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NOTICE OF CLAIM.

CAMDEN COUNTY ORPHANS' COURT.

In the Matter of the Estate } 10
of FRANCIS D. TULL, de- } Notice of Claim.
ceased.

To Katherine C. Keegan, administratrix of the Estate of Francis D. Tull, deceased:

Take notice that the following claim is hereby made by Emma R. Booth against the estate of Francis D. Tull, deceased, for table board, and housekeeping services rendered to the said Francis D. Tull, during his lifetime at his request, as follows:

Housekeeping Services from June 15, 1919, to September 15, 1926 (Seven Years), at \$10.00 per week (364 weeks)	\$3,640.00	
Table Board from October 15, 1926, to December 15, 1927, at \$10.00 per week (54 weeks)	540.00	30
Total	<u>\$4,180.00</u>	

State of New Jersey, }
 County of Camden, } ss.

- 10 EMMA R. BOOTH, of full age, and being duly sworn according to law, deposes and says that she is the creditor in the foregoing claim mentioned, and the table board, and housekeeping services rendered therein mentioned were performed for Francis D. Tull, late of Haddon Heights, County of Camden, at the times and at the prices in the foregoing claim named; and deponent further says that no part of the foregoing claim has been paid but that the whole sum of four thousand one hundred eighty dollars
 20 (\$4,180.00) therein named is justly due and owing to her.

EMMA R. BOOTH.

Sworn and subscribed to before me this 13th day of August, 1929.

(Seal)

GRACE M. GORMAN,
Notary Public of N. J.

NOTICE.

CAMDEN COUNTY ORPHANS' COURT.

10

In the Matter of the Estate
of FRANCIS D. TULL, de-
ceased.

} Notice.

*To William C. French, Esq., 3rd & Market Streets,
Camden, N. J.:*

20

Take notice that the administratrix, Katherine C. Keegan, of the estate of Francis D. Tull, deceased, denies that there is any money due and owing from the above estate.

WALTER S. KEOWN,
*Attorney for Katherine C.
Keegan, Administratrix.*

30

SUMMONS.

STATE OF NEW JERSEY, TO KATHERINE C. KEEGAN, AD-
 10 MINISTRATRIX OF THE WILL OF FRANCIS D. TULL,
 DECEASED :

You are summoned to answer the an-
 nexed complaint of Emma R. Booth, in
 (L. S.) an action at law in the Supreme Court.
 And take notice, that unless you file your
 answer to the said complaint with the
 clerk of the Supreme Court, at Trenton, New Jersey,
 within twenty days after service upon you of this
 20 writ and the annexed complaint, the plaintiff may
 proceed in her suit and judgment may be entered
 against you.

Witness, HONORABLE WILLIAM S. GUMMERE, Chief
 Justice of the Supreme Court, at Trenton, this 23rd
 day of October, A. D. 1929.

FRED L. BLOODGOOD,
Clerk.

WILLIAM C. FRENCH,
Attorney.

COMPLAINT.

NEW JERSEY SUPREME COURT.

CAMDEN COUNTY.

10

EMMA R. BOOTH,
Plaintiff,

v.

KATHERINE C. KEEGAN, ad-
ministratrix of the estate
of FRANCIS D. TULL, de-
ceased,

Defendant.

Action at Law.
Complaint.

20

Emma R. Booth, of the City and County of Cam-
den, and State of New Jersey, the plaintiff herein,
says that:

1. Plaintiff demands of defendant, Katherine C.
Keegan, administratrix of the last will and testa- 30
ment of Francis D. Tull, deceased, the sum of four
thousand one hundred eighty dollars (\$4,180.00) for
services rendered to the said Francis D. Tull, de-
ceased, during his lifetime at his request between
June, 1919, and December, 1927.

2. The said sum of money was not paid to the said plaintiff, either in whole or in part, in the lifetime of said Francis D. Tull.

3. On August 19, 1929, the plaintiff filed the account of said claim with the defendant, administratrix of said Francis D. Tull, deceased, in the manner prescribed by law, under the oath of the plaintiff.

4. Defendant did not pay said sum of money, either in whole or in part, and the same still remains unpaid, wherefore said plaintiff brings this suit against the defendant, administratrix of the will of Francis D. Tull, deceased, for the said sum of four thousand one hundred eighty dollars (\$4,180.00).

20

WILLIAM C. FRENCH,
Attorney for Plaintiff.

[ENDORSED]

30

I hereby depute and appoint Kennedy Brown to execute the within writ. Witness my hand and seal this 29 day of Oct., A. D. 1929.

Walter T. Gross, Seal
Sheriff Camden Co., By
J. M. Ackley,
Under Sheriff.

NOTICE.

NEW JERSEY SUPREME COURT.

CAMDEN COUNTY.

10

EMMA R. BOOTH,

Plaintiff,

v.

KATHERINE C. KEEGAN, ad-
ministratrix of the estate
of FRANCIS D. TULL, de-
ceased,

Defendant.

Action at Law.
Notice.

20

William French, Esq., Attorney for Plaintiff:

Sir:

Take notice that I will apply to the Honorable Frank T. Lloyd, Justice of the New Jersey Supreme Court in the Court House in Camden, November 30 16th, 1929, at the hour of 10 A. M. or as soon thereafter as counsel may be had for the purpose of demanding a bill of particulars of the allegations stated in the complaint in the above-entitled cause, which bill shall show:

1. What services were rendered to the said Francis D. Tull, deceased, during his lifetime.

2. How the sum of four thousand one hundred eighty dollars (\$4,180.00) was arrived at for such services.

10 3. What form of request was made of the said plaintiff for these services.

4. The exact day and month when such services began.

5. The exact day and month when such services ended.

WALTER S. KEOWN,
Attorney for Defendant.

20 Dated Nov. 8th, 1929.

BILL OF PARTICULARS.

NEW JERSEY SUPREME COURT.

CAMDEN COUNTY.

10

EMMA R. BOOTH,

Plaintiff,

v.

KATHERINE C. KEEGAN, ad-
ministratrix of the estate
of FRANCIS D. TULL, de-
ceased,

Defendant.

Action at Law.
Bill of Particulars.

20

*Walter S. Keown, Esq., Attorney for Defendant,
Camden, New Jersey:*

Sir:

Please take notice that plaintiff herewith furnish
bill of particulars demanded by defendant on the
7th day of November, 1929, as follows:

30

1. Housekeeping services, and also board fur-
nished to defendant's intestate.

2. 364 weeks as housekeeper for the said Francis
D. Tull, deceased, at the rate of \$10 per week,

amounting to \$3640.00; board for 54 weeks during a portion of the time, at \$10 per week, \$540.00, total \$4,180.00.

3. During the early part of June, 1919, while the plaintiff was a real estate agent representing several real estate dealers she sold the property in which
10 Mr. Tull resided to Mr. Tull and one of the considerations upon which the property was purchased by Mr. Tull was that the plaintiff come and keep house for him in the event of his purchasing same. The employment began some time in the month of June, in the forepart, in the year 1919, and continued uninterruptedly until the middle of September, 1926, and then plaintiff furnished board to said Francis D. Tull, deceased, from the middle of October, 1926, to the middle of December, 1927.

20

4. Housekeeping service ended September 15, 1926; furnishing of board ended December 15, 1927.

Respectfully yours,

WILLIAM C. FRENCH,

Attorney for Plaintiff.

Dated February 21st, 1930.

30

[ENDORSED]

Due and legal service of within bill of particulars acknowledged this Mar. 4, 1930.

Walter S. Keown,
Attorney for Defendant.

ANSWER AND COUNTER-CLAIM.

NEW JERSEY SUPREME COURT.

CAMDEN COUNTY.

10

EMMA R. BOOTH,

Plaintiff,

v.

KATHERINE C. KEEGAN, ad-
ministratrix of the estate
of FRANCIS D. TULL, de-
ceased,

Defendant.

Action at Law.
Answer and Counter-
claim.

20

The defendant, Katherine C. Keegan, administra-
trix of the estate of Francis D. Tull, deceased, in
answer to the complaint of the plaintiff, says that:

1. Paragraph one of said complaint is denied.
2. Paragraph two of said complaint is denied.
3. Paragraph three of said complaint is denied.
4. Paragraph four of said complaint is denied.

30

The administratrix, Katherine C. Keegan, further states by way of separate defenses that:

FIRST SEPARATE DEFENSE.

In accordance with the statute in such case made
10 and provided any obligation, debt, or sum of money due and owing to the plaintiff by the defendant prior to October 1st, 1923, if contracted more than six years last past before the institution of this cause of action, and while denying the truth and fact of the complaint of the plaintiff, she respectfully states that the estate of the defendant's decedent is not liable at law.

20

SECOND SEPARATE DEFENSE.

That whatever obligations, if any, or whatever sums of money which were due and owing by the defendant's decedent to the plaintiff were fully paid.

THIRD SEPARATE DEFENSE.

If there were at any time any debts due and owing
30 by the defendant administratrix's decedent to the plaintiff, there was a complete accord and satisfaction between the plaintiff and defendant.

The defendant, Katherine C. Keegan, administratrix of the estate of Francis Tull, deceased, by way of counter-claim states that:

1. On or about the 4th day of February, 1929, defendant's decedent endorsed at the instance and request of the plaintiff a promissory note in the amount of \$150.00.

