INDEX.

NOTICE AND GROUND OF APPEAL.

New Jersey Supreme Court

MORRIS COUNTY.

MARGARET G. MULROONEY, *Plaintiff-Appellant,* *vs.* CATHERINE O'KEEFE and CATHERINE McGOWAN, Executrices of the Last Will, etc., of Mary Prendergast, deceased, *Defendants-Appellees.*	*Notice of Appeal.*

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To Vreeland & Wilson, Esqs., attorneys of defendants-appellees.

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SIRS:

TAKE NOTICE that the plaintiff appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause on the following ground:

1. That the Court at the trial of the above issue granted a non-suit in favor of the defendants, upon application made by the defendants, against the objections of the plaintiff.

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KALISCH & KALISCH,
Attorneys of Plaintiff.

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AMENDED COMPLAINT.

NEW JERSEY SUPREME COURT.

UNION COUNTY.

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MARGARET G. MULROONEY, *Plaintiff,* *vs.* CATHERINE O'KEEFE and CATHERINE McGOWAN, Executrices of the Last Will and Testament of Mary Prendergast, deceased, *Defendants.*	*Amended Complaint.*

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Plaintiff, living in the City of New York, County of New York, and State of New York, through Kalisch & Kalisch, her attorneys, complains that:

1. From September, 1896, to January, 1906, plaintiff rendered services to the deceased, at her request, as business agent, bookkeeper, dressmaker and milliner.

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2. The services so rendered were reasonably worth two thousand ($2,000) dollars.

3. The deceased promised the said plaintiff to reimburse her in her said Will, for the services so rendered.

4. The deceased died in the month of January, 1922, leaving a Will in which Catherine O'Keefe and Catherine McGowan, were made executrices.

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5. There was no provision in said Will for payment to the said plaintiff for the services rendered to the deceased in her lifetime.

6. Plaintiff demanded from the executrices, payment for the services rendered as aforesaid, payment for which was refused by said executrices.

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Plaintiff demands therefor, as damages, the sum of two thousand ($2,000) dollars.

KALISCH & KALISCH,
Attorneys of Plaintiff.

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AMENDED ANSWER.

Filed November 21, 1922.

NEW JERSEY SUPREME COURT.

MORRIS COUNTY.

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MARGARET G. MULROONEY, *Plaintiff,* *vs.* CATHERINE O'KEEFE and CATHERINE McGOWAN, Executrices of the Last Will and Testament of Mary Prendergast, deceased, *Defendants.*	*Action at Law.* *Amended Answer.*

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Defendants, Catherine O'Keefe, living in the Town of Morristown, in the County of Morris and State of New Jersey, and Catherine McGowan, living in the City of Summit, in the County of Union and State of New Jersey, executrices of the last Will and Testatment of Mary Prendergast, deceased, answering the said plaintiff, say:

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1. They deny the first paragraph.

2. They deny the second paragraph.

3. They deny the third paragraph.

4. They admit the truth of the matters contained in the fourth paragraph.

5. They deny the truth of the matters contained in paragraph five except that the deceased died in the month of January, 1922, leaving a Will in which Catherine O'Keefe and

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Catherine McGowan were appointed executrices and aver that the plaintiff was paid for any services rendered by her to the deceased in her lifetime.

That as a further defense to all counts the defendants state that the cause of action stated in the complaint did not accrue within six years before the commencement of this action. 10

That as a further defense to all counts the defendants state that the agreement upon which this action was brought was not, by its terms, to be performed within one year from the making thereof, and that neither said agreement nor any note or memorandum thereof was or has ever been made in writing and subscribed by the said decedent or by the defendants, the parties sought to be charged therewith, or by their lawful agent. 20

VREELAND & WILSON,
Attorneys of Defendants.

In the Name of God, Amen:—

I, Mary Prendergast, of the City of Summit, in the County of Union and State of New Jersey, being of sound and disposing mind, memory and understanding do make publish and declare this present writing to be my last Will and Testament in manner following, that is to say:— 30

First:—I hereby revoke and annul any Will by me at any time heretofore made.

Second:—I order and direct that all of my just debts and funeral expenses be paid and satisfied as soon as convenient after my decease.

Third:—I give and bequeath unto St. Theresa Catholic Church at Summit, New Jersey, the sum 40

of Two Hundred Dollars for the purpose of keeping my burial lot in order.

FOURTH:—I give and bequeath unto the Home for Orphan Children, Buffalo, New York, for a perpetual mass for the repose of the souls of Ellen Connors and James Connors the sum of
10 Two Hundred Dollars.

FIFTH:—I give and bequeath unto the Catholic Protectory of Arlington, New Jersey, for perpetual mass for the repose of the soul of Bridget Prendergast and for the repose of the soul of Mary Prendergast (myself) the sum of Two Hundred Dollars.

SIXTH:—I give, devise and bequeath all the rest residue and remainder of my property and estate of whatsoever kind and nature and where-
20 soever situate which shall belong to or be owned by me at the time of my decease unto my executrices in trust for the uses and purposes as follows:—

To collect the rents, issues and profits thereof, invest and reinvest the same, pay all expenses for legal fees, taxes, assessments, insurance and repairs during the lifetime of my sister, Bridget Prendergast and to use the income thereof, or
30 so much as may be necessary to properly and comfortably care for and maintain my said sister during her lifetime and for the purpose to provide a home for her and my executrix, Catherine O'Keefe, on the premises where I now 2. live in Summit, New Jersey, and I request the said Catherine O'Keefe to live with my said sister on the said premises and take care of her and for so doing she, Catherine, shall be paid out of my estate a reasonable and just compensation in addition to the provision hereinafter
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made for her and on the death of my said sister to pay all funeral bills and necessary expenses. After the decease of the said Bridget Prendergast the said rest residue and remainder of my estate shall be freed and discharged of and from said trust.

SEVENTH:—I give and bequeath unto St. Theresa Catholic Church at Summit, New Jersey, the sum of Five Hundred Dollars. 10

EIGHTH:—I give and bequeath unto the Priest of the Roman Catholic Church who may be stationed at Chatham, New Jersey, at the time of my decease, the sum of Three Hundred Dollars for the purpose of offering for my parents and relatives.

NINTH:—I give and bequeath unto Catherine O'Keefe of Morristown, New Jersey, the sum of Five Hundred Dollars. 20

TENTH:—I give and bequeath unto Johanna Hogan, of Morristown, New Jersey, the sum of Five Hundred Dollars.

ELEVENTH:—I give and bequeath unto the Blessed Lady of Victory, Lackawanna, New York, the sum of Three Hundred Dollars.

TWELFTH:—I give and bequeath to Joseph McGowan, of Summit, New Jersey, the sum of Two Hundred Dollars. 30

THIRTEENTH:—I give and bequeath to Mary Shields, of Summit, New Jersey, the sum of One Hundred Dollars.

FOURTEENTH:—I give and bequeath to Robert Swanton, of Summit, New Jersey the sum
$200 of *One* (Two) Hundred Dollars to be paid to him when he shall arrive at the age of twenty-one years, and if he shall die

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before arriving at that age, then I give
$200 said sum of *One* (Two) Hundred Dollars to his parents, William Swanton and Elizabeth Swanton or the survivor of them.

FIFTEENTH:—I give and bequeath to Mary Maroony, of Summit, New 3. Jersey the sum of
10 One Hundred Dollars.

SIXTEENTH:—I give and bequeath unto William *Conely* Connolly of Summit, New Jersey, the sum of One Hundred Dollars.

SEVENTEENTH:—I give and bequeath the sum of One Thousand Dollars to Thomas Dooley, Edward Dooley, James Dooley, William Dooley and Mary Dooley, children of Michael Dooley and Johanna Dooley, to be equally divided between them or the survivors of them share and share
20 alike.

EIGHTEENTH:—I give and bequeath to Josephine Ferris, of Summit, New Jersey, the sum of Five Hundred Dollars.

NINETEENTH:—I give and bequeath unto Catherine Sullivan, of Madison, New Jersey, the sum of Two Hundred Dollars.

TWENTIETH:—I give and bequeath unto the
30 Home for the Aged of the Little Sisters of the Poor, of Newark, New Jersey, the sum of One Hundred Dollars.

TWENTY-FIRST:—I give and bequeath unto Mary McNamara of North Summit, New Jersey, the sum of Two Hundred Dollars.

TWENTY-SECOND:—I give and bequeath unto William Shay, Edward Shay, Joseph Shay and Francis Shay, the sum of One Hundred Dollars each.

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TWENTY-THIRD:—I give and bequeath unto Catherine Finnegan, of New York City, the sum of One Hundred Dollars.

TWENTY-FOURTH:—I give and bequeath unto John Clifford, of North Summit, New Jersey, the sum of Two Hundred Dollars.

TWENTY-FIFTH:—I order and direct that all of the above legacies be paid out of my estate excepting the real estate herein specifically devised. 10

TWENTY-SIXTH:—I give and devise unto Johanna Dooley, of East Summit, New Jersey, the house and lot known as #303 Morris Avenue, which said premises are situate on the corner of Morris Avenue and Chestnut *Street,* Avenue Summit, New Jersey.

TWENTY-SEVENTH:—I give and devise unto Catherine McGowan, of Summit, New Jersey, the premises known and designated as No. 313 Park Avenue in the City of Summit aforesaid. 20

TWENTY-EIGHTH:—I give and devise unto Margaret Landregan, of Summit, New Jersey, the house and lot known and designated as #299 Morris Avenue, Summit, New Jersey.

TWENTY-NINTH:—I give, devise and bequeath all the rest, residue and remainder of my property and estate of whatsoever kind and nature and wheresoever situate, real, personal and mixed which shall belong to or be owned by me at the time of my decease, unto Catherine O'Keefe and Catherine McGowan, to retain one-half of the same as an extra compensation in addition to the fees allowed to them by law on account of the extra care which will be required of them and the duty which will devolve on them in caring for and maintaining my sister, Bridget Prendergast, as they are directed and required to do 30 40

in and by the Sixth Item of this my last Will and Testament. The other one-half I give devise and bequeath unto them requesting that they shall give the same to some Hospital or Hospitals or to some other worthy Charities or objects.

10 LASTLY:—I hereby nominate, constitute and appoint the said Catherine O'Keefe and Catherine McGowan, executrices of this my last Will and Testament, hereby directing that they and each of them shall not be required to give security either as executrices or trustees.

IN WITNESS WHEREOF I have hereunto set my hand and seal this sixteenth day of June, in the year of Our Lord, One Thousand Nine Hundred and Thirteen.

20 MARY PRENDERGAST (SEAL)

Signed, sealed, published and declared by the said Mary Prendergast to be her last Will and Testament in our presence, we both being present at the same time, and we, at her request, in her presence and in the presence of each other, having hereunder subscribed our names as witnesses hereto.

30 Note: The words "Connolly" "house and lot known as #303 Morris Avenue which said" and "Avenue" written in and the words "Conely" and "Street" stricken out on page 3 before execution; and the word "two" written in item 14 twice before execution.

John J. Lamb
Summit
N. J.

John B. Vreeland
Morristown, N. J.

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Will of Mary Prendergast.

I, Mary Prendergast, of the City of Summit, in the County of Union and State of New Jersey, do make, publish and declare this present writing to be a Codicil to my last Will and Testament which bears date the sixteenth day of June, Nineteen Hundred and Thirteen.

