an hour or an hour and a half.

Q. Did you ever see her in the afternoon? A. Yes.

20 Q. How long? A. Very long.

Q. Did you ever see her around two o'clock in the afternoon? A. I guess two or three times after dinner, so.

Q. Did you ever see Mr. Erhard ask her to come to work? A. Oh, no.

Q. Did you? Yes or no. A. No.

30 Q. Was Mr. Erhard there all the time? A. Mr. Erhard is not all the time there. He went to the movies to the city downtown and Mrs. Glaser going to see after him in the movies, and in the saloons.

Q. Did you ever go downtown with him? A. Oh, no. I would see him myself; everybody knows Erhard.

Q. Did you ever go to the saloon here on Halsey street with him? A. No, that is where he got meet her.

40 Q. Who told you about it if you weren't there? A. Mr. Erhard told me one time she is coming and looking after him and give him hell why he don't take her along.

*Eophil Miller—For Defendant—Cross*

Q. In 1920, when you came from Germany, was Mrs. Erhard walking on a pair of crutches or canes? A. No, she had one stick and she could go better than now. She can go up and down. I seen that a dozen times.

Q. What business are you in? A. I am a car- 10  
penter.

Q. And you are a good friend of Mrs. Erhard's? A. Yes.

Q. Have you talked this over with her before coming here today? A. No, I never speak to her about this matter.

Q. You never spoke to anybody else? A. No. Mr. Erhard told me many things and told me—

Q. Just answer my questions. Did you ever tell 20  
Mrs. Erhard you would do what she wanted you to do because she would take care of you in her will? A. No.

Q. You didn't make that statement? A. No, I had nothing.

Q. But you don't know whether Mrs. Erhard was working there or did any work before February 12, 1920? You weren't in the country then, were you? A. I came back after the war, you know.

30 Q. You went away during the war? A. I came back after the war.

Q. When did you go to Germany? A. Before the war; 1912.

Q. And you came back in 1920? A. 1920.

Q. Do you know Mr. Leary? A. No.

Q. Did you ever see him? A. I saw him here.

Q. Is this the first time you have seen him? Mr. Leary, will you please stand up? A. No.

Q. Mr. Marinella, will you please stand up? 40  
Did you ever see him? A. No, never.

*Eophil Miller—For Defendant—Cross*

Q. Mr. Schilling, will you please stand up? Did you ever see him? A. No, a couple of times go past.

10 Q. Mr. Heinold, will you please stand up? Did you ever see him? A. That is the noodle soup man. I didn't see him in the saloon, only on the sidewalk at night.

Q. You never saw him in the saloon? A. No, sir.

Q. Do you know where he lives? A. No, I don't see him after he went away.

Q. Where did you live in 1920? A. I rent by Mr. Erhard.

Q. Where was that house, near the saloon? A. Sure.

20 Q. Next door? A. Not direct next door; there was a house between.

Q. Were you living there when Mr. Erhard put up the fire escape on the corner house? A. He was all the time on the fire escape.

Q. Did you help him put it up? A. No, he wouldn't have me for such a thing.

Q. Do you know where Heinold lived? A. No.

30 Q. Did you know that he was a neighbor of yours? A. I know he was a neighbor as I say before, I talked one time with him on the sidewalk.

Q. You never saw him in Erhard's saloon? A. Only on the sidewalk.

Q. And you were there pretty nearly every night of the week? A. Yes.

Q. Mrs. Van Houten, will you please stand up? Did you ever see that lady? A. Many times in day and night, oh, yes.

40 Q. Mrs. Miller, will you please stand up? Did you ever see that lady in there? A. No, I cannot remember her.

*Emma Ueberall—For Defendant—Direct*

EMMA UEBERALL, sworn in behalf of the defendant.