2. Said promissory note was negotiated for value to the Haddon Heights National Bank on or about the 4th day of February, 1929, by the plaintiff. 10

3. On or about the 4th day of March, 1929, said note was protested for non-payment by the plaintiff and defendant administratrix was compelled to pay the Haddon Heights National Bank in payment of said note the sum of \$153.20.

4. Said note was payable by the plaintiff and defendant administratrix has demanded said sum of money of the plaintiff but has been refused. 20

5. Defendant administratrix still holds the said note which was paid for the plaintiff.

Defendant administratrix demands the sum of \$153.20 with interest from March 4th, 1929, to date and costs.

WALTER S. KEOWN,

Attorney for Katherine C.

Keegan, administratrix of 30

the estate of Francis D.

Tull, deceased.

REPLY AND ANSWER TO COUNTER-CLAIM.

NEW JERSEY SUPREME COURT.

CAMDEN COUNTY.

10

EMMA R. BOOTH,

Plaintiff,

v.

KATHERINE C. KEEGAN, ad-
ministratrix of the estate
of FRANCIS D. TULL, de-
ceased,

Defendant.

Action at Law.
Reply and Answer to
Counter-claim.

20

Emma R. Booth, the plaintiff herein, replying to the answer of the defendant filed herein, says that she denies each and every allegation contained in each and every separate defense of said answer and joins issue thereon.

By way of answer to the counter-claim of the de-
30 fendant filed herein, plaintiff says:

1. Plaintiff denies the 1st paragraph of said counter-claim, and avers that said note for \$150.00 was given to the plaintiff by the defendant's decedent as part payment on account of moneys due plaintiff by said defendant's decedent.

2. Plaintiff has not sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 2 of said counter-claim and leaves defendant to her strict proof.

3. Plaintiff has not sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 3 of said counter-claim and leaves defendant to her strict proof. 10

4. Plaintiff denies paragraph 4 of said counter-claim.

5. Plaintiff denies paragraph 5 of said counter-claim.

Plaintiff denies that there is any sum of money due defendant or defendant's decedent from the plaintiff, but on the contrary avers that there is due the plaintiff such sums of money as are set out in the complaint filed herein, for services rendered and board furnished by the plaintiff to the defendant's decedent. 20

FRENCH & FRENCH,
Attorneys for Plaintiff.

POSTEA.

NEW JERSEY SUPREME COURT.

CAMDEN COUNTY.

10

	EMMA R. BOOTH,	
	<i>Plaintiff,</i>	} Action at Law. Postea.
	v.	
	KATHERINE C. KEEGAN, ad-	
	ministratrix of the estate	
	of FRANCIS D. TULL, de-	} Action at Law. Postea.
	ceased,	
20	<i>Defendant.</i>	

This case was tried before Judge Henry H. Eldredge with a jury at the Camden Circuit Court, on December 4, 1930.

The jury rendered a verdict of no cause of action against the plaintiff and the verdict of no cause of action against the defendants on its counter-claim.

30

HENRY H. ELDRIDGE,
Judge.

JUDGMENT FOR DEFENDANT ON COMPLAINT AND FOR PLAINTIFF ON COUNTER-CLAIM.

NEW JERSEY SUPREME COURT.

10

CAMDEN COUNTY.

<p>EMMA R. BOOTH,</p> <p style="text-align: right;"><i>Plaintiff,</i></p> <p style="text-align: center;">v.</p> <p>KATHERINE C. KEEGAN, ad- ministratrix of the estate of FRANCIS D. TULL, de- ceased,</p> <p style="text-align: right;"><i>Defendant.</i></p>	}	<p>Rule for Judgment. Judgment for Defen- dant on Complaint and for Plaintiff on Counter-claim.</p>	20
--	---	---	----

It is ordered that judgment be and hereby is entered in favor of defendant and against the defendant on plaintiff's complaint without costs and in favor of plaintiff and against the defendant on the counter-claim.

Rule entered December 8th, 1931, on motion of 30

WALTER S. KEOWN,
Attorney for Defendant.

WILLIAM C. FRENCH,
Attorney for Plaintiff.

PHILIP WENDKOS,
Of Counsel for Plaintiff.

Whereupon it is adjudged that the complaint of the plaintiff be dismissed without costs and it is further adjudged that the counterclaim of the defendant be dismissed.

No Costs.

Judgment signed and
entered Dec. 8, 1930

Wm. S. Gummere
C. J.

NOTICE OF APPEAL WITH REASONS.

NEW JERSEY SUPREME COURT.

10

EMMA R. BOOTH,

Plaintiff,

v.

KATHERINE C. KEEGAN, ad-
ministratrix of the estate
of FRANCIS D. TULL, de-
ceased,*Defendant.*} Notice of Appeal with
Reasons.

20

To Walter S. Keown, Attorney of Defendant:

Please take notice that we will appeal to the New Jersey Court of Errors and Appeals, the court of last resort in all causes, from the whole of the judgment of no cause of action against the plaintiff rendered in this cause on the 6th day of December, 1930, rendered at the Camden County Circuit and

30 filed with the clerk of this court; for the following reasons. We reserve the right to add other reasons upon the receipt of the transcript of the testimony.

(1) The judgment is contrary to both the law and evidence of the case.

(2) The defendant, by proving its counter-claim and offering proof of an accord and satisfaction between the plaintiff and defendant's decedent waived the privilege granted to the defendant by the 4th section of the Evidence Act of New Jersey.

(3) By offering proof of the counter-claim and of accord and satisfaction it was equivalent to the representative party offering herself first as a witness in her own behalf. 10

(4) The proof offered by the defendant rendered the plaintiff competent to testify to any and all transactions and conversations between the plaintiff and defendant's decedent.

(5) The trial Court erred in denying the plaintiff the right to testify as to her transactions and conversations with defendant's decedent. 20

(6) The defendant offered no testimony whatever to refute the allegations and proofs of the plaintiff.

(7) The defendant did not introduce evidence to rebut the presumption that defendant's decedent promised to pay plaintiff for the services which she had performed for him at his request. 30

(8) The learned trial Court erred in limiting the time within which plaintiff could recover for her services and the board which she had furnished decedent to six years beginning with October 23, 1923.

(9) The learned trial Court erroneously limited the cross-examination of the plaintiff as defendant's witness by plaintiff's counsel to the transaction to which she had testified on her direct examination by defendant's counsel.

10 (10) By proving her counter-claim of accord and satisfaction with the plaintiff as defendant's witness, plaintiff was rendered competent to testify as to the subject-matter of her suit.

FRENCH & FRENCH,
Attorneys of Plaintiff.
PHILIP WENDKOS,
Of Counsel.

TESTIMONY.

NEW JERSEY SUPREME COURT.

CAMDEN COUNTY.

10

EMMA R. BOOTH,

Plaintiff,

v.

KATHERINE C. KEEGAN, ad-
ministratrix of the estate
of FRANCIS D. TULL, de-
ceased,

Defendant.

Action at Law.

20

December 4, 1930.

TESTIMONY.

Before HENRY H. ELDRIDGE, J., and a jury.

30

APPEARANCES:

FRENCH & FRENCH, PHILIP WENDKOS, for plaintiff.

GEORGE D. ROTHERMEL, WALTER S. KEOWN, for de-
fendant.

Mr. Wendkos: I will proceed on the theory that there was a request for the services to be performed by the plaintiff, and that the law implies a promise to pay.

Mr. Rothermel: We are proceeding on the present pleadings.

10

J. LUKENS ANDERSON, SWORN.

Direct examination.

By Mr. Wendkos:

Q. What is your business?

20 A. Real estate.

Q. June, 1919, were you in the same business?

A. Yes, sir.

Q. Where was your office located at that time?

A. Mt. Ephraim.

Q. Did you see Mr. Tull in your office, or any place, at that particular time or about that time?

A. Yes, sir.

30 Q. Do you know whether or not Mrs. Booth had any transaction with Mr. Tull regarding the sale of any property you controlled?

A. Yes.

Q. Tell us the facts and circumstances surrounding that transaction?

Mr. Rothermel: I object to that. I cannot see that it is of any materiality in the present suit.

The Court: Objection overruled.

(Exception for defendant.)

The Witness: Mrs. Booth was employed by the Fairfield Estate as a saleswoman, in which I was an officer and sales agent; and she brought Mr. Tull to look over a property. He said he would be satisfied with the property, and would take it providing Mrs. Booth would keep house for him, and he did; the deal was consummated. 10

The Court: He bought the property?

The Witness: Yes, sir.

By Mr. Wendkos:

20

Q. Do you know, of your own knowledge, whether Mrs. Booth kept house for him after the deal was consummated?

A. Yes, sir; I know she kept house.

Q. Did you see her there in the house?

A. Yes.

Q. How long had you seen her in Mr. Tull's house, for how long a period?

A. Well, maybe over a period of a couple of years, because I moved from there to Camden. 30

Q. During all the time, that time, she was always in the house with Mr. Tull?

A. As far as I know.

Q. So far as you could see?

A. So far as I could see.

Q. Do you know what she was doing there?

A. No—keeping house, I judge.

Mr. Rothermel: I move that that answer be stricken out.

The Court: The latter part of the answer may be
10 stricken out.

By Mr. Rothermel:

Q. Did you see her doing anything?

A. Well, I went there on several occasions, and she was keeping house, doing housework.

Q. You are familiar with the usual house duties?

A. Yes.

Q. And she was engaged in those usual house
20 duties?

A. Yes.

Mr. Wendkos: Cross-examine.