First. I hereby ratify and confirm my said last Will in all respects save so far as the same may be changed or altered hereby. 10

Second. Out of my residuary estate I give and bequeath to Margaret Driscoll, wife of Henry Driscoll, of Morristown, N. J., the sum of Five Hundred Dollars; to Ann Ricks who now lives with me the sum of One Hundred Dollars and to Rev. Conrad Schotthoefer, Rector of St. Theresa Catholic Church at Summit, New Jersey, the sum of Three Hundred Dollars for the purpose of an offering. 20

Third. I give and bequeath the moneys which Margaret Landregan and her husband owe me, amounting to Five Hundred Dollars, to Margaret Landregan's mother, if living at the time of my death; if not living then to Michael Smith.

Fourth. In addition to the bequest mentioned in the fourth item of my Will, I give and bequeath unto The Home for Orphan Children, Buffalo, New York, the sum of Three Hundred Dollars, to be used exclusively for the support and benefit of orphans in said institution. 30

Fifth. In addition to the bequest mentioned in the fifth item of my Will I give and bequeath unto the Catholic Protectory of Arlington, New Jersey, the sum of Three Hundred Dollars to be used exclusively for the support and benefit of inmates of that institution. 40

SIXTH. In addition to and not in limitation of the provisions mentioned in the sixth item of my said Will, and in consideration of the care Catherine O'Keefe will take of my sister, Bridget Prendergast, and in order to fix the compensation therein provided for, I hereby order and direct my Executors to pay unto the said Catherine O'Keefe as wages the sum of Fifty Dollars per month during the time she shall live with and take care of my said sister, and until my said sister shall depart this life; in addition to which the said Catherine shall be maintained and supported at my said homestead, during such period, #2. at the expense of my estate.

SEVENTH. I hereby revoke the twenty sixth item of my said Will which devises unto Johanna Dooley my house and lot known as Number Three Hundred and Three Morris Avenue, Summit, New Jersey, and in lieu thereof I direct my Executors to permit the said Johanna Dooley to occupy and possess the said premises during the term of her natural life, without rent, and upon the death of the said Johanna Dooley to convey said premises to the children of the said Johanna Dooley who may then be living, and the lawful issue of any of said children who may have died, *per stirpes.*

EIGHTH. I hereby revoke the twenty eighth item of my said Will which devises unto Margaret Landregan my house and lot known and designated as Number Two Hundred and Ninety Nine Morris Avenue, Summit, New Jersey, and in lieu thereof, and upon the death of my sister Bridget, I order and direct my executors to permit the said Margaret Landregan to occupy and

possess said premises for and during the term of her natural life, without rent, and upon the death of the said Margaret Landregan to convey the same to the children of the said Johanna Dooley who may then be living and to the lawful issue of any who may have died, *per stirpes.*

NINTH. I revoke the last part of Item twenty nine of my said Will which reads as follows: "The other one-half I give, devise and bequeath unto them, requesting that they shall give the same to some hospital or hospitals or to some other worthy charities or objects," and in lieu thereof I give, devise and bequeath the said other one-half of my estate to my Executors requesting that they shall give the same to such worthy poor persons as they may in their discretion determine.

TENTH. I order and direct that the contents of my Will be made known the day following my death.

IN WITNESS WHEREOF I have hereunto set my hand and seal this fourth day of August, in the year of our Lord One #3. Thousand Nine Hundred and Fourteen.

MARY PRENDERGAST (SEAL)

SIGNED, SEALED, PUBLISHED and DECLARED by the said Mary Prendergast to be a Codicil to her last Will and Testament in our presence, we both being present at the same time, and we, at her request, in her presence and in the presence of each other having hereunder subscribed our names as attesting witnesses.

John B. Vreeland	Morristown, N. J.
James B. McClure	Summit N. J.

Will of Mary Prendergast.

I, Mary Prendergast, of the City of Summit, in the County of Union and State of New Jersey, do make, publish and declare this present writing to be a Codicil to my last Will and Testament, which bears date the sixteenth day of June in the year one thousand nine hundred and thirteen.

First. I hereby ratify and confirm my said Will and also the codicil thereto made by me, dated the fourth day of August in the year of Our Lord one thousand nine hundred and fourteen, in all respects save so far as the same may be changed or altered hereby.

Second. Whereas my sister Bridget has departed this life, and as the provisions contained in items six and twenty nine of my said Will and item six of the former codicil thereto providing for the maintenance and comfort of my said sister and the compensation to be paid to my executrices for services in that behalf, are no longer appropriate, and desiring to amend the provisions for the disposition of my residuary estate, I do revoke the whole and each and every part of said items six and twenty nine of my will and said item six and also item nine of the codicil thereto, hereby expressly ratifying and confirming all the other bequestes and devises of my said will and codicil, and I hereby give, devise and bequeath to my executrices, Cathereine O'Keefe and Cathereine McGowan and to the survivor, all my residuary estate, which I direct shall be given to and distributed among such worthy poor persons as my said executrices and the survivor, may in their discretion select, their judgment to be conclusive.

THIRD. I hereby authorize and empower my executrices and the survivor of them to sell at public or private sale, all of my real estate not specifically devised, in such parcels, for such prices, at such times and upon such terms as they may choose and give good and sufficient conveyances in the law therefor.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this twenty-seventh day of September, in the year one thousand nine hundred and seventeen.

MARY PRENDERGAST L. S.

Signed, Sealed, Published and Declared by the said MARY PRENDERGAST, to be a codicil to her last Will and Testament, in our presence we both being present at the same time and we at her request and in her presence and in the presence of each other have hereunder subscribed our names as attesting witnesses.

John B. Vreeland, Morristown, N. J.
Edith K. Drake, Morristown, N. J.

Will of Mary Prendergast.

STATE OF NEW JERSEY,

(Cut of Seal)

COUNTY OF UNION.

I, CHARLES N. CODDING, Surrogate of the County of Union, do certify the annexed to be a true copy of the last will and testament *and codicils thereto of Mary Prendergast,* late of the County of Union deceased and that *Catherine O'Keefe, of 39 DeHart St. Morristown, N. J. and Catherine McGowan, of 313 Morris Ave., Summit, N. J.,* the Executr*ices* therein named proved the same before me, and *are* duly authorized to take upon *themselves* the administration of the estate of said testat*rix* agreeably to said will *and codicils.*

WITNESS, my hand and seal of Office, the *Ninth* day of *February* in the year of our Lord, One thousand nine hundred and *twenty-two.*

(SEAL)

CHARLES N. CODDING,
Surrogate.

STATE OF NEW JERSEY,

UNION COUNTY SURROGATE'S OFFICE

(Cut of Seal)

I, CHARLES N. CODDING, Surrogate and Clerk of the Surrogate's Court of the said County of Union, do hereby certify that I have compared the annexed copy of the *Last Will and Testament and codicils thereto of Mary Prendergast, late of the County and State aforesaid, deceased, and of the Letters Testamentary issued thereon,* with the record thereof *in Book N No. 2 of Wills, page 233 &c.,* now remaining in this office, and have found the same to be a correct transcript thereof, and of the whole of such record. 10

WITNESS, my hand and seal of office, this *fourth* day of *August,* in the year of our Lord one thousand nine hundred and twenty-*two.* 20

(SEAL)

CHARLES N. CODDING,
Surrogate and Clerk of the Surrogate's Court.

UNION COUNTY SURROGATE'S COURT. 30

Certified Copy of the Last Will and Testament, &c.,
—of—
Mary Prendergast,
Deceased.

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NEW JERSEY SUPREME COURT.

MORRIS COUNTY.

MARGARET G. MULROONEY, *Plaintiff,* *vs.* CATHERINE O'KEEFE and CATHERINE MCGOWAN, Executrices of the last Will, etc., of Mary Prendergast, *Defendants.*	*Action at Law.*

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Morristown, N. J., November 21, 1922.

Before Hon. Richard Doherty, Judge, and a jury.

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Appearances:

For the plaintiff, Kalisch & Kalisch.

For the defendants, Vreeland & Wilson.

Albert H. Holland, Esq., of counsel.

A jury was empanelled, accepted and sworn.

Mr. Kalisch opened the case to the jury on behalf of the plaintiff.

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Mr. Holland opened the case to the jury on behalf of the defendants.

MARGARET G. MULROONEY, the plaintiff, sworn as a witness on her own behalf, testified as follows:

Direct examination by Mr. Kalisch.

Q Miss Mulrooney, where do you live? A In 72 Jane street, New York City.

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Q Did you live in Summit in 1896? A I lived in Summit from 1902 to 1906.

Q From 1902 till 1906? A Yes.

Q And what business were you engaged in in Summit? A I was in the dressmaking business.

Q Did you know Mary Prendergast in her lifetime? A Yes. I knew her since I was a child three or four years old. 10

Q And where did she live? A She lived in Chestnut, or in Morris avenue, Summit, New Jersey.

Q And do you know how long she lived in Morris avenue?

Mr. Holland. I just wonder, if your Honor please, if this is beginning to trespass on a field of which she cannot testify? 20

The Court. I will allow it.

Q Go on. How long did she live— A How long did she live in Summit?

Q Yes. A Well, she was 84 years old at the time she died, and I don't—I couldn't say. I think she probably, from all I know—my mother knew her when they were both girls together—that she was probably 18 or 20 years old when she came to the country, and for awhile she lived in New York; she worked out. 30

Mr. Holland. I submit, she is not answering the question.

The Court. I will control this examination.

Q How long did she live in Summit? A About 40 years, I should think.

Q And when did your acquaintanceship with her begin? 40

Mr. Holland. Now, if your Honor please, that is a transaction with the decedent.

The Court. I do not think so. The objection is overruled.

A Well, I have known her about 35 years.

10 Q And did you live near Mary Prendergast in Summit? A About three blocks away.

Q Three blocks away. Did you see her very often in Summit? A Yes; very often; every week.

Q Was Mary Prendergast a woman of education? A No.

Q How about her ability to read and write?

Mr. Holland. I object to that.

A Well, I never saw her read or write.

20

Mr. Holland. I object to that.

The Court. She can testify to what she saw her do.

Q I say, what was her ability to read and write?

Mr. Holland. I object.

The Court. That would only be testimony as to a transaction. I sustain the ob-

30 jection.

Q Can you place the year when she first came to Summit? A When she first came?

Q Yes. A No. I don't remember.

Q While she was residing in Summit, did you have any books belonging to her?

Mr. Holland. Objected to. What does he mean by, "have any books"?

Mr. Kalisch. Did she have any books be-

40 longing to her?

The Court. Doesn't that import a transaction in the nature of a bailment?

Mr. Kalisch. No. She can merely say yes or no; merely that she had them or that she did not have them. That is not a transaction with the deceased.

The Court. I think I will sustain your objection. 10

Q Did you file any claim with the executors of this estate? A I sent them a bill, yes.

Q Yes. And you received this? A (Referring.) Yes, yes.

Mr. Kalisch. I want to offer this in evidence. Is there any objection?

Mr. Holland. Is that the notice?

Mr. Kalisch. Yes. 20

Mr. Holland. No objection.

Mr. Kalisch. I offer this in evidence.

(Paper marked Exhibit P. 1 in evidence.)

Mr. Kalisch. (Reads Exhibit P. 1 to the jury.)

Q Do you know when Mary Prendergast died? A In January, 1921.

Mr. Kalisch. I want to offer a certified copy of the will in evidence. 30

Mr. Holland. No objection to a certified copy.