*Direct examination by Mr. Woerner.*

Q. Mrs. Ueberall, where do you live? A. 376 Central avenue, Secaucus. 10

Q. Mr. Ueberall is your husband? A. Yes.

Q. Are you related to Mrs. Anna Erhard? A. No, sir.

Q. Is your husband? A. Yes.

Q. What relation is he? A. I couldn't tell you.

Q. How long have you known Mrs. Erhard? A. 1906.

Q. Did you live with her or ever visit her? A. Always visited her. 20

Q. Did you ever visit her while they had this saloon at Fourteenth avenue and Eighteenth street? A. Many times.

Q. How many times did you get there? A. I wasn't there during the week, only Saturdays and Sundays.

Q. How many Saturdays and Sundays would you get there? A. About three times in a month.

Q. Do you know who did the housework? A. Mrs. Erhard. 30

Q. Do you know who did the washing? A. Mrs. Erhard.

Q. Who cooked the meals? A. Mrs. Erhard.

Q. Who took care of the bar? A. Mr. Erhard and Mrs. Erhard.

Q. Do you know Mrs. Glaser? A. No, sir.

Q. Did you ever see her around there? A. I seen her only once in the kitchen on a Sunday afternoon.

Q. What was she doing there? A. Nothing. 40

*Emma Ueberall—For Defendant—Cross*

Q. She was sitting there and talking? A. She was sitting there and talking and reading the paper.

Q. Mrs. Erhard lives with you now, doesn't she? A. Yes, sir.

10 Q. Did you use to help Mrs. Erhard? A. I did.

Q. What did you do for her? A. I had to clean and wash her feet—massaging her feet.

*Cross examination by Mr. Roder.*

Q. When did you massage her feet? A. When I came there and she wanted me.

Q. What year was that? A. It was between 1917 and 1921.

20 Q. Did you do it in 1917? A. I did.

Q. How often? A. About a month—every month once.

Q. And that is when you came over once a month? A. Oh, I came there and I seen Mrs. Erhard.

Q. Did you do anything else but massage her feet in 1917? A. That's all.

Q. What was the matter? A. She had swollen.

30 Q. That is all that was the matter with her? A. She had cold in it.

Q. How long did you continue the treatment?

A. About an hour.

Q. I mean a year or two years? A. Oh, longer.

Q. For how many years? A. From 1917 up to 1927.

Q. And she had a cold in her feet ten years? A. I couldn't say ten years; only I fixed up her feet a little bit.

40 Q. Could she walk without the aid of her canes in the last ten years? A. She could.

*Emma Ueberall—For Defendant—Cross*

Q. Well enough to do her own housework? A. Well enough to do her own housework.

Q. You are not related to her? A. No.

Q. Is Mr. Ueberall related to her? A. Yes.

Q. Has she made any promise that if you testify in her behalf she would take care of you in her will? A. Not yet. 10

Q. Do you expect her to? A. That I don't know.

Q. But you profess to hope that she will? A. I don't know.

Q. How many times did you come over in 1918 to massage her feet? A. Every month once.

Q. For all those years? A. Yes.

Q. And that was a Sunday? A. Saturday or Sunday, when I got time, and in the week I come to visit Mrs. Erhard. 20

Q. Was it in the day time? A. Always in the day time.

Q. About what time? A. About four o'clock.

Q. Did you come alone? A. Yes.

Q. About what time did you go home? A. About eight o'clock.

Q. You never saw Mrs. Glaser there but once? A. Only once on a Sunday. 30

Q. What year was it in that you saw Mrs. Glaser that once? A. I couldn't tell you exactly.

Q. About when? A. I don't remember.

Q. 1917? A. I don't remember.

Q. 1918? A. I couldn't remember; I don't put it down.

Q. Was it before 1921 or after 1921? A. After 1921 I didn't see her.

Q. What year was it about? A. 1918.

Q. What was she doing that once? A. In the kitchen reading the paper. 40

*Emma Ueberall—For Defendant—Cross*

Q. Where was Mrs. Erhard? A. In the kitchen.

Q. And you? A. In the kitchen.

Q. What were you doing? A. Sitting with Mrs. Erhard.

10 Q. You were not taking care of her feet? A. No.

Q. Did you ever see Mrs. Glaser taking care of Mrs. Erhard's feet? A. No, she wouldn't have it; she wouldn't allow it.

Q. Were you ever there when she declined to let Mrs. Glaser take care of her feet? A. She didn't ask her.

Q. Why do you say she wouldn't allow her? A. Mrs. Erhard told me herself.

20 Q. You were there eight o'clock evenings you said, weren't you? A. Before I went home it was eight o'clock.

Q. Did you ever go home later than eight o'clock? A. No, sir.

Q. Did Mr. Ueberall ever come and get you? A. No.

Q. Didn't you two ever come to pay a visit to Mr. and Mrs. Erhard in the evening? A. Not in the evening.

30 Q. What time would you go home when you paid a visit? A. About nine o'clock when my husband was with me.

Q. Do you know Mr. Leary? A. No, sir.

Q. Is today the first time you ever have seen him? A. I never seen him.

Q. Stand up, please, Mr. Leary. A. I never saw him.

40 Q. When you stayed until nine o'clock you were in the kitchen? A. Yes, but there was no window.

*Emma Ueberall—For Defendant—Cross*

Q. You could see into the saloon? A. Yes.

Q. You didn't see him? A. No.

Q. Did you ever see Mrs. Van Houten? A. No.

Q. Did you see Mrs. Miller? A. I don't know.

Q. You saw her for the first time today? A. Yes. 10

Q. Did you ever see Mr. Schilling? A. No, sir.

Q. Today was the first time? A. Yes.

Q. Did you ever see Mr. Marinella? A. No.

Q. Today was the first time? A. Yes.

Q. Did you ever see Mr. Heinold? A. That is the paper man, ain't it?

Q. No. Stand up, please, Mr. Heinold. A. No, I don't know.

Q. Did you ever know he lived in the house? A. No. 20

Q. Did you ever know any of the tenants in the house? A. Only Mrs. Van Houten.

Q. You know Mr. Schreiber, the paper man? A. Only in 1925 when he died I seen the paper man.

*Redirect examination by Mr. Woerner.*

Q. You say they didn't do much business in the saloon? A. No business at all in the saloon— 30

Objected to as immaterial.

The Court: I will let it stand.

ADJOURNED until Tuesday, January 25, 1927, at ten o'clock, A. M.

Tuesday, January 25, 1927

Continued pursuant to adjournment.

Present, counsel as before stated. 40

*William J. Erhard—For Defendant—Direct*

WILLIAM J. ERHARD, SWORN in behalf of defendant.

*Direct examination by Mr. Woerner.*

Q. Mr. Erhard, where are you employed? A.  
10 By the county.

Q. In what capacity? A. Essex County Mosquito Extermination Commission.

Q. Are you related to Mr. Erhard, the defendant in this suit? A. Yes.

Q. What relation are you? A. A cousin.

Q. Did you ever visit him at his place of business on Fourteenth Avenue and Eighteenth Street? A. Yes, sir.

Q. What business did he conduct there? A.  
20 Cafe.

Q. How often did you get up to visit him? A. Occasionally, sometimes once a week and sometimes not as often. It all depends on if I was in the neighborhood I would stop there once a week.

Q. Did you ever see Barbara Glaser there? A. Yes, sir.

Q. How often did you see her there? A. On several occasions.

Q. What was she doing? A. She seemed to be  
30 there on a friendly visit, as I thought.

Q. Was she doing any work? A. No, I couldn't say that.

Q. Do you know who did the housework there? A. As far as I know, Mr. Erhard used to do most of the work himself.

Q. That is, in the saloon? A. Yes.

Q. Who did the housework? A. He didn't have  
40 much housework to do; he did that himself, mostly.

*William J. Erhard—For Defendant—Cross*

Q. Who cooked the meals? A. He cooked the meals.

*Cross examination by Mr. Roder.*

Q. What time of the day did you call on your cousin? A. Sunday evening, when I was coming  
10 from the bicycle track; sometimes when I worked there in the neighborhood.

Q. Mostly evenings that you called? A. Evenings and sometimes in the afternoon.

Q. Did you see him cook the meals in the afternoon? A. No, not in the afternoon.

Q. Did you see him cook them Sunday nights? A. Yes.

Q. Where did he do this cooking? A. In the  
20 back of the cafe he had to take his range.

Q. And did he do the housework? A. He did there.

Q. How? A. He did it.

Q. Did he wait on the bar? A. Yes, sir.

Q. And he did all the housework around there? A. Yes, so far as I know.

Q. So you didn't see Mrs. Erhard do any work then, did you? A. Sometimes she did.

Q. What was her physical condition when you  
30 went there? A. It was bad; she was lame but she could get around with the assistance of two canes.

Q. How long did she suffer with that physical condition? A. I couldn't say; quite a number of years, as far as I know.

Q. Ten years? A. I wouldn't say ten to be exact.

Q. Was it more than ten or less than ten? A. I  
40 don't know; I don't think so. Maybe more or less.

*William J. Erhard—For Defendant—Cross*

Q. Ten years more or less? A. Yes.

Q. And she used two canes at that time and had great difficulty in getting around and walking around? A. Oh, yes.

10 Q. When you saw Mrs. Glaser there, how was she dressed? A. Fairly well.

Q. Did she have her hat and coat on? A. No, it was mostly in the summer time I visited.

Q. So you did not visit in the winter time? A. Not so often.

Q. How many times did you visit him in the winter time? A. Maybe once a month or every two weeks.

Q. Your work brought you in that neighborhood? A. Yes, sometimes.

20 Q. What part of the city did you work in? A. My line covers all over the county.

Q. Did you spread oil for the extermination of mosquitos? A. Yes.

Q. Did you work in back yards or the meadows? A. Years ago I did cover that section in back yards.

30 Q. Within recent years—within ten years—what has been the location in which you have worked? A. Down the meadows, mostly.

Q. Where do you live? A. 15 Garrison street.

Q. That is down neck? A. Yes.

Q. You came up to visit your uncle? A. I stopped in from the ball grounds, yes.

Q. Did you ever see Mrs. Glaser serve any customers? A. Only in a friendly way I did.

Q. Did you see her behind the bar? A. On one or two occasions.

40 Q. Did you see her hand out drinks to any customers? A. On one occasion to friends.

*William J. Erhard—For Defendant—Cross*

Q. You have seen her there on more than one occasion? A. Oh, yes.

Q. On how many occasions did you see her there? A. Five or six, if my memory serves me right.

Q. Do you recollect whether or not you saw her every time you came there? A. I saw her every time she was there, perhaps.

Q. How many times was she there? A. I couldn't figure that out.

Q. As a matter of fact, you saw her there every time you got there, didn't you? A. No, sir, not every time.

Q. But every time you visited there? A. Not every time.

Q. And she was there very often when you were there. A. I wouldn't say that.

Q. What would you say? A. I would see her occasionally.

*Redirect examination by Mr. Woerner.*

Q. Does your testimony refer to the period from January 1, 1917, to the latter part of September, 1921? A. Yes.

30 HENRY W. SANDHUSEN, sworn in behalf of the defendant.

*Direct examination by Mr. Woerner.*

Q. Mr. Sandhusen, where do you live? A. 116 Conover avenue, Nutley.

Q. By whom are you employed? A. Public Service.

Q. Did you know Anna and Julius Erhard? A. Yes, sir.

*Henry W. Sandhusen—For Defendant—Direct*

Q. How long have you known them? A. Twenty-five years or more.

Q. Did you ever visit there? A. Yes, sir.

Q. Did you visit there on January 1, 1917? A. Around that time.

10 Q. Did you visit them in 1925? A. Yes, sir.

Q. Did you know Barbara Glaser? A. There is a couple of Glasers stopped in there. I don't know which one it was. I don't know their first names; I don't know which Glaser it has got reference to here. If the lady stood up, maybe I could identify her.

The Court: Stand up, please, Mrs. Glaser.

20 Witness: Yes, sir.

Q. Did you ever see her in the Erhard place on Fourteenth avenue and Eighteenth street? A. Yes, sir.

Q. How often did you get there? A. I was at different times I would be there three or four times.

Q. And at other times? A. Once a week I would stop in or as he would send for me and I would come there.

30 Q. What did you do there? A. Repairing.

Q. What kind of repairing? A. Plumbing and tinning.

Q. When you saw Mrs. Glaser around there, what was she doing? A. Sitting in the kitchen or at the table at the end of the saloon.