Cross-examination.

By Mr. Rothermel:

Q. When was this ——

30 A. That was between May and July of 1919.

Mr. Rothermel: I now move that the testimony be stricken from the record as being barred by the statute of limitation. Any claim for services rendered at or about the time this witness testified to, would be barred by that statute.

The Court: I will permit the questions to stand as they are, with that limitation, that it does not permit compensation for the period outside of the six-year limit.

Mr. Rothermel: No other questions.

10

HARRY C. ROSS, SWORN.

Direct examination.

By Mr. Wendkos:

Q. Are you related to Mrs. Booth?

A. Yes, I am, by marriage.

Q. What relation?

20

A. Niece.

Q. Have you ever seen Mrs. Booth in the home of Mr. Tull, in Haddon Heights?

A. I did.

Q. Under what circumstances?

A. As housekeeper.

Q. When did you first see her there as such housekeeper?

A. Well, right after Mr. Tull bought the property.

30

Mr. Rothermel: I assume this will be taken on the same theory.

Mr. Wendkos: Surely.

The Court: Yes.

By Mr. Wendkos:

Q. Have you seen her on any other occasion after that, acting as Mr. Tull's housekeeper?

A. Yes, right after Thanksgiving Day, they were
10 there.

Q. How many years ago was that?

A. Well, to 1927, I guess; definitely I cannot say.

Q. Could you say positively that it was between
1919 and 1927?

Mr. Rothermel: That is objected to and leading.

The Court: I suppose it is, Mr. Wendkos; you are
fixing the dates there.

20

By Mr. Wendkos:

Q. Can you fix the years during which Mrs. Booth
acted as Mr. Tull's housekeeper?

A. I would say between 1919 and 1927.

Q. Can you describe what she did there?

A. General housekeeping work, cooking, ironing,
general work.

Q. On about how many occasions had you seen
30 her doing that work?

A. Numerous. I cannot say the number. I vis-
ited there often. I lived there part of the time.

Q. So that you were in a position to see this, for
yourself?

A. I was.

Q. Did you ever have any conversation with Mr. Tull about Mrs. Booth?

A. I did.

Q. What was that?

A. I came up from Washington where I was living at the time that Mr. Tull bought the house, and he told me —

10

Mr. Rothermel: I object, if the Court please.

Mr. Wendkos: On what ground?

Mr. Rothermel: In its present form it certainly is not admissible.

Mr. Wendkos: Why not?

Mr. Rothermel: I think I am entitled to have the 20 exact words used. If the answer should be that certain specific statements were made.

The Court: Overruled.

(Exception for defendant.)

The Witness: He had bought a house in Haddon Heights, and had arranged with Mrs. Booth to do the housekeeping—to be the housekeeper, and that 30 my wife and children and myself would have some place to spend the summer months. It was a very amicable arrangement.

Q. When you say “amicable arrangement,” between whom do you mean?

A. Between Mr. Tull and my family; and it seemed to be between all concerned. Furthermore, Mr. Tull said he was employing Mrs. Booth as his housekeeper. I asked him —

Mr. Rothermel: I object, if the Court please. Anything this witness said has no materiality in the
10 suit.

The Court: I think that is true. What this man said would not be binding at all upon the defendant, but if it is part of the conversation, I consider it admissible. Objection overruled.

(Exception for defendant.)

By Mr. Wendkos:

20

Q. If you please, confine your testimony to the statement with relation to the relationship between Mr. Tull and Mrs. Booth.

A. That is exactly what I was doing. Concerning myself and family, he said I would have to make those arrangements with Mrs. Booth, his housekeeper.

Q. Did you have any other occasion to talk with him about Mrs. Booth's relations with him as such
30 housekeeper?

A. In general conversation, nothing specific.

Q. What do you mean by "general conversation"?

A. Well, just that she was running the house in a first-class way, and taking care of him and taking care of things.

Q. Were those statements made by him to you?

A. Yes, they were.

Q. How many times did he make such statements to you?

A. On numerous occasions, specifically, I cannot say.

Q. Over how long a period?

A. The entire time we were there. 10

Cross-examination.

By Mr. Rothermel:

Q. How long did you live with Mrs. Booth and Mr. Tull?

A. Well, my family used to go down there in the summer time.

20

Mr. Rothermel: I move that be stricken out.

The Court: Strike it out.

The Witness: My residence with them was spasmodic. I could not definitely say what period of time, whether it was a year or whether it was just several months.

By Mr. Rothermel: 30

Q. As a matter of fact, you and your family were with them for slightly less than a year?

A. I think it was close on to a year.

Q. And, you were reconciled to live there because you did not pay rent, were you not?

A. That is not the truth.

Q. You did pay rent?

A. We did pay rent.

Q. To Mrs. Booth?

A. I paid rent to Mr. Tull and the rent was paid in this manner.

Q. Never mind, thank you.

10

Mr. Wendkos: Tell us the manner in which the rent was paid.

The Witness: I borrowed some money from Mr. Tull, on a note ——

Mr. Rothermel: I am sorry, I must object, because I don't wish to go into any collateral matter. I will withdraw the question and ask that the answer be
20 stricken out.

The Court: Strike it out.

By Mr. Rothermel:

Q. You were quite friendly, I presume, with Mr. Tull?

A. Sometimes very friendly and other times not so friendly.

30

Q. Do I understand, then, that there were some differences between you, at times, which would put you and him in an antagonistic position?

A. Yes.

Q. You married the niece of Mrs. Booth?

A. I did.

LOUISE NOLL, SWORN.

Direct examination.

By Mr. Wendkos:

Q. Where do you live? 10

A. Collingswood.

Q. Are you related to Mrs. Booth?

A. Sister-in-law.

Q. Sister-in-law?

A. Yes.

Q. Had you known Mr. Tull in his lifetime?

A. I had known Mr. Tull in his lifetime. I had known Mr. Tull at least twelve years.

Q. Did you know him in June, 1919?

A. I did. 20

Q. How had you known him?

A. Well, he visited my home a great deal. He came, I guess, about two or three times a month probably on Sunday, for dinner, and he talked very friendly to me. He always said that Mrs. Booth was his housekeeper, and that he could not pay her while she was housekeeping, but he expected to take care of her. He said that his brother wasn't to have anything when death came. He told me that not only once, but many, many times. 30

Q. How did he speak to you of Mrs. Booth?

A. He always spoke of her as his housekeeper, that she was a good cook, a good washer, and provided well for the table, provided well for him.

Q. Do you know when she went to keep house for Mr. Tull?

A. It was when he bought that house down in Fairfield, there.

Q. How soon after he had bought the house in Fairfield, did he come to see you?

A. Why, right away. I don't think it was a month afterward. He told me he would like me to come down to see the property. My husband and I
10 had gone down.

Q. When you went there, did you see Mrs. Booth there?

A. I did.

Q. What was she doing?

A. Housekeeping. She cooked the dinner, and we stayed to dinner, too.

Q. Had you been there on any other occasion?

A. Many times we had been there.

Q. For how long a period?

20 A. Well, I guess I was down there in 1927 again.

Q. Was Mrs. Booth still there in 1927?

A. Only she had gone out to work.

Q. Were you there in 1926?

A. Yes.

Q. Was she there, then?

A. Yes, in 1926 she was still there.

Q. Had you had occasion to stay there over night for any number of days?

30 A. No, not for any number of days, but I have spent the day there.

Q. While spending the day there, what was Mrs. Booth doing?

A. Still doing the housework, general housework.

Mr. Wendkos: You may cross-examine.

Mr. Rothermel: No questions.

RACHAEL PEETS, SWORN.

Direct examination.

By Mr. Wendkos:

Q. Where do you live?

10

A. Haddon Heights.

Q. Are you related to Mrs. Booth?

A. Oh, no.

Q. Did you know Mr. Tull during his lifetime?

A. I knew him pretty near as long as I know Mrs. Booth, close to about ten years.

Q. Did you know them both in June, 1919?

A. This is 1930—no, no, I didn't know him then; possibly between nine and ten years I have been in Haddon Heights—I think twelve years it is this January. It was close to a couple of years when I got acquainted with Mrs. Booth. 20

Q. What were the circumstances under which you became acquainted with Mrs. Booth?

A. I met her from time to time. I was told that she was a housekeeper. They moved in later on across the way from me. We visited back and forth all the time. I had noticed that she took care of the home, the washing, ironing, baking, cooking, and she was always very faithful, so far as I could see. Any time I went in, I was always treated nice, and found them very pleasant. 30

Q. Did you know Mr. Tull, too?

A. I knew Mr. Tull, too, the same as I knew Mrs. Booth.

Q. Did Mr. Tull ever say anything to you about Mrs. Booth?

A. He said that she was his housekeeper, and she had done all right; that he would never see her want for anything, that there was money—his money was interesting and all like that, but at the same time he would never see her want for nothing. He told me
10 that.

Q. Besides doing the work inside of the house, did Mrs. Booth do any work on the outside?

A. Sweeping the cellar and taking up ashes, things like that.

Q. I mean, on the property itself; was it a live property?

A. Well, I never visited that home while they lived there. She lived in an apartment opposite me when we visited them back and forth, and since she
20 has been in our place and stayed with me a week at a time.

Mr. Wendkos: Cross-examine.

Mr. Rothermel: No questions.

EMMA R. BOOTH, SWORN.