(Paper marked Exhibit P. 2 in evidence.)

Q What is your profession now, Miss Mulrooney? A I am a graduate nurse, registered under the City of New York State.

Q And when did you start to study nursing? A In 1906. 40

Q Do you remember the month? A February.

Q And where did you go from, what place did you leave to study nursing? A I left Summit, New Jersey.

Q And you went to New York? A Saint
10 Vincent's Hospital, New York City.

Q Before you left, did you see Catherine O'Keefe? A No. I had no dealings with Mrs. O'Keefe at all.

Q What do you mean? A I mean, Mrs.—Mrs. Prendergast, you mean?

Q Mrs. Prendergast. A Oh, yes; I saw her before I left, yes.

Q And how long before you left? A Well, it was about two days, possibly, before I left.

20 *Mr. Kalisch.* Cross examine.

Cross examination by Mr. Holland.

Q When was it you say that Mary Prendergast died? A In January, 1921, as far as I know. I was not there. I do not know anything about it, only just what I heard.

Q Then, you do not know when she died, really, do you? A Well, from hearsay. I did not see her die, and neither was I at the funeral.
30 I do not know, only from what I was told.

Mr. Kalisch. I think the pleadings admit she died in January.

Q Is that your signature (handing paper to witness)? A Yes. That is my signature, yes.

Mr. Holland. I ask that that be marked for identification.

(Paper marked Exhibit D. 1 for identification.)

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Q Is that your signature (handing paper to witness)? A Yes, yes.

Mr. Holland. I ask that that be marked 2 for identification.

(Paper marked Exhibit D. 2 for identification.) 10

Mr. Holland. Has your Honor the amended complaint?

The Court. I do not think I saw any amended complaint.

Mr. Kalisch. Yes. Here it is (producing paper).

Q Is that your amended complaint?

Mr. Kalisch. She would not know the legal technicality. 20

Mr. Holland. I just want to show that she does not.

Mr. Kalisch. I will admit it is the amended complaint.

Q I also show you an original copy of the original complaint, and call your attention to the difference in paragraph 1. A Yes.

Q That reading, "As her household servant and business agent." A Yes. 30

Q And you employed as her household servant, business agent and dressmaker and milliner? Just answer the question. Was that done at your instructions? A My instructions, yes.

Mr. Holland. That is all.

Mr. Kalisch. That is all.

Mr. Holland. Just one question, if your Honor please. 40

By Mr. Holland.

Q I am sorry I have to ask it. What is your age? A Forty-five.

Q Forty-five. A I am not ashamed to tell it, and you don't need to be afraid to ask me my age. It is in the certificate, if you would
10 like to have it.

HELEN MARTIN, sworn as a witness on behalf of the plaintiff, testified as follows:

Direct examination by Mr. Kalisch.

Q Miss Martin, where do you live? A Summit, New Jersey.

Q How long have you lived in Summit? A I was born in Summit.

Q Well, that is getting rather personal now,
20 but have you any objection to saying how long that is? A Forty-three years.

Q And what is your profession or business, do you have any? A A dressmaker.

Q And how long have you been a dressmaker? A Twenty-five years.

Q Did you know Mary Prendergast in her lifetime? A Yes, sir.

Q Will you talk a little louder, please? A
30 Yes, sir.

Q And you knew Margaret Mulrooney? A Yes.

Q And you have known her how long? A Twenty-five years.

Q Did you live near Margaret Mulrooney in 1896? A Yes. I was her neighbor.

Q Well, just how near did you live to Margaret Mulrooney? A The next house.

Q And what street in Summit did you live?
40 A Railroad avenue.

Q And you conducted a dressmaking business there? A Yes.

Q And what business did Margaret Mulrooney conduct there? A She did the same thing; dressmaking.

Q And how often would you see Margaret Mulrooney? A Very often. 10

Q Well, now, that may mean a lot and it may not. Now, just define what you mean by very often. A Well, from time to time, we would run back and forward.

Q Well, would you see her every day or— A Yes, every day.

Q —every other day? A Especially at night; I would run in at night.

Q So that, during the year, would you see her pretty near every day during the year? A Yes, pretty near. 20

Q What were the calls that you made, business calls or pleasure calls or both? A Yes. We would talk over business, dresses.

Q And how long would you stay on these different—

Mr. Holland. Is this with Miss Mulrooney or Mrs. Prendergast.

Mr. Kalisch. With plaintiff. 30

Q How long would you stay there? A Oh, I would stay late some evenings until eleven and twelve o'clock.

Q Now, on your various calls there, did you ever see Mary Prendergast there? A Yes, sir; I have.

Q Well, will you state whether often or not? A Very often, yes.

Q And can you state whether or not she brought anything there with her? A Yes, sir. 40

She brought books and letters and papers, and Miss Mulrooney used to work on them.

Q Do you know what kind of books they were? A Well, they were yellow books.

Q And large or small? A Well, about that size (indicating), like that.

10 Q And did you hear any conversation that Mary Prendergast had with Margaret Mulrooney with reference to the books? A Yes. She would bring them in and Margaret would sit down and do the work on them.

Q Well, what did Mary Prendergast say, if anything, to Margaret about the books? A Well, she wanted her to take care of her books and do the work.

Q Well, did she tell Margaret that? A Yes.

20 Q Well, can you use her words, or as nearly as possible, what she would say to Margaret? A "Margaret, dear, I have these letters to answer and I have these books I want you to look over and take care of for me."

Q And do you know, if anything, what Margaret would say? A Yes, certainly; she would take them and work on them.

Q And did Margaret work on those books? A Yes, she did.

30 Q And how long would she work on those books of an evening? A Well, she would work until all times.

Q Well— A Nine, ten, sometimes up till twelve to get them finished.

Q Well, can you state the hours, in hours? A From the time she would start on them?

Q Yes. How many hours would she put on the books, about? A At night?

Q Yes. A Well, from seven o'clock until

40 twelve, some nights.

Q And some nights not as late? A No.

Q And how often in a week would Mary Prendergast come to see Margaret Mulrooney? A Well, then, she would come over with her dressmaking, to make her dresses.

Q No; but please answer the question. A Oh! 10

Q I want to know how often in the week would Mary Prendergast come to see Miss Margaret Mulrooney. A Well, three times a week, I should say.

Q Do you know whether she lived far from Miss Mulrooney's? A She lived a good block, and a long block.

Q Now, what did you say about the dressmaking? You said something about that. A Well, Miss Mulrooney used to do her dressmaking for her. I have seen her working on her clothes. 20

Q Well, did you see her measure her? A Yes, measure and fit them.

Q How often would she do that? A Well, she would do that during the winter and summer when she wanted the clothes made.

Q Well, what kind of clothes were they? A Well, black cashmere, foulard silk, and then, in summer, thin clothes. 30

Q Would she bring over the material? A Yes, sir.

Q And what did she say, if anything, about making clothes for her? A Well, she—

Q If anything? A Well, she didn't say anything, only simply Miss Mulrooney made them like anyone else would come.

Q Now, do you know when Mary Prendergast started to call on Miss Mulrooney, what year it 40

was, about? A Well, I knew Miss Mulrooney from 1894.

Q Do you know when Mary Prendergast first started to come there? A Well, about 1896.

Q And were there any conversations between Mary Prendergast and Miss Mulrooney with regard to payment, made in your presence?

10

Mr. Holland. I object to that.

A Yes.

The Court. Read that, please.

(Question read by the stenographer.)

A Yes, sir.

Mr. Kalisch. Now, one moment.

20

Mr. Holland. Your Honor please, I do not think he ought to ask her whether there were any conversations with regard to payment. He might ask what the conversations were.

The Court. Do you object to the form of the question?

Mr. Holland. Yes, sir.

Mr. Kalisch. If you object it is leading, you did not make the objection that way.

30

Mr. Holland. Well, I make the objection.

Q Now, what conversation—I cannot lead you, Miss Martin—what conversation did they have regarding the work that Miss Mulrooney was doing for Mary Prendergast? A What conversation?

Q Yes. If any. Did they have any conversation? A In regard to the work?

40

Q Yes. In regard to payment? A Oh, yes.

Mr. Holland. I object.

Mr. Kalisch. Well, if your Honor please—

A Yes. Miss Mulrooney asked for payment.

Mr. Kalisch. Now, one moment.

The Court. It is a difficult situation. I will allow the testimony. You say Miss Mulrooney asked about payment? 10

The Witness. Yes, sir.

The Court. And what did Miss Prendergast say? Was she a married woman?

The Witness. No.

The Court. What did she say?

The Witness. She didn't have the money, she said, and couldn't pay her; her money was all tied up; but she said, God bless her; she would remember her in her will. 20

The Court. And can you tell us the occasion when she said that?

The Witness. Well, when—it was three years after Miss Mulrooney started to do the work, because Miss Mulrooney said, "I have been working for you now three years."

The Court. And this took place in Miss Mulrooney's house? 30

The Witness. Yes.

Q And she said she would remember her in her will? A Yes.

Q And what did Miss Mulrooney say to that? A Miss Mulrooney said she needed the money.

Q Yes. Well, when Miss Prendergast said she would remember her in her will, did Miss Mulrooney say anything? A "All right."

Q She said "All right"? 40

The Court. She let it go at that?

The Witness. It was hard to get money out of her. You couldn't get it.

Q Well, now, that, you say, was in the year 1896? A Yes, sir.

10 Q Well, did you continue calling on Miss Mulrooney? A Yes.

Q And how often during the week would you call on Miss Mulrooney? A Oh, two or three times a week.

Q And did you ever see Miss Mulrooney working on these books? A Yes, sir.

Q How long did that keep up? A Ten years.

Q Well, during those ten years, did you see Miss Mary Prendergast at Miss Mulrooney's 20 house? A Yes, sir.

Q Well, during the period of ten years, did she call at Miss Mulrooney's house? A She did.

Q And how often would Miss Mulrooney make—fix these dresses? A Oh, at all times.

Q What? A All the time, she would—any time she would bring the dresses in.

Q The dress goods? A Yes, the dress goods.

30 *The Court.* Tell us how frequently that would occur; how many dresses would she have in a year?

The Witness. Oh, she would have about twelve; she was a very good dresser.

Q What did you say? A About twelve.

Q Twelve dresses a year? A In the winter she would have a cloth dress.

Q What? A I think so, yes. I never counted them, really.

40

Q No. And do you know how much time Miss Mulrooney would spend on making these dresses? A Well, of course, I never figured out the time that she spent on them.

Q No. You say you have been in the dressmaking business twenty-five years? A Yes, sir.

Q Can you state what the reasonable value for making those dresses would be? A At that time? 10

Mr. Holland. I object.

Q At that time, yes. A Well—

Mr. Holland. Just a minute. I object to the form of the question. She has not qualified as an expert as to reasonable value.

The Court. She says she never counted those dresses. I sustain the objection. The foundation is not laid. 20

Mr. Kalisch. Well, it is for the purpose of showing the value of those dresses.

Q Do you know what that material was?

The Court. What dresses? She says she never counted them.

Q Do you know what the material was of which Miss Mulrooney made up those dresses? A Yes. 30

Q And do you know what the style was? A The style, yes.

Q Now, for making that material that particular material style, what would be the reasonable value for making them?

Mr. Holland. I object.

The Court. Well, have you identified those frocks as yet so that the other side know what she is testifying on? 40

Mr. Kalisch. Yes.