Q. Did you ever see her tend bar? A. No, sir.

Q. Did you ever see her do any housework? A. No, sir.

40 Q. Or cooking any meals? A. No.

*Henry W. Sandhusen—For Defendant—Direct*

Q. Who did tend bar? A. I seen Mr. Erhard there and Mrs. Erhard there.

Q. Who would cook the meals? A. Mrs. Erhard would fix the meals at the tables and she would hobble to the stove herself.

Q. Who did the housework? A. As much as 10 was done I seen him do and she did as much as she could, I guess.

Q. You are not related to the Erhards, are you? A. No, sir.

*Cross examination by Mr. Roder.*

Q. How long have you lived at Conover avenue, Nutley? A. A year.

Q. Where did you live previous to that? A. 20 Twenty-first street.

Q. How far is that from Mr. Erhard's place? A. About a fifteen minute walk.

Q. You worked regularly? A. Yes, sir.

Q. In 1917? A. Yes, sir.

Q. To 1925? A. Yes, sir.

Q. In the plumbing business? A. No, sir, I worked for the Public Service.

Q. But you did do some tin work for Mr. Erhard? A. Yes, sir.

Q. And some plumbing work? A. Yes, sir. 30

Q. Where did you do that work? A. In different properties he had around there.

Q. Where? A. Twenty-first street and Fourteenth avenue; Eighteenth street and Fourteenth avenue; four or five houses on Eighteenth street.

Q. Did you ever do any plumbing work when he built some houses? A. No, sir.

Q. Do you know how many houses he built? A. 40 The last one he must have been at about ten years.

Q. How many properties did he own? A. I don't know; they said he had many.

*Henry W. Sandhusen—For Defendant—Cross*

Q. You did work on at least a half dozen of these houses? A. Yes, sir.

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

Q. How old are you? A. Thirty-nine.

10 Q. And you have known him since you were fourteen years old? A. Yes, sir.

Q. When did you first start to go to work for him? A. When I was about seventeen years old. I didn't go to work for him then; I was working for some plumbers at that time.

Q. You have known Mrs. Erhard twenty-five years? A. Yes, sir.

Q. What was her condition? A. Pretty fair.

20 Q. Was she lame? A. No, she was a heavy woman and hard to get around, but she wasn't disabled.

Q. What was her condition for the ten years past? A. Ten years ago her physical condition failed a whole lot.

Q. She used canes? A. For awhile one cane and later on two.

Q. You got into the place often? A. Yes, sir.

Q. Afternoons? A. Well, it would depend on what shift I was on. When he had work to do I would do it when it was my convenience to do it.

30 Q. You got in evenings? A. More so during the day than evenings.

Q. Did you pay him any social calls evenings? A. Quite a few.

Q. Did you know Mrs. Van Houten? A. Yes, sir.

Q. She was often there? A. She lived upstairs.

Q. She was there frequently? A. Yes.

40 Q. She worked for Mrs. Erhard? A. Not that I seen.

*Henry W. Sandhusen—For Defendant—Cross*

Q. As a matter of fact, Mr. Erhard did all the work around there in your presence, didn't he?

A. Not all of it; she pushed a broom around as much as she could, too.

Q. Was it difficult for her? A. Yes.

10 Q. You never saw her wait on any customers? A. Yes, sir.

Q. Would she have a hard job doing it? A. Yes, sir, and if she didn't know them she wouldn't get up and wait on them.

Q. Did you ever see Mrs. Glaser in the place? A. Yes, sir.

Q. Did you ever see her talk to Mrs. Erhard? A. Yes.

20 Q. When did you see her in there last? A. I don't know how long ago that is, but there was some trouble and I ain't seen her since.

Q. When did you first see her in there? A. That I couldn't say; it is quite some time.

Q. Did you see her in 1917? A. I can't just place the years.

Q. Did you see her in 1920? A. I can't just place the years.

30 Q. How many times did you see her there? A. I seen her there quite often.

Q. What was she doing? A. Sitting at the table.

Q. Did she ever have her hat and coat on? A. At times.

Q. Did you ever see her back of the bar? A. No, sir.

Q. Did you ever see her wait on any customers? A. No, sir.

Q. You just thought she was there on a social visit? A. Yes, sir.

*Eugene Ueberall—For Defendant—Direct*

EUGENE UEBERALL, sworn in behalf of the defendant.

*Direct examination by Mr. Woerner.*

10 Q. Mr. Ueberall, where do you live? A. Secaucus, 326 Central avenue.

Q. Are you related to Mr. Erhard? A. Yes, sir.

Q. What relation were you? A. A cousin.

Q. It is Mrs. Erhard that lives with you now? A. Yes.

Q. How long have you known Mr. and Mrs. Erhard? A. Since 1899.

Q. Since when have you visited them? A. Since that time.

20 Q. Did you visit them at their place of business and home on the corner of Fourteenth street and Eighteenth avenue? A. In the saloon, yes.

Q. Mr. Erhard conducted the saloon? A. Yes, sir.

Q. Do you know Mrs. Glaser? A. Yes, sir.

Q. Did you see her in the place between 1917 and 1925? A. Yes, sir.

30 Q. What was she doing? A. She would keep him company, coming down about half-past two and going home about five o'clock. She came again 7:30 and went home ten o'clock.

Q. What was she doing? A. Nothing.

Q. Did she ever tend bar? A. No, sir.

Q. Do house work? A. No, sir.

Q. Kitchen work? A. No, sir.

Q. Or wash windows? A. No, sir.

Q. Who did the housework there? A. Mrs. Erhard. When I was there I done it.

40 Q. Who tended the saloon? A. Mr. Erhard, but there was no business in 1917. He put seventy-

*Eugene Ueberall—For Defendant—Direct*

five cents in the register and at the end of the day maybe he had a dollar. After prohibition he had no busienss.

10 Q. What did he do? A. He had a little soda water and maybe you wouldn't see nobody for days. He had the front door locked and then he didn't open it again. Maybe he sold soda water or a bottle of beer. People didn't drink the near-beer.

Q. Do you know who did the washing there? A. No, sir.

Q. Who did the housework? A. Mrs. Erhard done the housework, yes, sir.

20 Q. Did you ever help her around there? A. When I came there, yes, I cleaned the saloon and I cleaned the bar and I was there Saturday and Sunday many times. I was there sometimes two weeks. I helped him once in awhile. There wasn't much work.

Q. What was your business at that time? A. I am a switch maker, making switches for the railroad and the Public Service.

*Cross examination by Mr. Roder.*

30 Q. When did you first come over to help Mr. Erhard? A. I came over to help Mr. Erhard in 1900.

Q. Did he ask you to come over and help him? A. No, he never did.

Q. How many times did you come over in 1900? A. I was there every Sunday.

Q. Every Saturday and Sunday? A. No, Sunday at that time.

40 Q. Did he have the front door locked on Sundays? A. Not that time, there was no prohibition

*Eugene Ueberall—For Defendant—Cross*

then. We had blue law once in awhile and he had the door locked then.

Q. When he had the front door locked, which way did the customers come in? A. On the side.

10 Q. So he had a side door to the saloon, didn't he? A. Yes.

Q. Did you come over in 1917? A. Yes, sir.

Q. When did you start to come over in 1917? A. I came over every year, every month, and every week. I didn't start in 1917. I was there in 1914 when I was a widower, every Saturday and Sunday you could see me by Mrs. Erhard's.

Q. Did you come over to see Mr. Erhard, or did you have a girl in Newark? A. No.

20 Q. Didn't you take a woman out that lived in that neighborhood? A. I never took a woman out.

Q. Didn't you expect to marry a woman who lived in that neighborhood? A. I never said nothing about marry business. I got married in 1925.

Q. All that time you lived in Secaucus? A. Yes.

Q. You met Mrs. Glaser there very, very often, didn't you? A. Yes, sir.

30 Q. And she was doing nothing in the saloon but keeping him company? A. Sometimes she went with Mr. Erhard to Miner's to see a show.