30

Direct examination.

By Mr. Wendkos:

Q. Were you employed by Mr. Anderson as a saleswoman, some time starting June, 1919?

A. I was.

Q. When did you go to the home of Mr. Tull?

A. In the early part of June, 1919.

Mr. Rothermel: I have not objected, and will not object to this. I assume it is for the same purpose, and that I still have the benefit of my original objection.

10

The Court: Yes.

Mr. Wendkos: Yes.

By Mr. Wendkos:

Q. Did you have an interest in the house which Mr. Tull had bought through you?

20

Mr. Rothermel: I object to that.

The Witness: No.

The Court: Do you want the answer stricken out?

Mr. Rothermel: I admit it does not make any difference.

The Court: All right.

30

By Mr. Wendkos:

Q. How did you keep house?

A. As housekeeper for Mr. Tull.

Mr. Rothermel: I move that that be stricken out.

By Mr. Wendkos:

Q. Just tell me what you did in that house?

Mr. Rothermel: I merely make this objection on
10 the same ground, that this testimony would be also
part of a transaction with the decedent, and ask the
Court to rule.

Mr. Wendkos: There is nothing I would ask that
involves any transaction with the decedent in this
question.

The Court: Overruled.

20 (Exception for defendant.)

The Witness: I kept house there, as any other
woman would. I did all the housework, took care
of a nine-room house.

By Mr. Wendkos:

Q. Just tell me what you did, enumerate the work
you did.

30 A. General housekeeping, general work.

Q. What is that?

A. Sewed, cleaned, washed dishes, all those
things, everything in general.

Q. How many persons occupied that house?

A. Well, Mr. Ross and his family were there for
quite some time, and Mr. Tull and myself.

Q. When Mr. Ross and his family were not there, excepting those persons, who was in the house?

A. Mr. Tull and myself.

Q. How long had you remained in that house doing the work you just outlined?

Mr. Rothermel: May I have the benefit of a general exception to any testimony along that line, so 10
as not to take up so much time?

The Court: Yes.

The Witness: From June, 1919, until the fall—
I don't just recall the month, but in the early fall
of 1927.

By Mr. Wendkos:

Q. Between June, 1919, and September of 1926, 20
did you personally pay for any eatables that went
into the house?

Mr. Rothermel: Same objection.

The Court: Same ruling.

The Witness: I did.

30

(Exception for defendant.)

By Mr. Wendkos:

Q. Between the month of September, 1926 —

Mr. Rothermel: I move that that answer be stricken from the record, on the ground that there is no claim made for any such item in the complaint. The only allegation with respect to that is for house-keeping services from June, 1919, to September, 1926.

10 The Court: What do you have to say to that, Mr. Wendkos?

Mr. Wendkos: I didn't know what answer to expect to that question, but even though the witness stated that she had paid for the food, we are not making any claim for it.

The Court: Then, it is immaterial.

20 Mr. Wendkos: Well, it turned out so, but I didn't know.

The Court: Then, it may be stricken from the record as immaterial.

By Mr. Wendkos:

Q. Who paid for the food between September, 1926, and the fall of December, 1927?

30

Mr. Rothermel: I object to that. My objection is that it would be a transaction with the decedent.

Mr. Wendkos: Not by any means.

The Court: I will sustain the objection. In the

Paine case, the Court uses the expression "in regard to those transactions and conversation in which the decedent bore a part." The details of the relationship existing between this decedent and his housekeeper, in my judgment, are transactions in which the deceased bore a part.

By Mr. Wendkos: 10

Q. Between the months of September, 1926, and December of 1927, did you eat any food that was paid for by someone else other than yourself?

Mr. Rothermel: I object to that.

The Witness: No.

Mr. Rothermel: Unless it is confined to some material element of this suit. The mere fact that she ate food bought by somebody else does not make the question material. 20

The Court: Sustained, and on the ground that the question is immaterial, the answer which was made may be stricken out.

(Exception for plaintiff.)

By Mr. Wendkos: 30

Q. Who furnished the food between June, 1919, and September of 1926?

Mr. Rothermel: Objected to on the same ground.

The Court: Same ruling.

(Exception for plaintiff.)

By Mr. Wendkos:

Q. Who furnished the food between September,
10 1926, and December of 1927?

Mr. Rothermel: I object.

The Court: Same ruling.

(Exception for plaintiff.)

By Mr. Wendkos:

20 Q. Did Mr. Tull eat the food between September,
1926, and December, 1927, which you paid for?

Mr. Rothermel: I object to that.

The Court: Same ruling.

(Exception for plaintiff.)

30 The Court: The objections to the questions relating to the purchase and consumption of food are sustained, on the ground that there is no claim in the complaint asking for compensation for food furnished up to September, 1926. There is a claim for board for December, I think, 1926, and these questions are overruled on the ground that they are transactions in which the deceased bore a part.

By Mr. Rothermel:

Q. Is this your signature?

A. Yes, that is my signature.

Mr. Rothermel: I ask this be marked for identification.

By Mr. Rothermel:

10

Q. Do you recall in 1927 being served with a summons and complaint in the suit of Francis B. Tull against you?

A. Absolutely not, absolutely not.

Q. In 1923 were you residing at 508 Station Avenue, Haddon Heights?

A. I had a business there; I had a pastry shop. I wasn't residing there. I was residing at Belmar 20 and South Park Avenue, near Mr. Tull's home.

Q. Were you there in September, 1923?

A. I don't remember.

Q. In October, 1923?

A. I don't remember.

Q. In November —

A. I can't tell you. I want to tell the truth. I am here to tell the truth, and all I want is justice.

Q. You were not in November?

A. I can't tell you.

30

Q. In December, 1923?

A. I am unable to tell you.

Q. When did you first get the pastry shop?

A. I don't remember that.

Q. How long were you there after you had gotten into the place?

A. For a couple of months.

Q. What do you mean by a couple of months?

A. Two or three or four.

Q. Your answer of a couple of months might be noted as two, three or four months?

A. It might, yes.

Q. Could it be greater than four months?

10 A. I don't think so. Then, I moved to the other side of the street.

Q. You absolutely deny having been served by the Sheriff of Camden County with a summons and complaint in the suit of Francis B. Tull against you?

A. Well, I will just explain ——

Q. I don't care for any explanations.

A. I will have to explain. Would that be in connection with the bungalow he had financed?

20 Q. I have no explanation. This sets forth that the plaintiff, Mr. Tull, sued for the amount of a promissory note for \$754.00, made by the defendant, Emma R. Booth, to the order of the plaintiff, Francis D. Tull, a copy of which note is annexed. The copy is dated October 26th, 1923, in the amount of \$754.00, payable one day after date, to the order of Francis D. Tull, \$754.00, at the West Jersey Trust Company, Camden.

A. No, there was never such a transaction.

30 Q. Were you served with a summons and complaint in this suit?

A. There was only one time I was served with a summons, and that was when Mr. Tull ——

Mr. Rothermel: I ask that the Court instruct the witness to answer.

The Witness: He financed a bungalow for me.

Mr. Rothermel: I ask that that be stricken out.

The Court: If you don't know, say you don't know.

The Witness: That would be the only way I could 10 explain it, that Mr. Tull had financed this bungalow. I was unable to take care of it.

Mr. Rothermel: I ask that that be stricken out.

The Court: It doesn't make any difference, why. Were you served?

The Witness: Yes, but I don't think it was that date; I think it was a later date. 20

By Mr. Rothermel:

Q. Were you served with a summons and complaint in this suit —

A. Let me see that again, please?

The Court: You can answer that "yes" or "no."

The Witness: No, positively not. 30

By Mr. Rothermel:

Q. You were never served with that summons and complaint?

A. Never with that summons.

Q. Were you in Mr. Cogan's office sometime in April or June of 1927, at which time the judgment entered in this suit was cancelled of record?

A. No, no.

Q. You were never in Mr. Cogan's office?

A. I was in Mr. Cogan's office, but there was no transaction of any kind with any papers.

10 Q. When you went to Mr. Cogan's office at that time, you were told about a judgment having been entered for this \$754.00, were you not?

A. No.

Q. You were never told ——

A. No, sir; Mr. Cogan never said anything about any judgment. Just one minute, please.

Q. You were never served with this summons and complaint?

A. No.

20 Q. But, your name is Emma R. Booth?

A. That is my name.

Q. And some time in 1923 you had a pastry shop at 508 Station Avenue, Haddon Heights, Camden County?

A. Yes.

Q. That might have been during the month of November, as far as your recollection now serves you?

A. I couldn't recall that.

30 Q. I say, it might have been, so far as your recollection now serves you?

A. Yes, it might have been, but I haven't any recollection.

Q. Where do you reside now?

A. In Collingswood.

Q. At what address, please?

A. Maple Avenue and Crescent Boulevard.

Q. With whom?

A. Mrs. Noll.

Q. How long have you been there?

A. For a number of months.

Q. How many, please?

A. Well, I have lived in her home for, I guess, eight months—seven or eight months, and prior to 10 that I lived, had a room on Federal Street, 213 Federal Street.

Q. Do you know when you went to Mrs. Noll's home, to live?

A. To live, yes. I lived there in the early part of the year.

Q. 1930, you mean?

A. In the early part of 1929 or 1930—1930. Prior to that I lived all around, because I didn't have any permanent home, and I would go from one place to 20 the other, and I lived with my friends in Jersey, Pennsylvania, or any other place, because I was alone. I lived for several months at 213 Federal Street.