Mr. Holland. In the first place, she says about twelve dresses a year, and she says she never counted the dresses, she doesn't know.

The Witness. I should say yes.

10 *The Court.* He is not talking to you.

The Witness. Oh!

Mr. Holland. Then Mr. Kalisch puts to her the enlightening question, "Do you know the material out of which the dress was made?" Now, here we have a period from 1896 to 1906.

The Court. All right. The evidence on that point is indefinite so far.

Mr. Kalisch. Does your Honor rule?

20

Q What kind of a dress would Miss Mulrooney make for Miss O'Keefe, or Miss Prendergast? A Those little tight-fitted waists that they used to wear then, all bones and hooks and eyes.

Q And for making a dress such as that, what would be the reasonable value of making such a dress? A Well, $15 to $20 at that time.

Q $15 to $20 at that time? A Yes.

30 Q And you say that she made about twelve dresses a year? A Well, I am not positive just how many.

Q Well, about, I said. You say about twelve dresses a year? A I should think so.

Q What? A I should think so, yes.

Q And you say $12 or $15 for making a tight-fitting dress? A Yes.

Q Well, was that the only style she made? A Oh, no. She made different styles.

40

Q Now, give me the other styles. The ladies on the jury will know about this. A Well, they wore basques, little gathered skirt, and all that, at that time.

Q Talk a little louder, please. A They wore basques, all boned, and hooks and eyes up the front, gathered skirts, ruffled. 10

Mr. Holland. Is this an exposition on the styles of the day?

Mr. Kalisch. Dresses that she made. that is what I have asked her, what kind of styles did she make for Mary Prendergast?

A Well, those styles with the ruffles and tucks on them, little gathered skirts.

Q Yes. How tall was Mary Prendergast, about? A About seven feet tall. 20

Q Was she stout or thin? A Thin.

Q Now, what would be the reasonable value for making such a dress? A Well, fifteen to twenty.

Q Did she make any hats? A Yes. She made her hats, too.

Q What kind of hats did she make for her? A Straw ones; little straw hats, and then, winter hats.

Q What would be the reasonable value of 30 making those straw hats, or winter hats? A At that time?

Q At that time. A $7.00.

Mr. Holland. Just a minute. We are now into the question of reasonable value for hats. I object to it. I do not think the witness knows anything about a hat.

The Court. She does not profess to be a milliner.

40

Q Well, have you made hats? A Yes. I can make hats.

Q How long have you been making hats? A Well, it is not my business; but I can make them.

Q You can make them? Have you made
10 them? A Yes.

Q How often have you made hats? A Oh, very often.

Q What? A Very often.

Q Well, during the period of— A To match a dress, sometimes you have to make a hat.

Q What? A You have to make a hat to match a dress, sometimes.

Q Well, now, during a period of twenty-five years, how often have you made the hats? A
20 Well, very often.

Q Well, that is very indefinite, very often. How often in the period of a year would you make hats to match the dresses? A Well, maybe three times a year.

Q How often? A Three times.

Q Do you know the reasonable value of making those kind of hats? A Seven or eight dollars, at that time.

30 Q Now, what would you say would be the reasonable value of making hats such as Mary Prendergast wore? A Well, about seven or eight dollars.

Q Now, were you present when Margaret Mulrooney told Mary Prendergast that she was going to study for a nurse? A Yes.

Q Going away? A Yes.

Q When was that, do you know? A In 1906.

Q Will you talk a little louder, please? A February, 1906.

40

Q And where were you? A I was in Miss Mulrooney's house.

Q And was Mary Prendergast there? A Yes, sir.

Q What was she doing there? A She was saying good-bye to Miss Mulrooney.

Q Well, was there anything said about payment, then? A Yes. Miss Mulrooney said she she would be under— 10

Mr. Holland. Now—

Mr. Kalisch. One moment.

Mr. Holland. All right; let it go.

The Court. Go on; answer that.

The Witness. Pardon me?

The Court. Go on.

Q Go on. A Miss Mulrooney said she would be under a very big expense going into the hospital to take up nursing; she needed some money, and asked Miss Prendergast if she could let her have some, and Miss Prendergast said, "God bless you, Margaret. My money is all out on mortgages, but I will remember you in my will." 20

Q Well, did they say good-bye then, or what happened? A Well, they said good-bye.

Q And do you know whether or not Margaret Mulrooney left Summit to go to— A Yes. 30

Q Did you see Mary Prendergast after that? A Yes, sir.

Q Where did you see Mary Prendergast? A Oh, I saw her on the street; on the street.

Mr. Kalisch. That is all. Cross examine.

Cross examination by Mr. Holland.

Q How long did you know Mary Prendergast? A Oh, I have known her since I was about seven years old. 40

Q And was she as tall as I am? A Just about; she was quite tall.

Q Just about as tall as I am? A Well, no; I wouldn't say she was as tall as you are.

Q Not quite so tall. And you think she was seven feet tall, is that right? A Well, I should say yes, she was seven feet tall.

Q Then you think I am seven feet tall? A I do not know.

Q Are you trying to be honest? A Yes, sir.

Q Do you think I am seven feet tall? A Oh, I guess you are over seven feet tall.

Q You think I am over seven feet tall?

Mr. Kalisch. Is that material, your Honor please?

Q Well, did it make any difference as to the cost of these dresses, whether she was seven feet tall or not? A No. It doesn't make any difference.

Q Oh, it didn't? A No, sir.

Q How long have you known Margaret Mulrooney? A Twenty-five years.

Q Now, that brings you back to when? A 1892.

Q Are you sure twenty-five years brings you back to 1892? A Well, around that time.

Q Don't you know?

Mr. Kalisch. That is a mathematical question. She can figure it.

Mr. Holland. She cannot even figure by mathematics. How could she figure twelve dresses a year?

The Court. Go on.

Q Do you say 1892? A Yes. 1894; between that time.

Q Well, when did Margaret Mulrooney come to live in Summit? A Well, she came down about in 1891.

Q Well, didn't you say, or testify, on direct examination that she lived in Summit from 1902 to 1906? A I am not positive when she came to Summit. 10

Q Oh, then you may be mistaken about that? A Just the time she came down; yes, sir.

Q And you may be mistaken about some of the other things you said? A (No response.)

Q Now, if Margaret Mulrooney did not come to Summit until 1902, you have been mistaken about all this testimony about seeing Mary Prendergast in her house prior to 1902?

Mr. Kalisch. She didn't say that, if your Honor please. She didn't say she saw Mary Prendergast in the house prior to 1902. 20

The Witness. 1906.

Mr. Kalisch. If you want to bewilder the witness, of course—

Q Well, when did you first see Mary Prendergast at Margaret Mulrooney's house? A Why, in 1906.

Q In 1906. That is when you first saw her? 30 A 1896, I mean.

Q Well, now, which is it? Are you looking— A 1896, it was.

Q Well, which is it? A 1896.

Q 1896. Well, did you hear Miss Mulrooney testify that she did not move to Summit until 1902? A Yes.

Q What is that? How could you see her in Summit in 1896 if she didn't move there until 1902? Please don't look at Miss Mulrooney. 40

Look at me, or look at the jury. Look at the jury. They are the ones who are going to gauge your testimony. How could you see her in 1896 if she did not move there until 1902? Can you explain that? A She didn't move there until 1902?

10 Q Wasn't that the testimony that you heard of Miss Mulrooney, that she lived in Summit from 1902 to 1906?

Miss Mulrooney. 1892.

Mr. Kalisch. If your Honor please, that wasn't the testimony. The testimony was 1892.

Mr. Holland. Well, it may be; I have it 1902.

The Court. Go on.

20 Q Now, how far did Mary Mulrooney live from you in 1892? A Why, next door.

Q Next door? Right next door? A Yes.

Q And what was her business? A A dressmaker.

Q And what was your business? A Dressmaker.

Q And did I understand your name to be Mrs. or Miss Martin? A Miss.

30 Q Well, how old were you when you left home? A Oh, I lived right in my home.

Q And did Miss Mulrooney live in her home? A Yes, sir.

Q And how old were you when you started in the dressmaking business? A Oh, I was about sixteen.

Q You were sixteen when you started in the dressmaking business? A Yes, sir.

Q For yourself or working for somebody else? A Somebody else when I first started.

40

Q And how old was Margaret Mulrooney when she started in the dressmaking business? A Oh, I couldn't say how old she was.

Q Well, she is two years older than you, isn't she? How old was she in 1892? A I can't tell all that.

Q What is that? A I don't think the stenographer got what you said, and I did not. A (No response.) 10

Q Well, we will put another question. How old was Margaret Mulrooney the first time that you saw Mary Prendergast there? A Well, I do not know how old she was.

Q No.

The Court. Was she keeping house there for herself?

The Witness. She was living with her mother. 20

The Court. And in the dressmaking business?

The Witness. Yes.

The Court. And was she a woman or a girl?

The Witness. She was a young girl, then. 30

Q Well, was she dressmaking for herself? A Yes.

Q Or for somebody else? A For herself.

Q And how often did you used to spend your time there? A Oh, very often.

Q Days or nights? A Well, sometimes during the day, and at night.

Q You mean, in the evening? A Yes; in the evening. 40

Q Well, every time that you were there, was Mary Prendergast there? A No; not every time.

Q Well, how can you remember at this late day, about thirty years ago, how many times you saw Mary Prendergast? A Oh, well, you
10 would almost see her there all the time. She used to come in with her books and letters and—

Q How did you know that she came in with her books? A I saw her coming there and saw her sitting there, asking Miss Mulrooney to do this work.

Q To do what work? A To take care of her books and write her letters.

Q Well, you were there. Letters, about what? What were the letters? You heard her ask her.
20 A Of course, I never looked right in the letters.

Q Well, didn't you hear her ask her? A Yes; I heard her ask her.

Q Well, what was she asking her? A Asking her to write her letters; answer her personal letters.

Q Letters about what? A Well, people that she got them from.

30 Q Well, what did they say?

Mr. Kalisch. She said she did not read them, if your Honor please.

A I didn't sit there and listen to what was going on in their business.

Q Well, then, you do not know whether Mary Prendergast asked her to write letters or not; you are guessing at it, aren't you? A No, I am not guessing at it. I heard her ask her to write the letters, and saw her bring them in.

40

Q Well, it wouldn't take long to write a letter, would it? A Oh, she had a bundle of them.

Q She had a bundle of them every time you saw her? A Yes, sir.

Q Well, Mary Prendergast— A Not every time. Sometimes she would come in with the dressmaking. 10

Q Well, she always came in and had something to do? A (No response.)

Q You knew that Mary Prendergast was working herself, didn't you? A Yes.

Q And what she was working at? A Why, she used to do housework.

Q Yes. She used to go out house working? A Yes, sir.

Q And yet, practically every time she came to Margaret Mulrooney's house, she had this bundle of correspondence? A Oh, no; not every time, no. 20

Q Just how many times, then? I understood you to say practically every time. A Well, the last of the month you would usually see her coming along with this bundle.

Mr. Kalisch. The last of the month?

The Witness. Yes.

Q With what? With a bundle of letters? A With a book; there was books of hers. 30

Q Now, was it book or books? A Books.

Q How many books? A Well, about—

Q Oh, you knew all about it, didn't you? A No, I didn't know all about it.

Q How do you know that she brought the books for Margaret Mulrooney to look at? A I saw her bring them in.