Q. Did you see them go? A. Yes.

Q. And did you see— A. And every time he took her he told me.

Mr. Roder: I ask that that be stricken out.

The Court: Strike it out.

40 Q. You were there to Miner's with them? A. Yes.

*Eugene Ueberall—For Defendant—Cross*

Q. You saw a show there? A. Yes.

Q. Where did you leave from, from Fourteenth street and Eighteenth avenue? A. From Fourteenth street and Eighteenth avenue.

Q. You started from the saloon to go to Miner's? A. Yes. 10

Q. You and Mr. Erhard and Mrs. Glaser? A. I and Mr. Erhard.

Q. Where did he meet Mrs. Glaser? A. Down the show.

Q. Did Mrs. Erhard know about it? A. I didn't say nothing to her.

Q. Did she say anything to you? A. No.

Q. Did he say anything to her? A. I don't know. 20

Q. Did she ever say anything to Mrs. Erhard? A. I don't know.

Q. That is the only time he ever took her to the show with you? A. Yes.

Q. Did he have any business in 1917? A. Very little.

Q. If you were there, were you there every week in 1917? A. Yes, sir.

Q. The first Sunday in 1917, how much business was done? A. I couldn't tell you from ten years 30 how much business was done. Mr. Glaser counted the money.

Q. Do you know how much money was taken in then? A. No, I couldn't say that.

Q. Do you know how many customers came in the saloon that day? A. Very few; he never had any customers.

Q. How long did you stay there that Sunday? A. Eleven or twelve o'clock. 40

*Eugene Ueberall—For Defendant—Cross*

- Q. Was Mrs. Glaser there? A. I couldn't say at that time if she was or not. I remember when Mrs. Glaser came in the first time in the house; she came in with another woman and asked for a glass of beer and sat on the first table and then they walked out again; I remember that.
- 10 Q. You don't know when that was? A. No.
- Q. You don't remember whether that was in 1917? A. It was between 1917 and 1918, the first time.
- Q. That is the first time you saw her? A. Yes.
- Q. Did you know Mrs. Van Houten? A. Yes.
- Q. Was she in the saloon every evening? A. Not in the saloon; in the kitchen in the rear.
- 20 Q. Wasn't there a big doorway leading from the saloon to the kitchen? A. Yes.
- Q. Who was in the kitchen? A. Mrs. Erhard.
- Q. And Mrs. Van Houten? A. Yes.
- Q. Who was taking care of the saloon? A. Mr. Erhard.
- Q. Mrs. Erhard lives with you now? A. Yes.
- Q. Are you her only relative? A. I am not related to her.
- 30 Q. Did she make a provision for you in her will? A. I don't know nothing about that.
- Q. When did you see Mrs. Glaser last in the place? A. In 1921.
- Q. You did see her from 1917 to 1921? A. Yes, sir.

DEFENDANT RESTS.

*Barbara Glaser—Plaintiff—Direct*

BARBARA GLASER, plaintiff, recalled in rebuttal.  
*Direct examination by Mr. Roder.*

Q. Mrs. Glaser, you have heard Mrs. Erhard testify that from time to time, or on several occasions, Mr. Erhard gave you money and also gave you a pair of shoes? A. Never. 10

Q. He never did it? A. He never gave me anything.

Q. Did you ever ask him for your money? A. Plenty of times—

Objected to.

Mr. Roder: I thought the defendant had testified to some alleged business relations that were— 20

The Court: She has testified that he never gave her anything.

Mr. Roder: But the defendant executrix has testified as to some business relations between the deceased and this party. My notion is that that has opened the way for Mrs. Glaser to testify as to some conversation she had with the deceased.

Q. You have heard Mrs. Erhard testify that she discovered you and Mr. Erhard in an act of intimacy? A. Never, never; absolutely not. 30

Objection to.

Objection overruled.

Defendant's counsel prays an exception to this ruling of the court.

Exception noted as ground of appeal.

Q. Mrs. Glaser, did you have any conversation with Mr. Erhard in regard to your pay? A. Yes, sir— 40

*Barbara Glaser—Plaintiff—Direct*

Objected to on the ground that it is not rebuttal and inadmissible under Section 4 of the Evidence Act.

Objection overruled.

Defendant's counsel prays an exception to this ruling of the court.

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Exception noted as ground of appeal.

Q. How many times?

Witness: Yes, sir.

Objected to.

The Court: I will allow you an exception to this line of testimony, Mr. Woener.

Witness: I asked him dozens and dozens of times.

20

Q. What did he say? A. If he sold the lots on 20th street he would make it good with me.

Q. You asked him that while you worked with him? A. Yes, sir.

Q. After you discontinued to work for him did you have any conversations with him? A. Yes, sir.

Q. Where? A. I met him on the street.

Q. What did he reply to that? A. He said—he built a house on that lot—and if he builds it and sells it he would pay me then.

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Q. Did he pay you? A. He never finished the house—he died before.

CROSS EXAMINATION WAIVED.

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*Mary Van Houten—For Plaintiff—Direct*

MARY VAN HOUTEN, recalled for the plaintiff in rebuttal.

*Direct examination by Mr. Roder.*

Q. Mrs. Van Houten, did you ever tell Mrs. Erhard that her husband and Mrs. Glaser were intimate? A. No, I never did. 10

Q. Did you know whether they were intimate?

A. No, I never knew.

Q. Did you ever do any work for Mrs. Erhard?

A. When she was sick I took care of her—

Objected to.

The Court: Why wasn't this covered on direct?

Mr. Roder: This woman testifies it was several years before Mrs. Erhard became lame. I think I have the right to show that. 20

The Court: Ask her that.

Q. Did you work for Mrs. Erhard before Mrs. Glaser was there? A. Only when she was sick; I took care of her feet.

Q. How did she walk at that time? A. Her feet was bad.

Q. Was it much better than you have seen her walk here? A. Oh, yes. 30

Q. How was it in 1917 when Mrs. Glaser, as you said, came there? What was Mrs. Erhard's condition at that time? A. She got lamer then.

Q. You didn't see her do anything around the place, did you? A. Sometimes she done a little.

CROSS EXAMINATION WAIVED.

PLAINTIFF RESTS IN REBUTTAL.

DEFENDANT RESTS.

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*Charge*

Defendant's counsel moves for the direction of a verdict on the following grounds:

1. So far as any service alleged to have been performed within six years of the date of the commencement of the services.

2. That there is no evidence before the jury upon which they can base a verdict.

3. That there is nothing shown of Mr. Erhard's acceptance of the work.

The Court: On the first ground I will direct the jury when I charge; on the second and third grounds I deny the motion.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Mr. Woerner sums up for the defendant.

Mr. Roder sums up for the plaintiff.

### The Court's Charge.

The Court charges the jury as follows:

SMITH, J.

Members of the jury. This action is brought by Barbara Glaser against Anna Erhard, who is the executrix of the estate of her husband, Julius Erhard.

The deceased was the owner and operator of a café business in this city and the plaintiff here is suing to recover for services which she alleges that she rendered to him during his lifetime. He being dead, the suit is instituted against the executrix of his estate.

*Charge*

The suit is for the reasonable value of the services which it is claimed have been rendered and accepted by the deceased; that these services were rendered from January 1, 1917, to September 25, 1921, and the character of work alleged is the work of assisting around the saloon and the rooms in back of it, serving at the bar, and assisting the deceased in the care of his wife. The plaintiff claims that the reasonable value of these services was two dollars a day, and that is what she is suing for.

There is a presumption that if services are rendered and they are accepted, and you must, of course, consider that in considering this presumption, that is, if the services were rendered and if the services were accepted by the deceased, that the plaintiff is entitled to reasonable payment for such services. In other words, she is entitled to be paid the reasonable value of those services. It is an implied obligation, as we call it.

The testimony is not entirely clear, even on the plaintiff's part, as to the regularity of the services she is claiming for all of this period; yet there is testimony showing that she was not there at specific, definite hours every day during that period. If the services were not rendered, of course, she is not entitled to pay under an implied promise or under a promise to pay for services, even if it is expressed. As she has said in her testimony, he promised himself to pay her but never fixed the exact time, that is, the time never arrived at which he said he was going to pay her, but she is not entitled to recover unless she rendered the services you are going to allow her payment for.