Q. What was your residence on October 23rd, 1929?

A. October 23rd, 1929?

Q. Yes.

A. I had my residence at Mrs. Noll's home. I was staying there for a couple of months, then; 30 possibly somewhat less.

Q. In Collingswood?

A. In Collingswood, but I always retained my room there, whether I was there or not.

Q. In Mrs. Noll's home?

A. In Mrs. Noll's home.

Q. Where were you residing on March 28th, 1930?

A. 213 Federal Street, Camden.

Q. How long did you have that room?

A. Well, I had that room until the middle of May. I went there the 4th of January and stayed until the middle of May. I was compelled to leave because the child had diphtheria, and I was obliged to
10 get out of the home.

Mr. Rothermel: That is all.

By Mr. Wendkos:

Q. Mrs. Booth, did Mr. Tull have an understanding with you, as to how you were to be paid for the services?

20

Mr. Rothermel: I object to that.

(Recess taken until 1:30 P. M.)

AFTER RECESS.

MRS. EMMA R. BOOTH, recalled.

30

By Mr. Wendkos:

Q. You told me just a minute ago, as I came in the court, that you, thinking over the question of that judgment, had a better recollection of it?

A. Yes.

Q. Will you tell the Court and jury what the circumstances of that transaction were?

Mr. Rothermel: Assuming that this is rebuttal, I ask that it be confined to something brought out in my cross-examination.

Mr. Wendkos: This is not rebuttal. 10

The Court: I don't think it is rebuttal. I will permit this correction, as I understand it, of her oral testimony.

Mr. Rothermel: May I ask the Court, then, to confine the witness; that is the rule laid down by the statute.

The Court: Her testimony must be limited to this 20 question of the judgment.

Mr. Rothermel: I would certainly ask the Court not to permit the witness to go into any transaction with respect to anything that occurred between her and the decedent, not actually disclosed by the record.

The Court: I will permit the witness to correct any misstatement she may have made in answering 30 the question asked prior to the noon recess.

By Mr. Wendkos:

Q. You were asked by Mr. Rothermel whether you had been served with certain papers—with a

certain paper—which he showed to you, and your answer originally was, “No.” Do you care to correct that statement, now?

A. I do, Mr. Wendkos.

Q. What have you to say?

A. Mr. Tull purchased two bungalows —

10 Mr. Rothermel: I object to that.

The Court: Objection sustained.

(Exception for plaintiff.)

By Mr. Wendkos:

Q. Look at this note, Mrs. Booth. I would like you to give me the history of it. Is that a new note
20 for \$150.00, or a renewal of an original one?

Mr. Rothermel: That is not proper examination.

The Court: I suppose it would have to go in under rebuttal.

Mr. Wendkos: This is rebuttal, now.

Mr. Rothermel: I contend the plaintiff has not
30 closed its case.

The Court: The only question asked was proof of the note, itself. That is as far as that proof went.

Mr. Wendkos: All right.

By Mr. Wendkos:

Q. Mrs. Booth, that was not your home that you went to?

A. No.

Q. You went there as Mr. Tull's housekeeper?

Mr. Rothermel: I object to that. 10

The Witness: I certainly did.

The Court: Strike it out.

By Mr. Wendkos:

Q. Was there an understanding between you and Mr. Tull as to how you were to be paid, and when you were to be paid for your services? 20

Mr. Rothermel: I make the same objection.

The Court: Sustained.

(Exception for plaintiff.)

Mr. Wendkos: The ground of my exception is that I want to have noted on the record first, that the defendant has permitted the plaintiff to be sworn as a witness in her own behalf, and therefore, has permitted her to testify regarding the subject-matter of this suit. The defendant has, therefore, waived the benefit of the statute. 30

The second ground is, that having examined this witness—that is, counsel for the defendant having

examined the plaintiff party on other transactions between her and the decedent, that the door has been opened, and the transactions involved in the present suit may now be testified to by the plaintiff.

Mr. Rothermel: I would like also to have noted on the record that that examination was purely on the
10 facts contained in a public record, judgment record, and was elicited solely by the answer given by the plaintiff to the question asked on cross-examination as to whether she was personally served, her answer at that time being "no," which answer she has since corrected.

By Mr. Wendkos:

Q. Did Mr. Tull ever say to you that he would
20 provide for you in his will?

Mr. Rothermel: That is objected to, on the same ground.

The Court: Sustained.

Mr. Wendkos: I ask for an exception, for the reasons heretofore given. I may state now, that all exceptions to your Honor's ruling are based upon the
30 grounds previously stated.

The Court: All right.

By Mr. Wendkos:

Q. Did Mr. Tull provide for you in his will?

Mr. Rothermel: I object to that.

The Court: Sustained.

(Exception for plaintiff.)

By Mr. Wendkos:

Q. When did you leave Mr. Tull's house?

10

Mr. Rothermel: I object.

The Court: Overruled.

(Exception for defendant.)

The Witness: A year and a half or two years before he died.

20

By Mr. Wendkos:

Q. The next question is, why did you leave Mr. Tull's house?

Mr. Rothermel: That is objected to, because obviously, it must have been as a result of some transaction or controversy with the decedent.

30

The Court: Sustained.

By Mr. Wendkos:

Q. What did you do after you left Mr. Tull's house?

A. Well, I was employed in the capacity of practical nurse and housekeeper, in order to maintain myself.

Q. How much money did you receive?

A. All the way from \$15.00, \$18.00, to \$20.00 a week.

10 Mr. Rothermel: I wish to object to that on the ground it is immaterial and irrelevant.

The Court: Overruled.

(Exception for defendant.)

By Mr. Wendkos:

20 Q. How much did you receive for your services, per week, as nurse and housekeeper after you left Mr. Tull's house?

A. I had various sums, nothing less than \$15.00, \$18.00, or \$20.00 a week.

Q. How long had you done that work up until the time the suit was brought?

A. Well, at various times; I could not just say.

Q. In these new places, were your hours as long as you had been putting in while you were still living in Mr. Tull's house?

30

Mr. Rothermel: That is objected to.

The Witness: Absolutely no.

The Court: On what ground?

Mr. Rothermel: On the ground that in answering it, she must compare the transactions with what happened after leaving the decedent's home; therefore, it is inadmissible under the statute.

The Court: Sustained on the ground that a comparison of the time spent elsewhere with the time spent with the decedent, would be evidential as to 10 transactions.

(Exception for plaintiff.)

By Mr. Wendkos:

Q. Were your duties in the other places generally similar to those that you have already testified to?

A. Yes, sir.

20

Mr. Rothermel: I object to that, and move that the answer be stricken out, on the ground that it was answered before I had an opportunity to object, unless it appears from the question that the transaction with the decedent is excluded from the question and answer.

The Court: Sustained. Strike out the answer.

30

(Exception for plaintiff.)

By Mr. Wendkos:

Q. Did you receive any money from Mr. Tull for your services which you rendered?

Mr. Rothermel: That is objected to on the same ground.

The Court: Sustained.

(Exception for plaintiff.)

10 Mr. Wendkos: That is all.

Mr. Rothermel: No cross-examination.

MAUD W. MOORE, SWORN.

Direct examination.

20 By Mr. Wendkos:

Q. What is your business?

A. Federal, State and Municipal Employment Office, Camden.

Q. You have to deal with persons who perform household duties?

A. Yes, part of the work, yes.

Q. You know what certain persons receive for performing household duties, as compensation?

30 A. Yes —

Mr. Rothermel: May I interrupt? I presume this witness is called to prove the worth of such service. Proceeding on his theory of the case, I can merely ask the benefit of an objection to that, on the theory outlined originally, that such a charge is not con-

tained in the complaint; therefore, we are not compelled to meet that. My contention, therefore, is, that this testimony would be immaterial and irrelevant.

The Court: Overruled.

(Exception for defendant.)

10

By Mr. Wendkos:

Q. Will you tell us what is the value of household services, housekeeping services, in which the person lives in the house and performs all the necessary duties, with which you are more familiar than I am?

A. Of course, that varies.

Q. I beg pardon?

A. I say, of course, that varies.

20

Q. Assuming that this is a household, and that a person has complete charge of it, does the cooking, cleaning, washing, etc., sewing—whatever is necessary to conduct the complete household?

A. I place them from \$8.00 to \$15.00 a week.

Q. Have you had experience with boarding people?

A. No.

Mr. Wendkos: Cross-examine.

30

Mr. Rothermel: No cross-examination.

Mr. Wendkos: That is our case.

Mr. Rothermel: I would like to move for a non-suit upon the grounds first, that there is no proof, in the case that whatever services were rendered,—assuming them to have been rendered—had not in fact been actually paid for prior to the decease of the decedent.

10 Secondly, on the ground that obviously the plaintiff has failed to prove any contract between the decedent and plaintiff, whereby these services were supposed to have been rendered at the stipulated sums set forth in the complaint.

Also, I would like to move that any demand set forth in the complaint for board from October, 1926, to December, 1927, be stricken from the complaint for the reason that plaintiff has failed to prove the particular items. There is proof of what may be
20 called housekeeping services, on the quantum meruit basis; I concede that, but so far as any particular bill is concerned, I submit there is absolutely no proof. So, I think I am entitled to have that portion stricken out, namely, the item of fifty-four weeks at \$10.00 a week, covering from October, 1926, to December, 1927.