Q Where did she carry them? A Under her arm. 40

Q How did she take them out again, under her arm? A Yes.

Q And, in the meantime, did she try on any dresses? A No, not that time; but then she would come with the dresses.

Q She never brought the books at the same
10 time that she looked at the dresses? A Yes; she would, sometimes.

Q Oh, well, did she ever bring the books when she was looking at dresses, but not use the books? A Yes. She would bring in the material, and brings the books, too.

Q But they did not look at the books sometimes, is that right? Is that right? A (No response.)

Q Well, now, for how many years did Mary
20 Prendergast go out to work? A Oh, always, since I can remember.

Q She always went out to work? A Yes, sir.

Q Well, do you still think that you are right when you say that she had twelve dresses made every year? A Well, it might be twelve.

Q Oh! It might be one, mightn't it? A Well, I know she had more than one.

Q More than one every year? A Thin
30 dresses. It may be six thin dresses, in the winter, and six heavier ones.

Q Well, Mary Prendergast could make dresses herself, couldn't she? A No, she could not.

Q Didn't she used to help? A No. I never seen her help.

Q Well, all you mean is that you don't know whether she could or not? You don't know whether she could or not, do you? A I am sure
40 she could not.

Q And so she had six dresses every summer? A Yes.

Q And how many during every winter? A Well, I would say six in the winter.

Q About six every winter. And these are the dresses that she used to go out and work with? A Some of them, yes. 10

Q Do you think a working dress is worth $20.00 to make up? A No.

Q Well, how much are those worth? A Well, they would be worth about ten.

Q Oh, they are worth about ten. Well, why didn't you say ten on your direct examination? Why didn't you give this jury the correct information? A Well, he didn't ask what kind of dresses; different prices.

Q Didn't Mr. Kalisch ask you what was the price of the dresses, and you said fifteen or twenty dollars? A Yes. These cashmere and silk dresses were fifteen and twenty dollars. 20

Q How many cashmere dresses did she have? Oh, I don't know. I saw one cashmere.

Q What is that? Did you ever see any more than one cashmere dress? A Yes. She always liked cashmere. She would always bring that material in. 30

Q How was it she always brought the materials? Didn't she get some of this material from Margaret Mulrooney? A No.

Q Never? A She always brought her own.

Q Well, you knew her quite well, didn't you? A Who?

Q Mary Prendergast? A Yes, sir.

Q Did you ever make any dresses for her? A Never.

Q Never. 40

The Court. Was the ten or twenty dollars the price of making the dresses up?

The Witness. Fifteen or twenty for the silk or cashmere; and ten for these gingham dresses.

The Court. In 1906?

10 Q Well, as a matter of fact, these dresses, some of them were made in 1892, weren't they, or 1896? A 1896.

Q And is that the price in 1896? A Yes.

Q Are you sure about that? A Yes.

Q Do you mean that? How much were you getting for dresses in 1896? A About that.

Q About what? A From fifteen to twenty, ten.

20 Q Do you mean it? Now, who have you been talking this case over with? A Nobody.

Q Not a soul? A No, sir.

Q Are you sure? A Yes, sir.

Q You haven't spoken to Miss Mulrooney about it? A Well, of course.

Q You have? Did you say you have or you haven't?

Mr. Kalisch. She said she had.

30 *Mr. Holland.* Now, I am not asking you, Mr. Kalisch.

Mr. Kalisch. I say, she said she had.

The Court. Never mind, now.

A When they were trying to beat her out of the money; of course, I knew she did this work.

Mr. Holland. What was the last question, please?

(Question read by the stenographer.)

40

Q Do you say you have spoken to her? A Yes, I have spoken to her.

Q Why did you say you didn't speak to anybody just a little while ago? A Well, you didn't say—

Q I asked you, did you speak to anybody, and you said no. A Yes. 10

Q Well, why did you say no? A Well, I didn't know who you meant.

Q Haven't you spoken to Mr. Kalisch? A Yes.

Q Well, why didn't you say that? A I didn't know who you meant I spoke to.

Mr. Holland. All right; that is all.

Mr. Kalisch. That is all.

20

DANIEL McNAMARA, sworn as a witness on behalf of the plaintiff, testified as follows:

Direct examination by Mr. Kalisch.

Q Mr. McNamara, where do you live? A Summit, New Jersey.

Q What is your business? A Real estate.

Q What was your business in 1896? A Locomotive engineer.

Q On the Lackawanna? A Yes, sir. 30

Q And did you know Catherine O'Keefe? I mean Mary Prendergast? A Oh, yes.

Q Did you know her well? A Yes.

Q How many years had you known her? A Oh, I think along about 39 years.

Q And do you know where she lived? A Oh, yes.

Q Where? A First off, she lived with a family by the name of Gleason on Springfield avenue opposite the Blackburn house; then, 40

after that, she went living with her sister on Morris avenue, Mrs. Connors.

Q On Morris avenue, Summit? A Morris avenue, Summit.

Q And do you know Margaret Mulrooney? A I do.

10 Q How long have you known her? A I beg pardon?

Q How long have you known her? A Well, I know her since she moved to Summit, that is about thirty years ago. They moved from Morristown to Summit.

Q And did you know what business she was in when she was in Summit? A What business she was in?

Q Yes. That Margaret Mulrooney was in? A At that time, she was a little girl.

20 Q Well, did you know afterwards that she was in any business? A (No response.)

Q Did you know afterwards that she was in any business while she was in Summit? A Only at her house, she used to do dressmaking, and so on.

Q Now, did you ever see Mary Prendergast go into Margaret Mulrooney's house? A Oh, yes; quite often.

30 Q Well, do you know when it first started? A Well, no; I cannot say exactly about the time.

Q Well, can you give me about the year?

Mr. Holland. The witness has already said he cannot say.

A '96 or '97.

Q 1896 or '97? A Yes.

Q And how often would you see Mary Prendergast on a weekly average go into Margaret

40

Mulrooney's house? A Well, I used to see them quite often after—after '98.

Q After what? A 1898. I went on the police force in 1898, and I used to see them quite often then going into Mrs. Mulrooney's.

Q Can you give me about, on a weekly average, how often would you see Mary Prendergast call on Miss Mulrooney? A What is that? 10

Q Could you give me, on a weekly average, on a weekly basis, how often you would see Mary Prendergast call on Miss Mulrooney? A Well, I couldn't exactly say that. I have seen them going there quite often.

Q Covering what period of time? How long did this last that she would be calling on Margaret Mulrooney? A How often?

Q Yes. How long, during how many years would that last, if it did? A Oh, I don't know; maybe seven or eight years or more; maybe not that much; I couldn't say positively. 20

Q Did you ever have a conversation with Mary Prendergast on her way down when she was calling on Miss Mulrooney? A Oh, yes. I often met Miss Prendergast and Mrs. Connors going.

Q Would you stop and talk with them? A Oh, yes. 30

Q Would she mention anything about going to Mulrooney's? A Yes. She would tell me she was going to see Maggie Mulrooney.

Q Would she have any books or papers in her hand? A Yes. She used to have a book, as a rule. She didn't have a book every time, but a great many times she had a book.

Q Did she ever mention to you what she was going to Margaret Mulrooney's place for? A She mentioned that Margaret was doing 40

some work for her, keeping track of her money and so on.

Q What? A Keeping track of her money, and so on.

Q Now, did you see Mary Prendergast when she was ill? A Oh, yes.

10

Q How often would you see her when she was ill? A Oh, I saw her quite often, sometimes every other day, and sometimes when she was up and around, why, I would see her, maybe, twice a month; but when she would be ill, I might step in and see her every other day, or every three or four days; sometimes three or four days; sometimes it would be a couple of days.

Q What do you say about Mary Prendergast's education; was she an educated woman

20

or wasn't she? A Oh, no; I never knew her to have any education.

Q Well, how about reading and writing? A I never knew her to be able to do any of that, either.

Q Did you ever call on her with your wife? A Well, no. They used to come to our house occasionally.

Q Who did? A Miss Prendergast, and

30

Miss—

Q Call on you? A And Mrs. Connors, yes.

Q And would they be reading?

Mr. Holland. What is that?

Q Would they be reading? A Why, no; I never knowed them to read.

Q Well, was there any reading when they called upon you? A Oh, my wife would read, sometimes I would read in the paper, sometimes.

40

Q Who would you read the papers to? A I would read them to them, local news there of the town.

Q Well, who would you read the papers to? A Oh, to Mrs. Connors and Miss Prendergast, and my mother-in-law would be there.

Q Would she read, too? A Who? 10

Q Your mother-in-law. A My mother-in-law used to read, yes.

Q How about your wife? A My wife used to read.

Q Would she read out loud? A Oh, yes, yes.

Q While you were there, did you see Mary Prendergast take a paper to read? A I never saw her take a paper to read.

Q Now, you say you called on Mary Prendergast when she was ill? A Yes. 20

Q Can you state what year that was? A Oh, that was the last of January, the last of it.

Q Well, do you know when Mary Prendergast died? A Last January.

Q And did you call on her before she died? A Oh, yes; yes.

Q And where was she living when you called upon her? A On Morris avenue.

Q Now, did she send for you, or did you go? A She used to make—insist that I would promise that I would come and see her again in a day or two. 30

Q And did you go to see her? A Oh, yes.

Q During those times that you visited her, did she say anything about any payment due Margaret Mulrooney?

Mr. Holland. I submit it is very leading, but I have no objection. 40

The Court. I will allow it. Go on.

A What is that?

Q During those times that you visited her like that, did she say anything about any payment due Margaret Mulrooney? A Yes.

Q What did she say? A Well, she said she wanted to—in that conversation I had with her, she said she wanted to leave Maggie Mulrooney something as she was awful good to her when she was here.

Q Did she say anything to you about making a will? A Well, that was the conversation.

Q When was the last time you saw her? A About three days before she died.

Q And when was the time she said that she wanted to leave Maggie something in her will? A That was in December; last December.

Q The last of December? A Yes.

The Court. How old a woman was she when she died? How old?

The Witness. Well, I couldn't tell. She was pretty—she was 75 to 80, to the best of my opinion.

Mr. Kalisch. Cross examine.

Cross examination by Mr. Holland.

Q And she said, because Maggie was awful good to her while she was here, is that what she said? A What is it?

Q She said, because Maggie was awful good to her while she was here, is that what she said? A Yes.

Q Well, it is not unusual to be good to anybody, is it? A What is that?

Q It is not unusual to be good to anybody, is it? A I don't know anything about that.

Q You don't? Well, you were talking about it, weren't you? A Why, I am telling you just what Miss Prendergast said.

Q Yes. Well, when she said something about Maggie being good to her, there was nothing unusual about Maggie's being good to her? You were good to her, weren't you? A I certainly was, yes; and I would be today if she was alive. 10

Q And you went to see her? A Yes.

Q And you came every other day because she made you promise to come and see her and talk to her? A Yes.

Q And you were good to her? A That was when she was ill.

Q Wouldn't you have been good to her while she was well? A Yes; just the same.

Q Of course you would. And it wasn't anything unusual for Mary Prendergast to say that Maggie Mulrooney had been good to her, was it? 20

Mr. Kalisch. I object to that question.

The Court. It can bring forth only a criticism from the witness. I sustain your objection.

Q You were on the police force in '98, Mr. McNamara? A I was, yes. 30

Q And for how long a period of time? A I was on the police for for 23 years.