*Charge*

The defense is that no services were rendered and that the amount of services she alleges were not rendered; that the services were not valuable and that she did not work at all; that the plaintiff was calling on them and keeping company with them, and acting as any visitor might.

10 These are disputed questions of fact and you, as the jury, are charged with the duty of finding out what the true facts are; and in deciding this case you will rely on your own recollection of the evidence in determining the facts.

The burden of proof is upon the plaintiff. She must establish her case by a fair preponderance of the evidence, that is, the evidence must weigh in her favor. If she fails in this she is not entitled to your verdict.

20 There is probably some mystery about the Court's ruling on evidence of conversations with the deceased. The act provides that the plaintiff cannot testify to conversations or transactions with the deceased. It is a modification of an old statute, and the rule provides that unless the executrix of the deceased testifies to transactions with the deceased the plaintiff cannot so testify; but if the executrix does so testify then the door is opened for the plaintiff to do so.

30 The Statute of Limitations has been set up as a defense. It provides that the services "shall be commenced and sued within six years next after the cause of such action shall have accrued, and not after." The act also provides in case of death "that if any person, against whom there is or shall be any such cause of action \* \* \* shall have died or shall hereafter die before the expiration of the times of limitation therein mentioned the space

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*Charge*

of term of six months next succeeding the death of such person shall not be computed as part of the limited period within which such action or actions is or are required to be brought by the previous provision."

You will see that the suit must be brought within six years after the cause of action arose and it is, of course, a continuing cause of action, where services are rendered continuously under an implied promise to pay.

The deceased died on January 27, 1925, and then for six months thereafter the statute did not run because of the provision as to death. That is put in the statute so that time will be given for the executrix to close the estate or become familiar with it. The suit was started December 19, 1925.

20 Of course, you will figure it yourselves, but as I figure it, she cannot recover back of June 19, 1919, and up to September 25, 1921, a period of two years, three months and six days. At two dollars a day it would be \$1,632. If the plaintiff is entitled to your verdict she is entitled to interest from September 25, 1921, on the sum which you should find due her.

I have been requested to charge certain requests on behalf of the plaintiff. The first I will charge: "That when one performs work and service for another and that work and service is accepted, the law implies a promise on the part of the party accepting the service to pay a just and reasonable compensation." The second request of the plaintiff I will deny.

The first request of the defendant I think I have covered but I will charge it: "The burden of proof is on the plaintiff to show by a preponderance of evidence that she performed the services

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*Charge*

alleged and what their reasonable value is." The second request of the defendant I will deny.

10 Defendant's counsel prays an exception to that portion of the Court's charge wherein the Court stated that the jury could find that the plaintiff was entitled to recover from June 19, 1919.

Exception noted as ground of appeal.

Defendant's counsel prays an exception to the Court's refusal to charge the defendant's second request to charge.

Exception noted as ground of appeal.

**Plaintiff's Requests to Charge.**

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1. That when one performs work and service for another and that work and service is accepted, the law implies a promise on the part of the party accepting the service to pay a just and reasonable compensation.

2. That when one performs a continuous service and there is a continuous promise to pay, the statute of limitations starts to run from the last

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item of service.

**Defendant's Requests to Charge.**

1. The burden of proof is on the plaintiff to show by a preponderance of evidence that she performed the services alleged and what their reasonable value is.

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2. Plaintiff cannot recover for any services not performed within six years next before December 19, 1926, the time of the commencement of this action.

18 OCT. T. 1927

**New Jersey Court of Errors and Appeals**

BARBARA GLASER,  
*Plaintiff-Respondent,*

VS.

ANNA ERHARD, Executrix of the  
Estate of Julius Erhard, de-  
ceased,  
*Defendant-Appellant.*

Action at Law.

On Appeal from  
New Jersey  
Supreme Court.**BRIEF FOR APPELLANT.****Facts.**

The suit below was brought by the respondent against the appellant, as executrix of her husband's estate, for services alleged to have been performed for the decedent. The respondent sued for work as a bartender, nurse and housekeeper at the residence and place of business of the decedent from January 1, 1917, to September 25, 1921, a period of 1,775 days, the reasonable value of which work she claimed was \$2.00 a day. Julius Erhard died January 27, 1925, and his will was probated in the Essex County Surrogate's Court on February 19, 1925, and letters testamentary were issued to appellant.

The case was tried before Judge William A. Smith, with a jury, at the Essex County Circuit of the Supreme Court on January 25, 1927. The jury rendered a verdict in favor of the respondent and against the appellant for \$2,207.04.

The appeal is based on the failure of the court below to grant the appellant's motions for a nonsuit and the direction of a verdict and on the admission of certain testimony over the objection of appellant.

### **Grounds of Appeal.**

The appellant states the following grounds of appeal:

Case, pages 2, 3 and 4.

1. The trial court refused to direct a judgment of non-suit against the plaintiff and in favor of the defendant when thereunto moved by counsel for the defendant.

Motion. Case, page 30, line 34.

Exception. Case, page 31, line 11.

2. The trial court refused to direct the jury to return a verdict in favor of the defendant and against the plaintiff, when thereunto moved by counsel of the defendant.

Motion. Case, page 72, line 1.

Exception. Case, page 72, line 20.

3. The charge of the court to the jury as follows: "The act (the Statute of Limitations) also provides in case of death 'that if any person against whom there is or shall be any such cause of action \* \* \* shall have died or shall hereafter die before the expiration of the times of limitation therein mentioned the space of six months next succeeding the death of such person shall not be computed as part of the limited period within which such action or actions is or are acquired to be brought by the previous provision.'"

Waived.

4. The charge of the court to the jury as follows: "The deceased died January 27, 1925, and then for six months thereafter the statute did not run because of the provision as to death. This is

put in the statute so that time will be given for the executrix to close the estate or become familiar with it. The suit was started December 19, 1925."

Waived.

5. The charge of the court to the jury as follows: "Of course, you will figure it yourselves, but as I figure it, she cannot recover back of June 19, 1919, up to September 25, 1921, a period of two years, three months and six days. At two dollars a day it would be \$1,632.00."

Waived.

6. The refusal of the court to charge the jury the defendant's request to charge as follows: "Plaintiff cannot recover for any services not performed within six years next before December 19, 1926, the time of the commencement of this action."

Waived.

The following question was admitted to the witness, Frank X. Keiling:

7. "The reasonable value of the services per day?"

Objection. Case, page 25, line 10.

Exception. Case, page 25, line 21.

The following questions were admitted to the witness, Barbara Glaser:

8. "Did you ever work at bartending?"

9. "Did you ever ask him for money?"

10. "You have heard Mrs. Erhard testify that she discovered you and Mr. Erhard in an act of intimacy?"

11. "Mrs. Glaser, did you have any conversation with Mr. Erhard in regard to your pay?"
12. "How many times?"
13. "What did he say?"
14. "You asked while you worked with him?"
15. "After you discontinued work for him did you have any conversation with him?"
16. "Where?"
17. "What did he reply to that?"
18. "Did he pay you?"

Objections. Case, page 69, lines 17 and 32; page 70, lines 1 and 14.

Exceptions. Case, page 69, line 35; page 70, lines 5 and 15.

#### POINT I.

##### **No evidence in case to sustain cause of action.**

The appellant claims there is no legal evidence in the case to sustain the cause of action of the respondent. This argument is not directed to the weight of the evidence, but to the total absence of proof to justify the submission of the case to the jury. The province of a jury is not to speculate or guess as to the work done, its acceptance, or the reasonable value of the alleged services rendered.