The Court: As to the first ground, the motion is overruled by reason of the fact of there being proof
30 of services rendered by a stranger, and the law implies a promise to pay; and that such proof puts the defendant upon his defense to show payment. The plaintiff is not required to prove non-payment.

The motion is denied with respect to the second ground because that question has already been passed upon by the Court.

As to the next, I think I shall have to eliminate the question of board.

Mr. Rothermel: May I also in that connection, move that the Court strike from the complaint, any demand for housekeeping services prior to October 23rd, 1923. The summons was issued October 23rd, 1929, and that takes the six-year period. I make 10 this on the ground that any such claim is barred by the statute of limitation.

Mr. Wendkos: I move to amend the complaint so that the housekeeping activities or services would cover the period from October, 1923, to December, 1927.

Mr. Rothermel: I object to that.

20

The Court: Overruled.

(Exception for defendant.)

Mr. Rothermel: What I now have to meet, if I understand it correctly, is a claim for housekeeping services from October 23rd, 1923, down to December, 1927.

The complaint based on the computation set forth in the Bill of Particulars specified a rate of \$10.00 30 a week, and is for a definite and specific demand of \$4,180.00. Am I to understand that under your Honor's ruling with respect to the basis on which the claim is put, also cutting down the time, is going to, in turn, reduce this demand to \$2,150.00?

The Court: No, I cannot reduce it to \$2,150.00, because the testimony is that the services were worth from \$8.00 to \$15.00 a week. I don't know what it is. It is for the jury to say what is a fair sum. I certainly would not instruct the jury that she is entitled to \$40.00 or \$80.00 a month.

- 10 Mr. Rothermel: I merely raised that point as another additional ground against your Honor's ruling on the original complaint. I am now forced to meet something I was not called upon to meet in the original complaint.

DEFENDANT'S EVIDENCE.

20

ADRIAN J. THOMPSON, SWORN.

Direct examination.

By Mr. Rothermel:

Q. Where do you live?

A. Haddon Heights, New Jersey.

Q. How long have you lived in Haddon Heights?

30 A. About six years.

Q. Do you know Mrs. Booth?

A. Yes, sir.

Q. Do you know Mr. Tull?

A. Yes, sir.

Q. Do you know what work Mrs. Booth did between October, 1923, and December, 1927?

A. She did housework for other people, and came to Mr. Tull's home when she had no other employment.

Q. The question was purposely framed not to indicate the answer. I want nothing with reference to Mr. Tull's place. Merely confine the answer to the work which Mrs. Booth did, outside of any transaction which she might have had with Mr. Tull. 10

A. Mrs. Booth did housekeeping.

Q. For people you knew in the neighborhood?

A. For one family in Haddon Heights.

Q. Do you know the name?

A. I won't be positive. I think the name was Kraft; I won't be sure, but they were residents of Haddon Heights. It is three and a half years, I won't be positive of the name.

Q. To your knowledge, did she work at any place other than the Krafts ——— 20

A. Yes, sir, she worked in Audubon.

Q. During these dates, October, 1923, to December, 1927?

A. Yes.

Q. Any other place that you know of?

A. That is all.

Cross-examination.

By Mr. Wendkos: 30

Q. Where do you live?

A. Haddon Heights, New Jersey.

Q. Do you know where you live?

A. Yes, sir. I know it

Q. Then, why don't you tell us?

A. Haddon Heights, New Jersey.

Q. Is that all?

A. That is all.

Q. Absolutely?

A. Yes.

Q. Positively?

A. Yes, sir.

10 Q. How big is Haddon Heights?

A. So far as the area or miles?

Q. Area?

A. I couldn't say.

The Court: That is rather a broad question.

Mr. Wendkos: I want to know whether he lives all over Haddon Heights, or whether he lives in a particular locality.

20

The Court: Then, ask him for his address.

By Mr. Wendkos:

Q. Where do you live?

A. 503 Station Avenue, Haddon Heights, New Jersey.

Q. Where did Mr. Tull live?

30

Mr. Rothermel: I object to that; or, I will permit it if the Court will not hold me as waiving any of my rights. But, if it involves any waiving of my rights, I must object to it.

The Court: I will permit this one question.

Mr. Wendkos: I think on cross-examination we are permitted greater latitude than on direct.

The Witness: He lived in Haddon Heights. I think it was 300 Belmar Avenue.

By Mr. Wendkos:

10

Q. How old are you?

A. Thirty-three.

Q. Thirty-three?

A. Yes, sir.

Q. What is your business?

A. Shoemaker.

Q. Is that your place of business, 503 Station Avenue?

A. Yes, sir.

Q. Do you stay at that place of business all the time? 20

A. Yes, sir.

Q. Do you have occasion to visit your friends?

A. Yes.

Q. And your relatives?

A. Yes, sir.

Q. And your customers?

A. No, I don't visit customers.

Q. Was Mr. Tull a customer of yours?

A. No, sir.

30

Q. Was he a friend of yours?

A. Yes, sir.

Q. Did you visit him frequently?

A. On several occasions, on a number of occasions.

Q. How many times did you visit him in the year 1919?

Mr. Rothermel: I don't wish to be captious. May I have the benefit of a general exception to this line of examination, merely to preserve my status?

10 The Court: What is your purpose? You are going outside of the examination in chief?

Mr. Wendkos: I don't think so.

The Court: Objection overruled.

(Exception for defendant.)

The Witness: I didn't know Mr. Tull in 1919.

20

By Mr. Wendkos:

Q. How long have you lived there?

A. A little over six years.

Q. Just when did you move to Haddon Heights?

A. I think I came to Haddon Heights some time in the latter part of 1923, or the first part of 1924; I won't be sure which.

Q. You won't be sure which?

30 A. No, sir; I won't be sure on the date.

Q. Six years ago would make it in December of 1924?

A. It has been over six years.

Q. About six and a half years?

A. No, I would not say that. It has been between six and seven years, as near as I can guess it.

Q. There is a greater likelihood of your going to Haddon Heights in January of 1924?

A. No.

Q. Would it be December, 1923; that would be seven years?

A. I would not care to give any date or month.

Mr. Wendkos: That is all.

10

Mr. Rothermel: I think I merely had this note marked for identification. I now offer it in evidence.

The Court: Any objection, Mr. Wendkos?

Mr. Wendkos: No, because I want it to appear that there was the transaction between the parties.

20

JAMES J. CAIN, sworn.

Direct examination.

By Mr. Rothermel:

Q. You are a member of the Haddon Heights National Bank?

30

A. I am.

Q. What is your name?

A. James J. Cain.

Q. I show you a note marked "Defendant's Exhibit 2," and ask you if you recognize that note?

A. I do, sir; it is all my own handwriting.

Q. Did the Haddon Heights National Bank hold that note among its assets?

A. It did.

Q. Was the amount due on that note paid by Catherine C. Keegan, administratrix of Francis D. Tull, from the funds in your bank to the credit of the estate?

10 A. It was paid by Catherine C. Keegan.

Q. Paid what?

A. \$150.00 plus interest.

Q. What was that?

A. \$3.20.

Cross-examination.

By Mr. Wendkos:

20 Q. Do you know of the transaction in which this note was involved?

Mr. Rothermel: That is objected to as not proper cross-examination.

Mr. Wendkos: I want to know if this witness was familiar with the transaction in which this note was involved.

30 Mr. Rothermel: He was not called and examined on that point.

The Court: He was only called to prove payment by the administratrix, and you are going outside of that.

By Mr. Wendkos:

Q. Do you know whether or not this note was half of another note of \$300.00?

Mr. Rothermel: I object to that on the same ground.

The Court: It is outside the scope of the examination in chief, Mr. Wendkos.

10

Mr. Wendkos: May I have an exception?

The Court: Yes.

By Mr. Wendkos:

Q. Do you remember issuing this note on the 4th 20 of February, 1929?

Mr. Rothermel: I object to that also as being outside of the examination in chief.

The Court: He might know about the transaction, but he was not question about it by counsel for the defendant. He has been put on merely for the purpose of proving payment, and by whom payment was made.

30

Mr. Wendkos: All right.

The Court: So that the cross-examination would have to be limited to that.

Mr. Wendkos: That is all.

Mr. Rothermel: I suppose the judgment record is in evidence?

The Court: Yes.

10 Mr. Rothermel: Defendant rests.

PLAINTIFF'S REBUTTAL.

EMMA R. BOOTH, recalled.

20 By Mr. Wendkos:

Q. I show you a summons and complaint in which Mr. Tull appears as plaintiff against you as defendant, and in which he sues for the amount of a promissory note, \$754.00, made by you to his order. Will you please tell me for what purpose that note was given?

30 Mr. Rothermel: I object to that on the ground that it is not rebuttal evidence at this point, and further, the transaction itself is barred by the statute.

The Court: Well, so far as the first objection is concerned, I don't know whether it is rebuttal, or whether it is not.

With respect to the second objection, Mr. Rothermel, certainly when you have used the witness yourself for the purpose of introducing that record, the entire transaction is entitled to be presented. The objection is overruled.

(Exception for defendant.)

10

By Mr. Wendkos:

Q. Will you tell me the circumstances which led up to this suit against you by Mr. Tull?

Mr. Rothermel: For the record, may I have another exception?

The Court: Yes.