Q And during that time you saw a great many people, didn't you? A I certainly did.

Q And you saw Mary Prendergast and her sister a great number of times, too, didn't you? You haven't any idea how many times? A No, no.

Q You haven't any idea, during all the number of times that you saw her, what she carried 40

in her hand, or where she was going to, have you, really? A Have I what?

Q You haven't any idea what she carried in her hands during all that time, or where she was going? A Well, I saw her carrying books to Miss Mulrooney, yes. But I have saw her lots of times without any books.

10 Q And where was she going, then? A Well, the other times—

Q Well, now, there were lots of times she didn't have any books at all when she went down to Mulrooney's, weren't there? A Well, I couldn't say that, no. I might have seen her going down there without books.

Q Yes. A But I know there was lots of times I did see her going with books.

Q Now, we have been talking about Mary 20 Prendergast. Let us talk about Margaret Mulrooney. Haven't there been lots of times you saw Margaret Mulrooney go to Mary Prendergast's house? A I do not ever remember seeing Margaret Mulrooney going to Mrs. Prendergast's house.

Q Now, you are sure of that? A Sure of that.

Q All right. Now, what was Mary Prendergast's sister's first name? A Which one of 30 them?

Q Well, how many did she have? A She had two.

Q What were both their names? A One was Bridget and one was Ellen.

Q Bridget what? A Bridget Prendergast.

Q And Ellen? A Ellen Connors.

Q Ellen Connors? A Yes.

Q And didn't I understand you to say that you had conversations with Mary Prendergast

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and Mrs. Connors? Now, didn't Mary Prendergast live with Mrs. Connors? A Yes.

Q And wasn't Mrs. Connors able to read and write? A I never knew her to read or write.

Q Well, you did not know her not to to be, did you? A I certainly knew her for years, and she come to my house there. 10

Q Who is that? A Mrs. Connors and Mrs. Prendergast.

Q Well, was she able to read and write, or wasn't she able to? A Not that I knowed of.

Q In other words, if she was able to, you would know it? A I think I would, yes.

Q When did Mrs. Connors die? A Oh, Mrs. Connors died ten or twelve years ago.

Q Yes. Now, when she died, didn't she leave all her property to her sister, or don't you know? 20

Mr. Kalisch. I object. That is not cross examination.

The Court. I sustain the objection.

Q When you were reading the newspaper aloud in your home, everybody else was listening, weren't they? There wasn't anything unusual about reading a newspaper aloud in your home, was there? A Well, I would usually read 30 it aloud if they were there and there was, of course, my wife and mother-in-law that used to read the paper themselves.

Q Well, they couldn't read it themselves if you were reading it, could they? A Oh, no. If I was reading it myself, they would read it themselves.

Q Well, now, you were on the police force in '98 for a great many years. Where did Mary Prendergast used to work? A What is that? 40

Mr. Kalisch. Now, one moment, please. This witness has not testified that Mary Prendergast worked anywheres.

Q Well, did she work? A I tell you, when I first—before I—or since I was on the police force?

10 Q Well, at any time. A Oh, yes; Mary Prendergast worked.

Q Yes. Had she worked since you were on the police force? A Not that I know of, no.

Q Did she work in '98? A Not that I can recall, no; I don't think she did.

Q What did she do? A What?

Q What did she do? A She was there with her sister, then, living with her sister.

Q She was living with her sister? A Yes.

20

The Court. She did not work, to your knowledge, since 1898?

The Witness. No, your Honor.

Q Are you sure of that? A Not that I know of.

Q She might have worked and you not know anything about it? A I beg pardon?

Q She might have worked and you wouldn't know anything about it? A Well, I hardly

30 think she would be working that I wouldn't know it.

Q Well, I think you said on direct examination that you were told that Margaret Mulrooney was keeping track of her money. Who told you that? A I think they told me themselves.

Q Well, now, who is "they"? A Miss Prendergast and Mrs. Connors.

Q I see. And whose money was she keeping track of? A Their own.

40

Q Mrs. Connors' or Mary Prendergast's? A Well, at that time, Mrs. Connors was the manager of the whole business.

Q Yes. A And when Mrs. Connors died, I went in to her house and Miss Prendergast asked me if I could help her, and she was crying, and I says, "Why, yes, anything I can do for you, I will do for you, Mary, that will help you." 10

Q Yes. A And she says, "Well, Ellen died," and she says, "There is no will."

Q Yes. A "Well, then," I says, "You need a lawyer," I says, "and I would advise you to see Reverend Father Purcell and he will advise you to get a lawyer."

Q Yes. A And then, that is where it came to Mary.

Q That is how it came to Mary Prendergast? A It was to be left to whoever was there last, all their money was. 20

Mr. Kalisch. I object. The will will speak for itself, if there is any will.

Q Before that, Mary didn't have anything, did she?

Mr. Kalisch. I object. How does he know? It is only hearsay. 30

The Court. I sustain the objection.

Q Well, do you know whether Mary had anything before that or not? That is answered yes or no. A Well, I think that all the money Mary had she always used to give it to her sister.

Q She what? A The sister, Mrs. Connors, she was the manager of the whole affairs. She had charge of everything, and it was all applied to the three of them.

40

Mr. Kalisch. I move to strike that out. It must all necessarily be hearsay. He cannot speak from first-hand knowledge on this.

The Court. I will allow it to stand. Your objection is noted. Go on.

10 Q When did you say Mrs. Connors died? A I couldn't say for sure; ten or twelve years ago.

Q About 1913? A Along there, yes, probably.

Q Did you see her with all this profusion of dresses, so many per year? A I beg pardon?

Q Was Mary Prendergast a woman who was flashily dressed? A Why, no; she dressed plainly that I could see, stylishly.

20 *Mr. Kalisch.* That is all.

JOHANNA DOOLEY, sworn as a witness on behalf of the plaintiff, testified as follows:

Direct examination by Mr. Kalisch.

Q Miss Dooley, where do you live? A 303 Morris avenue.

Q Morristown? A Morris avenue, Summit.

Q Where? A Morris avenue, Summit.

30 Q Summit. And you were a cousin to Mary Prendergast, weren't you? A Yes. I am a second cousin to Mrs. Prendergast as far as I know.

Q And under the will of Mary Prendergast you received a house and lot, didn't you? A Yes, sir.

Q Now, did you know, and do you know, Margaret Mulrooney? A Yes. I know Margaret Mulrooney a long time.

40

Q Well, how long? A About twenty-six years. I am in Summit twenty-six years, and I know her that length of time.

Q Did you ever see Mary Prendergast calling on Margaret Mulrooney? A Yes. She was a frequent caller of Miss Mulrooney and her mother.

10

Q And do you know whether Margaret Mulrooney did any work for Mary Prendergast? A Well, I do not know, but I always heard Miss Prendergast repeat that she—

Mr. Holland. I ask that the last part be stricken out. "I always heard," and so on.

Q What were you going to say, what you heard?

The Court. Listen to this question and answer the question and nothing more.

20

Mr. Kalisch. Please read the question.

(Question read by the stenographer.)

A Yes. Miss Prendergast said she used to work.

The Court. The answer is yes. Now, go on.

30

Q Now, did Mary Prendergast ever say anything about the work that was being done by Margaret? A She said Margaret Mulrooney used to do work for her, yes.

Q And how often has she said that to you? A Well, she often used to repeat it up to the time she died.

Q What is that? A Up to the time she died, she said Margaret Mulrooney used to do work for her, but that is sometime ago.

40

Q And where were you when she would make these remarks? A I lived on Chestnut avenue then.

Q And were you at her home? A Yes. Right next door to Miss Prendergast.

Q Well, I know; but when she made these
10 remarks about what Margaret was doing— A That is what I say. That is where I was, in Miss Prendergast's home, yes.

Mr. Kalisch. Cross examine.

Cross examination by Mr. Holland.

Q Are you a relation of Mary Prendergast? A Yes; I certainly am.

Q What? A Second cousin.

Q How? A By my mother's side.

20 Q Your mother is what relation to who? A My mother's father and Miss Prendergast's father was two first cousins. And I comes next, and Miss Prendergast always told me I was a first cousin.

Q Your mother's father— A Yes.

Q —and Mrs. Prendergast's father— A Not Mrs. at all; she is a Miss.

Q —and Miss Prendergast's father were first
30 cousins? A Yes.

Q And were you and Mary Prendergast on very friendly terms? A Yes, very friendly. I took care of her when she died.

Q What is that? A I took care of her when she died.

Q You took care of her when she died? A Yes, I did.

Q And did you say you heard very many statements by Mary Prendergast about Margaret Mulrooney? A No, not very much about
40

Margaret Mulrooney, but she used to say she sewed for her sometime ago.

Q She used to say what? A She sewed for her and done writing for her sometime ago; but what amount, I don't know.

Q When did she say that? A She said that at the time she died. She used to repeat it regularly. 10

Q How did she come to say that? A Because she always used to speak about it; they were always friends. Miss Prendergast and Margaret Mulrooney, and the mother was from the old country home; they lived in one place.

Q Well, she always used to think that Maggie was a nice girl, didn't she? A Well, she always said that she—

Q So did everybody else? 20

Mr. Kalisch. I object to that.

The Court. Yes.

A I can't say nothing else, or say anything different.

Mr. Kalisch. One moment.

Q Did Mary Prendergast speak of anybody else that she liked? A Oh, yes; the different people that she liked. She had lots of friends around she used to speak of. 30

Q Did she speak of anybody else that used to do her sewing? A No. Not that I know of.

Q Well, somebody else did her sewing since 1906?

Mr. Kalisch. I object to that.

The Court. That is argumentative. I sustain the objection.

40

Q Did she say anything about anybody who did her sewing since 1906? A No.

Q Did she say anything about anybody who wrote a letter for her since 1906? A No.

Q All she said to you was about Margaret Mulrooney writing letters before 1906? A Yes.

10 Q Have you been talking to anybody about this case? A No. I didn't know when I had to come here.

Q Haven't you been talking to Margaret Mulrooney? A Yes; when I met her here.

Q Well, is she anybody? A I didn't say she wasn't.

Q And you have been talking to her? A I just met her here, that is all; I didn't know I had to come up here at all.

20 Q You hadn't spoken to her at all except in the court room here? A No.

Q Nobody else? A No.

Q Are you sure of that? A Yes, I am sure of that.

Q How did anybody know that you knew this? A Well, everybody knows I knew it.

Q Who did you tell? A Because I been always a neighbor.

Q Then, you have been speaking to a lot of

30 people, haven't you? A Well, I have been to lots of friends.

Mr. Holland. That is all.

Mr. Kalisch. That is all.

By Mr. Holland.

Q How many dresses— A I don't know anything about it.

The Court. She does not know anything

40 about it.

Mr. Holland. Well, I have a right to ask her.

Mr. Kalisch. I object; it is not cross examination. I did not ask her anything about dresses.

Q Did you take care of her during her last illness? A Yes. I was there when she died. 10

Q And she said to you that Margaret Mulrooney had been sewing for her? A Yes; but she didn't mention any sewing or any dresses that she had been sewing on for her.

Q She didn't mention any dresses? A No, not the amount, or anything like that.

Q How many dresses did she have when she died? A Oh, she had quite a few when she died.

Q She had quite a few when she died? A Yes. 20

Q You didn't think very much of that? A No, I didn't. She could have better by her means.