No attempt was made to prove an express contract. The plaintiff below sought to recover for the reasonable value of services which she claimed she performed and which she claims the decedent accepted. The respondent testified that she went

to the decedent's house at different hours, nine, ten, sometimes twelve o'clock; that sometimes she went in and stayed to half-past five and then went for her supper and came back and stayed until closing time. Case, page 11, lines 22 to 34. This is the only testimony as to the time she claims she worked each day. We do not know what days she came in at nine o'clock; what days she came in at ten; what days at eleven, and what days at twelve o'clock; nor can we tell on what days she sometimes came and stayed to half-past five and then went for her supper and came back and stayed until closing time and what days she did not do so. Surely a judgment based on proof of this kind is pure speculation and guesswork. She certainly would be entitled to more money if she came at nine o'clock than if she came at twelve. This is also true on the days she sometimes stayed to half-past five and went for her supper and stayed until closing time; sometimes twelve and sometimes after twelve. If two dollars a day was the reasonable value of a day's work she would only be entitled to one dollar if she worked half a day. How is a jury going to determine the amount due her when they don't know how long she worked each day? There is no evidence of the time she worked which would justify a jury in awarding her any damages.

The court below itself said "The testimony is not entirely clear, even on the plaintiff's part, as to the regularity of the services she is claiming for all of that period; yet there is testimony showing that she was not there at specified, definite hours every day during that period." Case, page 73, lines 26 to 30.

The court should have non-suited the plaintiff below and directed a verdict for defendant below on this ground alone.

The evidence as to the kind of work she claimed she performed is of the same general loose character. She claimed she tended to customers, cleaned behind the bar, washed dishes, washed Mrs. Erhard's body and took care of her feet. Case, page 11, lines 36, 37 and 38. She does not say what hours she tended bar; whether she washed dishes in the bar alone or those of the household also; when and how often she washed the body of Mrs. Erhard, now what services she performed in taking care of Mrs. Erhard's feet. How could a jury determine the amount of time she devoted as a bar woman, as a dish washer, as a nurse and as a chiropodist? They could not determine what the services were worth; they could only guess at it.

The court below in refusing to non-suit the plaintiff below said "The mere acceptance of the work raises a presumption of payment." Case, page 31, lines 2 and 3. The appellant contends that this principle does not apply to the class of cases now considered. The plaintiff below could not testify to the fact that the work claimed to have been performed by her was accepted by the decedent, because she was estopped by section four of the Evidence Act. Neither can she in the face of that act by presumption supply proof that she could not introduce as evidence. In the present case she showed that she was in the place of business of the decedent, which we do not deny, but controvert her purpose in being there. She could testify that she served customers, cleaned up around the bar, etc., but she could not testify that these alleged services were accepted by the decedent nor that they were performed in his presence. How can she then in this state of the proofs say, well I can't testify that Mr. Erhard

accepted my services because it is a transaction with a deceased person, but I can controvert the statute by a presumption of acceptance of my services?

The proof of the supposed reasonable value of the alleged services of the plaintiff below are even more ephemeral. The plaintiff below was asked by her counsel what was the reasonable value per (a) day "of the character of the work that you did in that saloon?" In the examination by appellant's attorney as to her qualifications to testify as to the reasonable value of her alleged services she said she worked "Only at Erhard's, I was bartending, I went out washing and then bartending Erhard's bar, nowhere else." Case, page 23, lines 28 to 30. This certainly does not qualify her to testify as to the reasonable value of the services she claimed she performed.

The testimony of Frank X. Keiling, the expert, does not help very much to determine the reasonable value of the plaintiff's alleged services. The hypothetical question propounded to him, which will be considered later as to its admissibility, does not state any work that respondent is claimed to have performed. It merely states certain hours that the plaintiff below was alleged to have worked, but not the character of the work that she did. Case, page 24, line 35, to page 35, line 25. In his cross examination, Case, page 25, lines 29 to 40, he testified that the reasonable value of being at a place of business anywhere from nine o'clock to eleven o'clock in the morning, etc., without specifying the kind of work that was done was worth \$2.50 to \$3.00 a day. He said that for \$2.50 a day he would expect a woman to tend bar, "housework and kitchen work, anything that came along." The case is barren of evidence of the doing of any housework or kitchen work.

His testimony is speculative and vague. The jury had no legal criterion from which to find the reasonable value of the services.

The appellant claims that the court should have granted her motions for a non-suit and for the direction of a verdict in her favor, because there was no evidence in the case to sustain the cause of action as has been shown in the argument under this point.

### POINT II.

#### **Evidence of expert, Frank X. Keiling, should not have been admitted.**

The appellant claims the court erroneously permitted the witness Frank X. Keiling to answer the question, "The reasonable value of the services per day," over the objection of the defendant below, duly accepted to. Case, page 25, line 8. The question is really a continuation of the preceding question on page 24 of the case, line 35. The appellant claims that the question which purports to be a hypothetical question does not cover the facts in the case. The question attempts to have the expert fix the reasonable value of services for a party "who comes to your place of business, at anywheres from nine, ten, or eleven o'clock in the morning and stays until noon, goes home to dinner, comes back after lunch, works until supper, goes home for supper and comes back after supper and stays until closing, which was until twelve or one o'clock." It does not specify what work, if any, the party is alleged to have performed. It does not even allege that the party worked except from lunch until supper time, the rest of the time she only "stays" at

your place of business. Certainly an expert cannot testify to the reasonable value of services when he does not know what work the party was alleged to have performed. The question does not contain any mention of washing Mrs. Erhard's body and bathing her feet, nor even of bartending or cleaning up the bar room.

### POINT III.

#### **Evidence of respondent should not have been admitted.**

The questions which the respondent, Barbara Glaser, was permitted to answer being 8 to 18 inclusive of the grounds of appeal were objected to by the defendant below on the ground that she could not testify to any transaction or conversation with the decedent. The court below allowed the counsel of the defendant an exception to that line of testimony (Case, page 70, line 16), after objections had been made and exception taken to several questions eliciting from the witness transactions and conversations with the decedent. The theory on which they were admitted seems to have been that the court held that the defendant below, the representative of the decedent, had testified to some business relations between the decedent and the plaintiff below.

The only testimony I can find that could in any way bear out this contention are the following questions and answers on the direct examination of the defendant below, is: "What did she (plaintiff below) do there?" (A. "It is too dirty for me (defendant below) to say it; she whored him and he do the dirty work with her." Case, page 33, line 22. This was objected to by counsel of

the plaintiff below and counsel for defendant below consented to its being stricken out, although it was not formally struck out. She was also asked: "Q. Did you ever hear Mrs. Glaser ask your husband for pay? A. I don't know. Only I see once he gave her a \$10.00 bill to buy her shoes, and coal and everything. Sometimes I didn't have a cent in the house." Case, page 33, line 39, to page 34, line 6.

The statute governing the admission of evidence in such cases is as follows:

4. In all civil actions any party thereto may be sworn and examined as a witness, notwithstanding any party thereto may sue or be sued in a representative capacity; provided, this section shall not extend to permit testimony to be given by any party to the action as to any transaction with or statement by any testator or intestate represented in said action, unless the representative offers himself as a witness on his own behalf, and testifies to any transaction with or statement by his testator or intestate, in which event the other party may be a witness on his own behalf as to all transactions with or statements by such testator or intestate, which are pertinent to the issue. (P. L. 1900, p. 363); 2 C. S. (1910) 2218.

While the statute states that if the representative testifies to "any" transaction with the testator that the other party may then testify to all conversations or transactions with the decedent, the appellant claims that any such transaction or conversation must be pertinent to the issue and that the transactions respondent testified to were not material to the issue. If it is considered that the testimony is in the case that the deceased whored the plaintiff, that statement is certainly irrelevant on the issue of performance of services and their reasonable value. This is also true of

the statement that she saw the testator give the plaintiff below ten dollars to buy shoes and coal.

This was the view taken by Green, V. C., in the case of *Matthews v. Hoagland*, 48 N. J. Eq., 455, the seventh syllabus of which reads as follows:

If the representative in any such action testifies in his own behalf, to any transaction of the deceased with the witness or another, "which are relevant to the relief in the action," the other party may be a witness in his own behalf to all transactions or statements of the deceased which are pertinent to his case. In every case in this state, which counsel for the appellant has examined, the representative of the testator had testified to some transaction or conversation material to the issue before the other party was permitted to testify to conversations or transactions with the decedent.