20

The Witness: Mr. Tull, he bought two bungalows at Pennsgrove, and he erected one on a lot that I had owned —

Mr. Rothermel: I must ask that this be stricken from the record. I do not see under what theory it can be admitted at this time, sir.

The Court: I will permit it, it having been introduced in evidence by way of a counter-claim, and this witness having been used to prove the transaction. 30

Mr. Rothermel: I must disagree with your Honor, she was used —

The Court: You asked her if that was her signature, which is proof of the note; otherwise, it could not be introduced in evidence.

Mr. Rothermel: But, that is not proof of the transaction. My question was confined entirely to the signature; that is all.

10

The Court: The objection is overruled.

(Exception for defendant.)

The Witness: I need money, and Mr. Tull owed me a considerable sum for my services in his home, and I asked him repeatedly for some money ——

20 The Court: We will have to get down to the circumstances surrounding the case.

The Witness: I am trying to do that.

The Court: You are a long time getting there.

The Witness: He said, "I haven't any money, but I can make you—give you a note for \$300.00"; I paid on that note every month.

30 The Court: Under these conditions, if you are willing to withdraw the proof, I don't see why it should not be withdrawn.

Mr. Rothermel: I am perfectly willing to, if the Court will permit it.

Mr. Wendkos: I leave it entirely to the Court.

The Court: It may be withdrawn.

Mr. Wendkos: Altogether?

The Court: Yes.

Mr. Wendkos: So that that is not in the case?

10

Mr. Rothermel: Yes.

By Mr. Wendkos:

Q. Now, this is a note which was in evidence made by you to Francis D. Tull, for \$150.00, dated the 4th of February, 1929, and endorsed by Mr. Tull. Will you tell us the circumstances of this note?

20

Mr. Rothermel: I object to that if it involves a transaction with the decedent.

The Court: Overruled.

(Exception for defendant.)

The Witness: Mr. Tull owed me quite a little bit of money, and each time I asked him for money he said, "I am financially embarrassed" —

30

Mr. Rothermel: Can she go so far as to testify to conversation?

The Court: I don't think so.

Mr. Rothermel: I move that that be stricken out.

The Court: Get down to the circumstances surrounding this note.

The Witness: Well, I needed the money; there was no ready money. He said he would endorse the
10 note if I would get the \$300.00 —

Mr. Rothermel: I object to the conversation.

The Court: Sustained.

Mr. Wendkos: May I call your Honor's attention to the fact that this is a transaction between the decedent and this witness.

20 The Court: Yes.

Mr. Wendkos: And, having been introduced by Mr. Rothermel, we have a right to testify as to that.

The Witness: Up until the time Mr. Tull died, I went to the bank to make another payment, and they refused to accept it because the endorser had then died. But I had told him before times I didn't intend to pay another penny on that note, "Because
30 you owe me so much money."

Mr. Rothermel: I assume I will have the benefit of my objection to the whole answer.

Mr. Wendkos: That is all.

JAMES J. CAIN, recalled.

By Mr. Rothermel:

Q. Do you have with you the account which Mr. Tull, in his lifetime, had in your bank, the record of that account? 10

A. I do not.

Q. Do you know whether or not, of your own knowledge, there was a bank account kept by Mr. Tull in your bank?

A. I am almost sure there was. Of course, being teller, I don't have them in charge.

Mr. Rothermel: I will have to withdraw the witness. 20

By Mr. Wendkos:

Q. I would like to know whether you recall if Mrs. Booth had paid the installments on account of that original \$300.00 note that she testified to?

Mr. Rothermel: That is objected to, not proper cross-examination.

The Court: You called him, yourself. 30

Mr. Wendkos: Yes.

The Witness: She has; I have taken them from her.

By Mr. Wendkos:

Q. And this \$150.00 note is the balance of the \$300.00 note?

A. Yes, sir.

10 Mr. Rothermel: I regret to do this, but I am compelled to make a request, and that is, to secure these records from the Haddon Heights National Bank, showing the account which existed in the name of Mr. Tull, prior to his decease.

Mr. Wendkos: On what grounds?

20 Mr. Rothermel: The statement was made that this note was given to Mrs. Booth by reason of the fact that he had no money. I think I can show, by the record, that at the time of the transaction he had considerable more money in cash.

Mr. Wendkos: I will admit that he had.

Mr. Rothermel: If you are willing to concede it —

Mr. Wendkos: Yes, I am conceding that he had.

30 Mr. Rothermel: All right; that is sufficient.

CHARGE OF THE COURT.

ELDRIDGE, J.:

Members of the jury: Emma R. Booth, as plaintiff, has brought suit against Catherine C. Keegan, administratrix of the estate of Francis D. Tull, deceased, to recover a sum of money representing, as she claims, the value of her services rendered to the decedent, Tull, during his lifetime. 10

The plaintiff in this matter was somewhat ambiguous, but under the present ruling of the Court, the proof which you are to consider is to be limited to services rendered from October, 1923, to December, 1927. Under the ruling of the Court, as I have already stated, your consideration must be limited to that period of time. 20

Against this claim for services on the part of the plaintiff, the defendant has set up a claim for \$153.20, alleged to be due her as administratrix of Mr. Tull's estate, for a note which she paid to the bank, by reason of the fact that Mr. Tull was endorser on the note, while the maker of the note was the plaintiff in this case. I shall have more to say to you about that, later.

I think I need not suggest to you that in the trial of this case, the proof has been difficult. Motions have been made frequently and ruled on by the Court. Our rule of evidence prohibits a party having transactions with a deceased person from testifying as to those transactions; the reason being that when the mouth of one party is closed by death, the mouth of the other ought also to be 30

closed. Hence, the limitation which the Court has placed upon the testimony of Mrs. Booth; death having eliminated one of the parties, as I have already stated, to any transactions which occurred between them, the law limits the testimony of the other.

I make that statement to you in order that there
10 may be no misunderstanding on your part, and that there may be no prejudice arising on your part by reason of the fact that the testimony of the plaintiff, Mrs. Booth, in this case, has been limited as it was. I think when you consider that matter, you will see the wise provision of the law in closing the mouth of one party to the transaction where the mouth of the other has already been closed by the intervention of death.

It is a principle of our law that where a stranger
20 renders service to another, the law implies a promise to pay for those services. No definite contract of employment is necessary, but the law presumes that there is a promise to pay. This, however, is a presumption of the law only which may be overcome by testimony in the case.

There is, it seems to the Court, three questions involved for your consideration. The first is, did the plaintiff render services to the decedent between
30 October 23rd, 1923, and December, 1927, the limit to which the Court has restricted you? To support her allegation that these services were rendered, you have the testimony of Mr. Ross, Mrs. Noll and Mrs. Booth, to the effect that they were frequently at the house of Mr. Tull's, and that the plaintiff in this case was there engaged in the care of the house, and doing the ordinary housework. Your first ques-

tion, then, as I have suggested, is to determine whether or not, during the period of time that I have suggested, the services were actually rendered by the plaintiff to the decedent, Mr. Tull.

Your second question, if you resolve that question in the affirmative, would be to determine whether or not the presumption of law, that there was a promise to pay for those services, was in any way overcome by the testimony in this case. I have already stated to you that where no specific promise is alleged, and proven, if it was a stranger rendering the service, the law presumes a promise to pay, but that presumption may be overcome by the testimony in the case. So that I repeat, if you find that the services were rendered by the plaintiff to the decedent, Mr. Tull, then your next question would be to determine whether or not the presumption of the promise to pay had been overcome by the testimony in the case. 10 20

If you resolve both of these questions in favor of the plaintiff, namely, that she did render the services, and that the legal presumption was not overcome, the third question for your determination is the amount which you would award to her for the services which she rendered. I have already pointed out to you that under the testimony of the three witnesses that I mentioned, there is proof that the plaintiff was in the home of Mr. Tull, and was there keeping house for him. Against that testimony, however, you have the evidence of Mr. Thompson to the effect that not only did she perform services for Mr. Tull, but that she worked in other places as well. That is a fact for you to take into consideration in determining the amount to which she is en- 30

titled, if you find that she is entitled to any compensation. Her allegation that she rendered the service, and is entitled to compensation, must be proven by a preponderance of the evidence. That is to say, she must sustain her case by the greater weight of the believable evidence, so that in considering these questions you are to weigh the evidence and to find your verdict in accordance with what you believe to be the greater weight of the believable evidence.

There is another element that enters into the trial, to which I want to call your attention and say a word; that is, with respect to the counter-claim, the note of \$150.00 which, together with interest, amounts to \$153.20. The defendant asks for that amount by reason of the fact that she alleges that that note was paid by her to the bank in which it had been deposited; that it was an obligation of Mrs. Booth, and that consequently she is entitled to repayment of that amount. The plaintiff has gone on the stand and given testimony explaining the giving of that note. However, in that connection, it seems to me that you ought to take into consideration the fact that prior to her going to the home of Mr. Tull, the plaintiff was engaged in the real estate business, which might be considered by you in determining whether or not she had knowledge of the character of that obligation which she signed. So that that is an element to be taken into consideration when you are considering this question of whose obligation the \$150.00 note was.

If you find for the plaintiff by a preponderance of the evidence, and if you also, by a preponderance of the evidence, find that the defendant paid the note

for the plaintiff, that amount should be off-set against that which you find for the plaintiff.