Q She could have better? A Yes, she could.

MARCELIA SHERRY, sworn as a witness on behalf of the plaintiff, testified as follows:

30

Direct examination by Mr. Kalisch.

Q Miss Sherry, where do you live? A Summit, New Jersey.

Q And you are a bookkeeper? A I am.

Q How long have you been a bookkeeper? A Fifteen years, since 1907.

Q And do you write letters, too? A Yes, I do.

Q What is the fair and reasonable charge for writing letters?

40

Mr. Holland. I object.

A For charging letters?

Mr. Kalisch. Now, one moment.

Mr. Holland. I object.

The Court. Nothing has been shown as to the character of these letters. You have not shown what the work is.

Mr. Kalisch. I have shown that she wrote letters; now, it doesn't make any difference what kind; it is a letter.

The Court. Does this witness profess to be able to state? Go ahead.

Mr. Holland. Your Honor will note my exception.

The Court. Yes.

Q What is your usual charge for writing letters? A It depends upon the length of the letter. If the letter is long, I get 25 cents; if it is a short letter, I get fifteen.

Q Fifteen? A Yes.

Q And what was the charge in 1896? A I could not say, then.

Q That is what you get now, it is? A Pardon me?

Q That is what you get now, it is? A That is what I get, yes.

Q And what about keeping books?

Mr. Holland. I submit, if your Honor please—

A Well—

Mr. Holland. Just a minute. I submit, if your Honor please, from what the witness has said, her testimony should be stricken

out, because it is not evidential of the service at the time.

The Court. Why isn't that so? If this witness can testify to the value of a short letter or a long letter, how do we know that this was not a medium sized letter, which would render this testimony entirely irrelevant? 10

Mr. Kalisch. Well, if it was short, she gets the benefit of a ten-cent letter, and if it was long, she loses the benefit of a long letter. I think it is relevant for what it is worth. It is some evidence of the value of letter writing, whether it was a long letter or a short letter. It is merely for practical letter writing such as this girl says she does. 20

Mr. Holland. But not in 1896.

The Court. Well, this girl does not know what kind of letters Miss Mulrooney wrote.

Mr. Kalisch. It does not make any difference, your Honor please, what kind they were, whether they were long or short letters.

The Court. Go ahead.

Q Now, for a short letter you say you get ten cents? A Yes. 30

Q And for a long letter you get what? A Twenty-five. From fifteen to twenty-five.

Q Fifteen to twenty-five? A Yes, sir.

Q And keeping books, what is the reasonable rate for keeping books?

Mr. Holland. I object.

The Court. I will allow it.

Mr. Holland. Exception. 40

Q What is the reasonable rate for keeping books of accounts? A Hourly bookkeeping, you mean?

Q Yes. A Well, from fifty cents to a dollar an hour.

Q And how long has that standard been in
10 vogue, fifty cents to a dollar an hour? A Well, I used to get fifty cents; now I get a dollar.

Q How long ago was it when you got fifty cents? A Oh, about six or seven years ago.

Mr. Kalisch. Cross examine.

Cross examination by Mr. Holland.

Q How much was it worth in 1896? A I couldn't say.

Q How much was a letter worth in 1896? A
20 I couldn't say.

Q When did you first start to do work? A 1907.

Q You do not know anything about what happened in 1906, do you? A 1906?

Q Yes. A That was the year before I left school.

Q Yes. And so you do not really know, do you? A I could not say that.

30

Q Everything that you are talking about is based on present-day values? A Since 1907; since my experience began.

Q And, as a matter of fact, it isn't since 1907 either, because if you are talking about a dollar an hour, you are talking about 1922, aren't you? A I am.

Q And when was it fifty cents an hour? A Five years ago.

Q Five years ago? A Yes.

40

Q Fifty cents an hour. What was it five years before that? Twenty-five cents? A For hourly bookkeeping you mean?

Q Yes. A No. I never got any less than fifty cents when I kept books.

Q That was when you first started five years ago? A That is up until about a year ago. 10

Q Yes. You do not know a thing about what happened between 1896 and 1906, do you? A No, I do not.

Q No.

Mr. Holland. That is all. I want to move to strike out—

By the Court.

Q Who did you ever write letters for? A Who did I ever write letters for? 20

Q Yes. A Several people.

Q Illiterate people who could not write them themselves? A No. Educated people. I work for a public stenographer.

Q Were they letters that were dictated to you? A They were letters that were dictated to me, yes.

Q And they were the only kind of letters that you wrote? A They were the only kind. 30

Mr. Holland. I have a motion pending to strike out her testimony.

The Court. No. I will let it stand.

Mr. Holland. Exception.

Mr. Kalisch. That is all. That is our case, if your Honor please.

Mr. Holland. Now, if your Honor please, I will move for a non-suit on two grounds. In the first place, that they have not estab- 40

lished a *prima facie* case as a contract between the decedent and this plaintiff. The strongest that they come is the testimony of Mr. McNamara in which "she wanted to leave Maggie something as she was awful good to her while she was here."

10 *The Court.* What is your other ground?

Mr. Holland. The other ground, if your Honor please, that the statute of frauds and the statute of limitations both apply.

(Argument and citation of cases.)

The Court. Is this evidence definite enough to submit to the jury? Have you shown the extent of the service?

Mr. Kalisch. I think I have shown enough evidence that she did work for her,
20 and the jury is the judge to place what value upon that work should be put. The witness said twelve dresses a year; she established the price. I say there is sufficient evidence to go to the jury; it is for them to decide the weight of the evidence, and for your Honor to pass upon the law in the case. I say there is sufficient evidence for the jury to pass upon. Whether they discredit it,
30 that is up to them.

The Court. This evidence is so indefinite and the circumstances are such as to indicate that there was a gratuitous service rendered that was never formed into a legal obligation by a promise, and the acceptance of benefits under circumstances that would imply a promise.

I am going to award a judgment of nonsuit.

40 *Mr. Kalisch.* May I have an exception?

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals

MARGARET MULROONEY, *Plaintiff-Appellant,* *vs.* CATHERINE O'KEEFE and CATHERINE McGOWAN, Executrices of the Last Will and Testament of Mary Prendergast, *Defendants-Appellees.*	*Action at Law.* *On Appeal from Supreme Court.*

BRIEF OF APPELLANT.

Facts.

This is an appeal from a non-suit directed against the plaintiff at the Morris County Circuit. The facts are these: Margaret G. Mulrooney, the plaintiff, was engaged in the dressmaking business in the Town of Summit, New Jersey, commencing in the year 1896. She knew the deceased, Mary Prendergast, for a good many years, since Mary Prendergast lived in the same town, namely Summit, N. J. (Case, p. 19, ll. 1 to 10). It seems that during the plaintiff's residence in Summit she was employed by Mary Prendergast to keep her books (Case, p. 26, ll. 18 to 25), and make hats and dresses for her (Case, p. 27, ll. 18 to 26). The plaintiff had been doing this work for a period of ten years (p. 30, ll. 10 to 25).

Helen Martin, a witness produced in behalf of the plaintiff, testified, on page 26, as follows:

> Q Well, what did Mary Prendergast say, if anything, to Margaret about the books?
> A Well, she wanted her to take care of her books and do the work.

> Q Well, did she tell Margaret that? A Yes (p. 26, ll. 15 to 20).

And further:

> Q Well, can you use her words, or as nearly as possible, what she did say to Margaret? A Margaret, dear, I have these letters to answer and I have these books, I want you to look over them and take care of them for me.
>
> Q Do you know, if anything, what Margaret would say? A Yes, certainly? She would take them and work on them (p. 26, ll. 20 to 25).

She further testified that the plaintiff would work on the books beginning at seven o'clock in the evening up to sometimes twelve at night (bottom p. 26). In addition, she testified that the deceased, Mary Prendergast, would come over to have the plaintiff make dresses (top p. 27). That the deceased would call at Margaret Mulrooney, the plaintiff's house, at least three times a week (p. 27, ll. 10 to 13); that she lived about one block away from the plaintiff (p. 27, ll. 14 to 16). She further testified that the plaintiff would make for the deceased about twelve dresses a year (bottom p. 30) that she was in the dress-making business and had been so engaged for a period of twenty-five years, and that the reasonable value for making the dresses such as were made for the deceased was from $15.00 to $20.00 (p. 32, ll. 25 to bottom of p.). She further testified that she also made some hats for the deceased (p. 33, ll. 22 to 30), and that the reasonable value for making the hats was $7.00 a hat (p. 33, ll. 30 to 32).

Daniel McNamara, a witness produced on behalf of the plaintiff, testified on direct examination that he had known the deceased for a period of thirty-nine years (p. 45, ll. 30 to 33)

and that he also knew the plaintiff, Margaret Mulrooney (p. 46, l. 10) and that she was engaged in the dressmaking business (p. 46, ll. 25 to 27); and that he very often saw Mary Prendergast, the deceased, go into the plaintiff's house, and that it started in about 1896 or 1897 (bottom p. 46), and that that time he was a member of the police force (top p. 47), and that he would very often see Mary Prendergast call on the plaintiff (p. 47, ll. 10 to 20); and that this had been going on for a period of seven, eight or more years (p. 47, ll. 18 to 22); and that he often would speak to the deceased and she would inform him that the plaintiff was doing work for her, keeping track of her money and so on (bottom p. 47, top p. 48). The witness further testified that she was an ignorant woman and that she was unable to read or write (p. 48, ll. 20 to 40) (also top p. 49). He further testified on cross examination that the deceased told him that Margaret Mulrooney, the plaintiff, was keeping track of her money (bottom p. 54) and that the deceased dressed plainly but stylishly (p. 56, l. 18).

Johanna Dooley, a witness sworn on behalf of the plaintiff, testified that she was a cousin to Mary Prendergast and that she had received under the will of Mary Prendergast a house and lot (p. 56, ll. 20 to 30), and that she knew Margaret Mulrooney, the plaintiff, a long time, about 26 years, and that the deceased, Mary Prendergast, was a frequent caller at the home of Miss Mulrooney, and that she frequently heard Miss Prendergast say that Margaret Mulrooney, the plaintiff, used to work for her (p. 57, ll. 10 to 40). She further testified on cross examination that the deceased told her that the plaintiff sewed for her and done writing for her (bottom p. 58, top p. 59) and (p. 60, ll. 8 to 10).

There was further testified on the part of the plaintiff's witness, Marcelia Sherry (p. 61) as to the reasonable charge of writing the letters which were testified to by the other witnesses for the plaintiff.

Johanna Dooley further testified on cross examination that at the time of her death she had quite a few dresses; that she had enough money to have pretty ones if she wanted to (p. 61, ll. 20 to 25).

The witness, Helen Martin, testified on direct examination that the plaintiff, Miss Mulrooney, asked the deceased for payment, using these words: "I have been working for you now three years" (p. 29, ll. 20 to 30), and further, the witness said, Miss Mulrooney told the deceased she needed the money, whereupon the deceased said to Miss Mulrooney that she would remember her in her will and that Miss Mulrooney said "all right" (p. 29, ll. 30 to 40). She further testified in the month of February, 1906, the plaintiff told the deceased that she was going to study for a nurse (bottom p. 34), and that she would be under very heavy expense and that she needed some money, and asked the deceased whether she could let her have some, whereupon the deceased said that her money was all out on mortgages, but that she would remember her in her will (p. 35, ll. 19 to 30).