Under the common law and our early statutes the plaintiff was rendered incompetent as a witness. Our present statute is directed more to the exclusion of certain testimony than the individual. The living party may now testify to any facts that are not conversations or transactions with the decedent. So that the plaintiff below could not be prevented from testifying, so long as she did not testify to transactions or conversations with the decedent. She could only so testify if respondent offered herself as a witness and testified to some transaction or conversation with the deceased material to the issue.

I do not see anything in the cross examination of the appellant which could be construed as testimony by her of transactions or conversations with the deceased, but even if there were such testimony it would not allow the other party to testify. Evidence brought out on cross-examination cannot have that effect. Under the statute itself the

representative must first offer himself as a witness "on his own behalf." Plaintiff cannot cross examine the representatives as to facts not touched in the direct examination, and thus make his own testimony competent.

*Jones on Evidence* (2nd Ed.) 984, sec. 785;  
*Joss v. Mohn*, 55 N. J. L. 407.

The appellant also claims the evidence admitted was not rebuttal testimony.

Grounds 3, 4, 5 and 6 of appeal are waived.

The appellant respectfully submitted that the judgment of the court below should be reversed because of the refusal to grant the motions for a non-suit and for the direction of a verdict and because of the improper admission of evidence.

HUGO WOERNER,  
*Attorney for Defendant-Appellant.*

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## New Jersey Court of Errors and Appeals

BARBARA GLASER, <i>Plaintiff-Respondent,</i>	}	Action at Law. On Appeal from New Jersey Supreme Court.
vs.		
ANNA ERHARD, Executrix of the Estate of Julius Erhard, de- ceased, <i>Defendant-Appellant.</i>		

### BRIEF FOR RESPONDENT.

The respondent agrees with the facts as set forth in state of case.

#### POINT I.

In reply to Point I of appellant's brief, that there is no legal evidence to sustain the action and support the verdict of the jury, and that the court was not justified in refusing the appellant's motion for a non-suit, and a direction of verdict, respondent submits the following:

##### A.

The testimony of respondent (Case, page 11, lines 22 to 38; page 12, lines 30 to 33) establishes a *prima facie* case, and is corroborated by the following witnesses:

1. Jennie Miller (Case, page 13, lines 31 to 40; page 14, lines 1 to 14; page 15, lines 20 to 24; page 15, lines 31 to 41), which testimony briefly stated is, that the witness not only saw the respondent working in decedent's cafe on many occasions,

but the decedent came to the respondent's home and in the presence of the witness requested the respondent to come to his cafe at once, and on numerous occasions when the respondent was not at home, left word with the witness to tell respondent to come to the cafe as soon as possible.

2. William Schreiber (Case, page 20, lines 9 and 10, lines 14 to 17, lines 25 to 33, wherein he testified that he was in decedent's cafe and saw the respondent working and serving refreshments.

3. Daniel H. Leary (Case, page 21, lines 33 to 40; page 22, lines 5 to 9), wherein he testified from January, 1917, until January, 1921, he went into decedent's cafe daily, and on all occasions found the respondent behind the bar serving refreshments.

4. George Schilling (Case, page 26, lines 14 to 40), wherein he testified that he visited decedent's cafe two or three times daily and that the respondent was always there cleaning around the bar, serving drinks, waiting on the customers and cleaning the house.

5. Noble Heinold (Case, page 16, lines 31 to 36; page 17, lines 1 to 18), wherein he testified he visited decedent's cafe daily and observed the respondent behind the bar serving refreshments, washing and wiping up.

6. Frank Marinella (Case, page 27, lines 33 to 40; page 28, lines 1 to 20, wherein he testified he saw the respondent on frequent occasions and she was serving refreshments.

7. Mary Van Houten (Case, page 29, lines 37 to 40; page 30, lines 1 to 13, lines 16 to 20), wherein she testified that she visited decedent's cafe nightly and there saw the respondent tending bar and working around.

The action was brought for the reasonable value of services rendered, thus, the respondent submits that the testimony above referred to, not only establishes a *prima facie* case, but absolutely corroborates and supplies oceans of evidence to justify the court's submission of the case to the jury, for it to decide whether such labor has been furnished and performed as alleged in the complaint, and if \$2.00 per day was a reasonable sum.

The action was brought for the reasonable value per day for such services rendered, commencing at any time between 9 o'clock and 11 o'clock A. M. and ending at midnight or thereafter, a period of at least twelve hours or more per day.

The respondent testified that she worked every day (Case, page 11, lines 22 to 38; page 12, lines 31 to 33) and specified the hours when she came to work and when she left.

It is not necessary to prove the exact hour she came to work each morning, since she is not suing for a day's work commencing at 8 A. M. and ending at 12 P. M., but on the contrary sues for a day's work commencing between 9 A. M. and 11 A. M. and ending at 12 P. M. and after. Since she did varied and general work for the decedent, it does not seem necessary, as urged by the appellant, to show at what hour she actually cleaned windows, tended bar, waited on customers, rubbed Mrs. Erhard's body and took care of her feet, and to show how much time each operation consumed. She was not employed by the hour at a different rate per hour for each separate operation, her employment was by the day.

The action was not on an express contract, but for the reasonable value of services rendered, and, since it has been proven, that the respondent worked for the decedent, and the kind, class and calibre of work she performed, it became a ques-

tion of fact for the jury to decide, first, did she perform the work as alleged; second, is \$2.00 per day a reasonable sum. The evidence of the respondent is not speculative, but, on the contrary conclusive, decisive and overwhelming, and thus the court was justified in refusing the appellant's motion for a non-suit.

B.

The testimony of the following appellant witnesses:

(1) Adam Stolz (Case, page 40, lines 40 and 41; page 41, lines 1 to 10); (2) Eophil Miller (Case, page 47, lines 29 to 36; page 48, lines 15 and 16); (3) William J. Erhard (Case, page 58, lines 36 to 40; page 59, lines 5 to 9); (4) Henry W. Sandhausen (Case, page 63, line 15); (5) Eugene Ueberall (Case, page 64, lines 25 to 31; page 67, lines 29 to 32). All appellant witnesses most emphatically prove that the respondent was at decedent's cafe daily during the period as alleged in complaint (see Case, page 64, lines 24 to 31) and, inasmuch as the respondent's proof shows that she worked for the period alleged, certainly a true question of fact arose for the jury to decide if the respondent performed services and if \$2.00 was a reasonable amount per day.

Thus the trial judge was again justified in refusing appellant's motion for a direction of verdict.

The respondent submits she was estopped by section 4 of the Evidence Act, Compiled Statutes, page 2218 (Public Laws 1900-363) from testifying to conversations relating to transactions with the decedent, but the act does not state that the acceptance of the work shall not raise a presumption to pay and submits that if the evidence shows her work was accepted, the presumption to pay must stand.

That the respondent worked for the decedent, that he was present at the time of the performance of the work, and that he requested the same, is shown by the following testimony:

(1) Jennie Miller (Case, page 14, lines 15 to 25; page 15, lines 30 to 39); (2) Noble Heinold (Case, page 17, lines 39 to 41; page 18, lines 9 to 14); (3) Daniel H. Leary (Case, page 21, line 40; page 22, lines 5 to 9); (4) George Schilling (Case, page 26, lines 39 and 40).

From the above testimony one learns not only did the decedent call at the home of the respondent and request that she come to his cafe, but on many occasions sent one Noble Heinold to the respondent's home and requested respondent to come to work at once, and it further shows that the decedent was present while the respondent was performing the work.

Referring to the appellant's brief, as to the qualifications of respondent and permitting her to testify to the reasonable value of the services rendered; it is submitted that, inasmuch as she worked for the decedent for a period of four years, nine months, and having heretofore worked as washerwoman and housewife, and since the work performed by her for the decedent was similar to washerwoman and housewife work, excepting bartending, she certainly is qualified to testify to the reasonable value of the work performed.

From 1917 to 1921, which was during the period of the World War, wages throughout the land were at a peak, and it was a difficult matter in those days to obtain labor to work twelve or sixteen hours a day for \$2.00, and it does not require much experting to arrive at the conclusion that \$2.00 per day for sixteen hours' work is a reasonable price.

The court is the sole judge as to whether or not an expert is duly qualified to give expert testimony.

*Electric Park Amusement Co. v. Psychios*,  
83 Atlantic Reporter, page 766;  
*Precipio v. Insurance Co. of State of Pennsylvania*, 137 Atlantic Reporter,  
page 549, silibus #4;  
*Burns v. Delaware, etc., Tel. Co.*, 59 Atlantic Reporter, page 220.

In the case at bar, the trial judge (Case, page 23, lines 31-35) overruled the objection of the appellant as to the qualification of the respondent, permitting her to testify as to the value of services, because he believed she was qualified to testify as to value, and thus, by the testimony of the respondent, \$2.00 per day (Case, page 23, line 40) was fixed as a reasonable sum for the services rendered. If the appellant desired to controvert that evidence, she should have done so at the trial by producing her own experts to show that the work was not worth \$2.00 per day.

## POINT II.

**In reply to Point II, the respondent submits that the appellant can only appeal on such grounds as were properly objected to, and noted as a ground of appeal.**

The appellant objected to the following question: "reasonable value of the services per day" (page 25, line 9, also on page 3, line 33 and known as #7 of the Grounds of Appeal).

Since the objection and ground of appeal is directed only against the question as it stands, namely, "the reasonable value of the services per

day" the appellant is now debarred from objecting to and making the hypothetical question as found on page 24, lines 35, etc., a ground of appeal, as no objection was made to it at the trial. Should, however, the court decide that the question "reasonable value of services per day" above referred to, is really a continuation of the preceding question, page 24, line 35, by the same token the respondent submits that the questions and answers (Case, page 24, lines 32 to 41; page 25, lines 5 and 6) are one and constituted the hypothetical question submitted to the expert Frank X. Keiling.

In reading the two questions and answers above referred to, the expert was asked "what do you consider the reasonable value of services (washing around the kitchen and bartending as was indicated in question and answer (Case, page 24, lines 32 to 34) for a person coming to work anywhere between 9 and 11 A. M., taking out time for supper and continuing to work until 12 P. M. or 1 A. M. The two questions and answers as referred to cover the facts in the case, so far and only so far, as the expert was qualified to testify, and that was in respect to washing and bartending. He was not qualified concerning massaging and chiropody. His testimony is that washing and bartending is worth \$2.50 to \$3.00 per day. It certainly must be admitted that the respondent performed just such services as the expert said was worth \$2.50 to \$3.00 per day. Even the appellant's attorney admits that she did some bartending, as is evidenced by his objection (page 24, lines 14 and 15) wherein he said "we have some evidence she worked at the bar."

It is submitted that if any one of the varied services rendered to the decedent were independently worth \$2.00 or more per day, that the respondent

has sufficiently fixed and proved the value of her services, when she demands only \$2.00 per day for doing more work than an expert would pay \$2.50 to \$3.00 per day. If she performed services worth \$10 to \$15 per day and only charges \$2.00 per day, the estate of the decedent is benefited to that extent.

The attorney of the appellant and his argument (page 8 of his brief) placed quotation marks before the phrase "who comes to your place, etc." whereas he should have placed the quotation mark before the word "reasonable," so that the phrase reads "reasonable value of service for a party, etc." instead of reading "who comes to your place, etc." When the quotation marks are properly placed the phrase assumes an entirely different meaning and aspect. It brings into play the thought that the word "service" indicates something of value to be rendered by one party to the other, as was in this case. It is highly technical when the appellant argues that the word "stays" in the hypothetical question is meaningless, it is quite obvious that "stays" if read in connection with the rest of the question, as it properly should be, is understandable and means that the party shall remain in the decedent's cafe until midnight and while so remaining shall render such services as might be required. There is nothing ambiguous about the hypothetical question or about the meaning of "services," "work" and "stay" as appear in the same.

It is further submitted in reply to Point II, that if the hypothetical question was ambiguous, that appellant's attorney by his cross examination of the witness (Case, page 25, lines 29 to 41), clarified the entire situation and ascertained from the expert exactly the class of work he would expect for \$2.50 per day, which work was identical to that

performed by the respondent. Therefore, if technically it was erroneous to permit the witness Frank X. Keiling to testify to the question "the reasonable value of service per day," such testimony was absolutely harmless and was not prejudicial to the appellant as the jury was placed in a position to know exactly what was expected for \$2.50 to \$3.00 per day, and for it to decide whether the respondent had performed like services and if her demand for \$2.00 per day was reasonable.

### POINT III.

**Replying to Point III, the respondent submits that all questions and answers (Case, pages 69 and 70, Grounds of Appeal, 8 to 18) were properly admitted in evidence under Section 4 of the Evidence Act, Compiled Statute, page 2218 (Public Laws 1900-363) for the following reasons:**

1. That the appellant-executrix testified (Case, page 32, lines 21 to 24), "she (meaning the respondent) whored him (meaning the decedent) and he do the dirty work with her." It was objected to, and by consent was to be stricken from the record; however, it still appears in the record, and went to the jury. Thus, we have a transaction testified to by the representative of the decedent and further, a transaction between the respondent and decedent, and under the act above referred to, the respondent claims she was permitted to testify to any transaction with or statement made by the decedent, which is pertinent to the issue.

A section of the act above referred to is as follows:

"if the representative offers himself as a witness on his own behalf and testifies to any transaction with or statement by his

testator or intestate, in which event the other party may be a witness on his own behalf as to all transactions with or statements by such testator or intestate which may be pertinent to the issue."

When the executrix testified to whoring (an illegal transaction) as between the respondent and decedent, she most certainly made it possible for the respondent to testify to any transaction with the decedent which was pertinent to the issue. It is claimed the whoring testimony is pertinent to the issue in the following respect; suit was brought for services performed and for the reasonable value thereof. The appellant admits the presence of the respondent at decedent's cafe, but denies services were rendered and by innuendo attempts to show the respondent was there only for immoral purposes. Therefore, the testimony of the respondent concerning a transaction with the decedent is extremely pertinent to the issue.

2. When the appellant executrix testified (Case, page 33, lines 39-40; page 34, lines 5 to 7) as follows:

A. "Did you ever hear Mrs. Glaser ask your husband for money?"

A. "I do not know, I only see him once he gave her \$10 to buy shoes, coal and everything."

again opened the door and made it possible for the respondent to testify to all transactions which were pertinent to the issue. The above question and answer certainly refer to a transaction between the decedent and respondent for the purpose of ascertaining whether or not the decedent had paid or had agreed to pay for the services

rendered by the respondent, for which the suit was brought. Payment of the services is pertinent to the issue.

The act above referred to does not say that the executrix must testify to a transaction which is pertinent to the issue being tried; it merely says that if the executrix testifies to any transaction of the decedent, then the plaintiff or defendant, as the case may be, can testify to all transactions, but such transactions must be pertinent to the issue.

Assuming the appellant's interpretation of the act as set forth in his brief to be correct "that the executrix must testify to an act, transaction or conversation of the decedent which is pertinent to the issue," it is submitted the very testimony of the appellant-executrix on direct examination (Case, page 33, lines 39-40; page 34, lines 5-6-7) was made pertinent to the issue by the asking of the question and the giving of the answer. If the giving of \$10 to the respondent was not pertinent (and it is now most respectfully submitted that it was introduced for the purpose of completing the thought that the respondent whored the decedent), why did the attorney for the appellant-executrix bring out the point.

3. Aside from respondent's testimony (entire pages 69 and 70), there is independent evidence of Noble Heinold (Case, page 17, lines 23-32; page 18, lines 5-6) and of Jennie Miller (Case, page 14, lines 27-29, wherein the witnesses testified as to conversations between the respondent and decedent concerning the payment for the work and services rendered. This testimony conclusively shows the decedent agreed to pay respon-

dent, and by reason of this independent proof and testimony given by Noble Heinold, Jennie Miller, the testimony of the respondent, if it were erroneously admitted, was not harmful and was not prejudicial in any respect.

The respondent respectfully submits that the judgment of the court below should be affirmed and the appeal dismissed with costs.

PAUL G. RODER,  
*Attorney for Plaintiff-Respondent.*