The witness, Daniel McNamara, testified on direct examination that when the witness called upon the deceased in her last illness the deceased told him that she wanted to leave Maggie Mulrooney, the plaintiff, something, as she was awfully good to her when she was here (p. 50, ll. 10 to 15).

The plaintiff offered in evidence the last will and testament of Mary Prendergast and from said will it is shown that there is no provision providing for payment of services rendered by plaintiff, Margaret Mulrooney, to the deceased, Mary Prendergast, in her lifetime.

Argument.

The Court in non-suiting the plaintiff, among other things, said this:

> "This evidence is so indefinite and the circumstances are such as to indicate that it was a gratuitous service rendered that was never formed into a legal obligation by a promise, and the acceptance of benefits under circumstances that would imply a promise" (p. 66, bottom of p.).

There was nothing indefinite about the evidence produced on behalf of the plaintiff, since the witness, Helen Martin, testified to the actual work which the plaintiff did for the deceased and also heard the demand which the plaintiff made upon the deceased on two occasions for payment, thereby negativing any idea that the services were performed gratuitously.

The witness, Johanna Dooley, also testified that the deceased very often told her that the plaintiff used to work for her (p. 57, ll. 30 to 40).

The witness, Daniel McNamara, testified that the deceased told him that the plaintiff had worked for her and that she wanted to leave the plaintiff something in her will (p. 50, ll. 1 to 15).

Under the circumstances, the evidence was as clear, direct and positive as one could wish to establish a claim for the services rendered.

As was said in the case of *Disbrow* v. *Durand,* 34 N. J. L., p. 343:

> "Ordinarily, where services are rendered and voluntarily accepted, the law will imply a promise upon the part of the recipient to pay for them."

The evidence in this case is that the plaintiff did bookkeeping and dressmaking for the deceased for three years before the year 1896 (p. 29, ll. 20 to 30) and covering a period of about ten years. There is no relationship between the parties, so that the law will imply a promise to pay for the services rendered. *Stone* v. *Todd,* 49 N. J. L., p. 280. In addition to that, we have the evidence of Helen Martin, who testifies that on at least two occasions the plaintiff asked for payment and on both occasions was told that the money was tied up in mortgages, but that she would remember the plaintiff in her will.

As was said in the case of *Stone* v. *Todd,* 49 N. J. L., p. 274, at page 281:

> "The mere fact that he intended to make a liberal provision for her by will and so stated, will not defeat her recovery when he failed and neglected so to do. If it was their understanding that she should be paid, the intended will was but the method of paying an existing and admitted obligation to compensate for the services rendered, and if he failed to pay, in the manner indicated, the plaintiff is entitled to recover as a creditor for the value of her services."

And further:

> "There was evidence tending to show such agreement between the parties * * *. There is nothing in the proofs to show that the services were gratuitous, while the presumption from the services rendered and the

acts and words of the decedent repel the inference that she was not to be paid."

See also *West* v. *Prest,* 119 Atl., p. 169 (Advance sheets).

We respectfully submit that the judgment of non-suit be reversed and a new trial granted.

KALISCH & KALISCH,
Attorneys of Plaintiff-Appellant.

SAMUEL KALISCH, JR.,
On the Brief.

This case was tried before Judge Richard Doherty, with a jury, at the Morris Circuit, on November 21, 1922; the plaintiff having submitted their evidence and the defendants moving for a non-suit, and I being of opinion that the evidence of the plaintiff is not sufficient to entitle her to recover do order a judgment of non-suit to be entered against said plaintiff, with costs to be taxed.

Whereupon it is adjudged that the complaint of the plaintiff be dismissed and that the defendants Catherine O'Keefe and Catherine McGowan Executrices of the Will of Mary Prendergast, deceased do recover of the said defendant, Margaret G. Mulrooney, their costs which have been taxed at the sum of Forty five dollars and ten cents.

Costs $45.10

Judgment entered November 27, 1922.

Wm. S. Gummere,

C.J.

hibit P. 1.

Margaret G. Mulrooney:

You are hereby notified that we dispute your aim amounting to Two thousand dollars, ($2,000.00) agai nst e Estate of Mary Prendergast, deceased, presented by you us as executrices of the estate.

Dated, Morristown, N. J., May 22nd, 1922.

Catherine O'Keefe,

Catherine McGowan,

Executrices

By Vreeland & Wilson,

Attorneys.

New Jersey Court of Errors and Appeals

MARGARET MULROONEY, Plaintiff-Appellant, vs. CATHERINE O'KEEFE and CATHERINE McGOWAN, Executrices of the Last Will and Testament of Mary Prendergast, Defendants-Appellees.	Action at Law. On Appeal from Supreme Court.

BRIEF OF APPELLEES.

Facts.

The Action in which the Trial Judge granted a judgment of non-suit was based upon the claim of the Plaintiff-Appellant that she had rendered services to the Defendants' Testatrix, who in her lifetime had agreed, so Plaintiff said, to pay her for the value of the services. The testimony of Plaintiff's witnesses discloses that the Plaintiff had known the decedant for about thirty-five years (Case p. 20, l. 8 &c.), that she lived close to her and that deceased and Plaintiff's mother were both girls together (Case p. 19, l. 24 &c.). Plaintiff's witnesses establish a very close social relationship between the Plaintiff and deceased (Case p. 20, l. 11, p. 46, l. 27 &c., p. 47, l. 31, p. 50, l. 30 &c.).

There is no testimony whatever that decedant agreed with Plaintiff to pay her for any work which the Plaintiff alleges she performed. The nearest testimony on that point is that of the witness Helen Martin, who said,

"Miss Mulrooney asked for payment"

and the deceased was alleged to have said,

> "She didn't have the money, she said, and couldn't pay her; her money was all tied up; but she said, God bless her; she would remember her in her Will." (Case p. 29, l. 5-21).

Helen Martin was not a very reliable witness. She testified that Mr. Holland, counsel cross-examining her, was over seven feet tall (Case p. 36, ll. 14 &c.). While not appearing in the testimony, Mr. Holland is less than five feet eleven. She was unable to do even the simplest of mathematical problems. (Case p. 36, ll. 28 &c.). She admitted that she was making mistakes in her testimony (Case p. 37, ll. 11 &c.).

The nearest to an agreement that Daniel McNamara, another witness on behalf of the Plaintiff, came, was to testify that,

> "Well, she said she wanted to—in that conversation I had with her, she said she wanted to leave Maggie Mulrooney something as she was awful good to her when she was here." (Case p. 50, l. 9 &c.).

The testimony of both of these witnesses, it is contended on the part of the Defendants-Appellees, falls far short of the requirements of an agreement. There was also testimony that Maggie Mulrooney asked for payment (Case p. 29, ll. 5, p. 35, l. 20 &c.). This latter happened in 1906. (Case p. 34, ll. 28).

The Court in awarding a judgment of non-suit stated,

> "This evidence is so indefinite and the circumstances are such as to indicate that it was a gratuitous service rendered that was never formed into a legal obligation by a promise, and the acceptance of benefits under circumstances that would imply a promise."

Argument.

The Court was right in granting a non-suit upon

either of the following grounds:

1. Gratuitous services may be rendered for which no compensation can be either implied or recovered.

2. The trial Court had a right to find, as a matter of law, that in the absence of any promise on the part of the decedant, express or implied, that the surrounding circumstances were sufficient to convince him that the services were gratuitously rendered.

3. If the Decedant owed any money to the Plaintiff for the alleged services her demand for payment in 1906, when she ceased from rendering any further alleged services, caused the money, if any, to become immediately due and owing at that time, and, therefore, under the Statute of Limitations, specially pleaded in the Answer, the Plaintiff would be barred from recovering in 1922.

POINT 1.

The law recognizes that gratuitous services may be rendered.

There is no question in our minds that services rendered gratuitously by one person to another constitutes a large element of human life. We do not believe that Plaintiff will contend that gratuitous services cannot exist. In fact gratuitous services are expressly recognized by our own Court, for the Chancellor in the case of Grandin vs. Reading, 10 Equity, page 370, says,

> "It is true, where a person renders service to another relying solely upon his generosity and expects compensation by a legacy, he cannot, when disappointed in his expectation, maintain an action at law for the value of those services."

Gratuitous services being in the nature of a gift, are generally rendered without stint, without prearrangement, between close friends or family associates, and without regard to whether the recipient is rich or poor, old or young, larned or illerate; and in this case we contend that the testimony of every

witness examined demonstrates this very same condition; Maggie Mulrooney, a friend of the family, young, pleasing, entertaining, amiable, was glad to help this kindly old lady, the decedant. There was never anything said on the part of the decedant except remembering Maggie Mulrooney in her Will, and we contend that there is no violation of any contractural relation in the fact that she did not remember her in her Will. Decedant might have remembered her by referring to the nice, kind little girl she knew back in 1906. She might have remembered her by leaving her her fountain pen, or her spectacles, or her library of books, any of which would have fully answered everything imputed to her by the testimony of the Plaintiff's witnesses; the fact that she did not do any of these things ought not to enlarge the relationship which existed between them into a contract which would make the decedant's estate liable for alleged services rendered from 1896 to 1906.

POINT 2.

It was the duty of the trial Court to determine whether or not there was any testimony concerning the contract.

It is a well known principle of law that a trial court is required to direct a non-suit or direct a verdict when the evidence does not constitute a **Prima Facia** case, and we believe that when this Honorable Court reads the testimony that it, too, will fail to see any evidence of any contract either express or implied to which Mary Prendergast, the deceased, was a party.

And since the Plaintiff did not in our opinion, produce any such testimony, she could not have shouldered the burden of proof cast upon her by law and the Trial Court very properly, in our opnion, granted a judgment of non-suit.

POINT 3.

Because Plaintiff states that a demand for money

was made in 1906, the Statute of Limitations applies.

The testimony of Plaintiff's witnesses clearly denotes to us that if any contractural relationship existed between the deceased and the Plaintiff that it was one for the payment of money upon the rendition of services, and not services rendered because of a promise to be renumerated by a legacy in the Will.

Helen Martin testified that Maggie Mulrooney asked for money in 1896 (Case p. 29, ll. 5, p. 30, ll. 8), and yet in 1906 Maggie Mulrooney asked for money again (Case bottom page 34 and p. 35), and each time, the decedant instead of paying her in accordance with the demand, which demand naturally would have to be the outgrowth of and based upon a contract, stated something about remembering her in a Will.

To us this clearly indicates that if anything was due from the Decedant to the Plaintiff at all, it was due in 1906, and the Decedant merely "stalled off" the Plaintiff by promising to remember her at some future time. This promise to remember at a future time was not in writing, and even if it were, would be within the six year period of the Statute of Limitations.

In the case of Stone vs. Todd, 49 Law, 282, the Court states,

> "It is well settled that where there is no express agreement as to the time or measure of compensation for long continued services, the law will not imply a postponement of compensation until the termination of the employment, but for the purpose of determining when the statute will begin to run, the hiring will be regarded as from year to year."

We do not consider it sound principle to uphold any creditor who comes in more than six years after a debt becomes due with testimony that before the obligation became outlawed, the debtor had promised to provide for a payment by his will.

Even such a promise would be much stronger than to be "remembered" in a Will.

We respectfully contend that the judgment of non-suit rendered in the Court below should be affirmed.

VREELAND & WILSON,
Attorneys of Defendants-Appellees.

ALBERT H. HOLLAND,
Of Counsel.