There is one other thing I want to call your attention to, and that is the introduction and withdrawal of the evidence of the suit having been brought by the decedent, Tull, against the plaintiff in this case. Whatever effect that might have had on a claim existing prior to the institution of this suit, might have been considered by you had not the Court limited recovery to the period from October 23, 1923, to December, 1927; the suit having been started approximately at the same time the claim began to run. Under the ruling of the Court, that suit becomes immaterial, and counsel for the defense has properly withdrawn that from the evidence. So that I want to caution you that it is no longer a part of the evidence in this case, and should receive no consideration at your hands. 10 20

You may, then, in rendering your verdict, find in favor of the plaintiff for an amount to which you feel she is entitled for services rendered, less the amount claimed on the promissory note, if you find that the promissory note was her obligation, and was paid by the defendant in this case. On the other hand, if you find that there was nothing due the plaintiff for services rendered, and find also that that promissory was her obligation, and that the decedent's administratrix paid the amount to the bank, then your verdict should be in favor of the defendant for \$153.20. If you find nothing due the plaintiff or the defendant by reason of the fact that you find the promissory note was the obligation of the decedent, then your verdict should be no cause of action. 30

Those are the questions, members of the jury, for your consideration. I think I have made them as plain to you as it is possible for me to do.

You may retire to deliberate, and return whenever you agree upon your verdict.

10 Mr. Rothermel: There is only one exception, if your Honor please. You have not pointed out to the jury that the note, of itself, could be considered as evidence of the account between the parties having been settled up to that point, and that it might be considered by them as evidence of accord and satisfaction, and as pay, for whatever services, if any, that were rendered.

The Court: All right; exception allowed.

20

30

NEW JERSEY COURT OF ERRORS AND
APPEALS.

EMMA R. BOOTH,
Plaintiff-Appellant,

v.

KATHERINE C. KEEGAN, Administratrix of the Estate
of FRANCIS D. TULL, deceased,
Defendant-Respondent.

ACTION AT LAW.

ON APPEAL FROM NEW JERSEY SUPREME COURT.

BRIEF OF DEFENDANT-RESPONDENT.

Plaintiff-appellant in her brief sets forth three separate divisions respectively, entitled FACTS, TESTIMONY and ARGUMENT. In this brief the facts and testimony will be treated as one sub-division and the argument will be treated as a separate sub-division.

FACTS AND TESTIMONY.

In referring to the facts and to the testimony it is necessary that the defendant-respondent disagree with certain statements made in the brief of plaintiff-appellant. The citations with reference to these disagreements will be set forth.

Francis D. Tull, the decedent of defendant-respondent, died on February 23, 1929. In August, 1929, a notice of claim was presented by the plaintiff (pages 1 and 2, S. C.). The claim was disputed and notice served of such dispute and suit brought in the New Jersey Supreme Court on October 23, 1929. The suit had its foundation in contract claiming, as set forth in the complaint and bill of particulars which was demanded and furnished, the following items: 364 weeks as housekeeper for decedent at the rate of \$10.00 per week, and 54 weeks' board furnished to defendant-respondent's decedent at \$10.00 per week, the total claim being, as specified in the bill of particulars, \$4,180.00. An answer and counter-claim was filed on the part of defendant-respondent, the counter-claim being for a note dated February 4, 1929, in the amount of \$150.00 on which defendant-respondent's decedent was the endorser; the maker being the plaintiff. Said note was, at the time of decedent's death, the property of the Had-don Heights National Bank and was paid by defendant-respondent from the assets of said estate after it had fallen due and had been protested for non-payment.

The case was tried at the Camden Circuit before the Honorable Henry H. Eldredge, Circuit Court Judge, and the jury returned a verdict for no cause for action both on the complaint and on the counter-claim. From judgment entered on this verdict, the plaintiff appeals.

On page 2 of the brief of appellant, in the first paragraph under the caption TESTIMONY, the statement is made that plaintiff took the stand in her own behalf and testified, without objection on the part of the defendant's counsel, that she did general housekeeping work; that she sewed, cleaned, washed dishes, etc. It is respectfully submitted that this is an error. The plaintiff first took the stand during the trial of the case as will appear on page 34, S. C. At the bottom of page 35, appears the following:

“By Mr. Wendkos:

Q. How did you keep house?

A. As housekeeper for Mr. Tull.

Mr. Rothermel: I move that that be stricken out.

By Mr. Wendkos:

Q. Just tell me what you did in that house?

Mr. Rothermel: I merely make this objection on the same ground, that this testimony would be also part of a transaction with the decedent, and ask the Court to rule.

Mr. Wendkos: There is nothing I would ask that involves any transaction with the decedent in this question.

The Court: Overruled.

(Exception for defendant.)”

And again on page 37 at the top of the page appears the following:

“By Mr. Wendkos:

Q. How long had you remained in that house doing the work you just outlined?

Mr. Rothermel: May I have the benefit of a general exception to any testimony along that line, so as not to take up so much time?

The Court: Yes.”

It will be seen that the defendant-respondent, through her counsel objected immediately to the testimony of the plaintiff and that it was admitted by the Court over objection, so that the statement made in the brief of appellant is not borne out by the record.

In the second paragraph, certain statements are made with respect to cross-examination of the plaintiff; first, with reference to the note which was the subject of the counter-claim, and second, with respect to a certain lawsuit. The testimony with respect to the note is found at the top of page 41, S. C., and consists merely of having the plaintiff identify her signature on that note. The cross-examination with reference to the suit by the decedent against the plaintiff in 1927 was gone into, due to the fact that the plaintiff originally denied having been served with that suit and after the plaintiff, in connection with the motion to non-suit, had amended the complaint in order to cover the period from October, 1923, to December, 1927, instead of from June, 1919, to September, 1926, as set forth in the bill of particulars, this evidence with respect

to the previous lawsuit between the parties was withdrawn from the case without objection from the plaintiff. This will be found beginning at line 30, page 68 and ending at line 12, page 69. This withdrawal is commented upon by the Court in his charge to the jury at page 77, S. C., first paragraph, as follows:

“There is one other thing I want to call your attention to, and that is the introduction and withdrawal of the evidence of the suit having been brought by the decedent, Tull, against the plaintiff in this case. Whatever effect that might have had on a claim existing prior to the institution of this suit, might have been considered by you had not the Court limited recovery to the period from October 23, 1923, to December, 1927; the suit having been started approximately at the same time the claim began to run. Under the ruling of the Court, that suit becomes immaterial, and counsel for the defense has properly withdrawn that from the evidence. So that I want to caution you that it is no longer a part of the evidence in this case, and should receive no consideration at your hands.”

In the third and fourth paragraphs, under the caption TESTIMONY, appellant refers to certain rulings made by the Court with respect to testimony. He cites, without authority, two propositions of law; (1) that the mere permission to have the plaintiff sworn as a witness in her own behalf opens the door to admit plaintiff's testimony, and (2) that counsel for defendant having examined her on other trans-

actions between her and the decedent, the transaction involved in the present suit may now be testified to by her. These statements will be treated, in this brief, under the heading of argument where they properly belong.

In the next paragraph (page 3 of the brief), the Court's ruling with respect to certain questions propounded to the witness, James J. Cain, by counsel for appellant, is criticised. The reason for the criticism is not given. On page 64, S. C., it will be noted that the objection made by defendant's counsel was that the questions, as propounded, were not proper cross-examination and the Court sustained defendant's objection on that basis. The entire series of objections made by defendant's counsel and sustained by the Court appearing in the witness Cain's testimony (pages 64, 65 and 66, S. C.), are on that basis. It is impossible, therefore, in the light of no arguments as to why these rulings are criticised, for defendant-respondent to answer said criticism.

The next paragraph of defendant's brief, at the bottom of page 3, deals with the previous suit between the parties; as stated before herein, that evidence was withdrawn entirely from the case and the Court properly instructed the jury to pay no attention whatsoever to it. It is submitted, therefore, that there is no error of any kind in connection with the Court's action with respect to this.

The last paragraph of this division, namely, TESTIMONY, found at the top of page 4 of the brief, goes on to show that the plaintiff testified with respect to the transaction involving the \$300.00 note. This testimony begins at the bottom of page 67 and

continues on pages 68, 69 and 70, S. C. It will be noted in every instance that there was no waiver whatsoever on the part of the defendant-respondent, but that in each instance the testimony was admitted by the Court over objection of counsel for the defendant, so that certainly this could not be considered, in any sense, a waiving by defendant of her rights. It may further be noted that in most cases defendant's objections were overruled by the Court and the witness permitted to testify fully with respect to the note transaction, so that certainly this did not harm the plaintiff.

ARGUMENT.

The appellant states, in his first paragraph under argument, that the verdict of the jury was evidently based on the Court's rulings, adverse to the plaintiff, which prevented her from showing the arrangement which she had made with the defendant's decedent. This is conceded, and we say, was properly prevented from showing this, in view of the statute then in force which will be found in 2 Compiled Statutes, page 2218, paragraph 4, and which reads as follows:

“In all civil actions any party thereto may be sworn and examined as a witness, notwithstanding any party thereto may sue or be sued in a representative capacity; provided, this Section shall not extend to permit testimony to be given by any party to the action as to any transac-

tion with or statement by any testator or intestate represented in said action, unless the representative offers himself as a witness on his own behalf, and testifies to any transaction with or statement by his testator or intestate, in which event the other party may be a witness on his own behalf as to all transactions with or statements by such testator or intestate, which are pertinent to the issue.”

The statute by its express terms disposes of the first point made by the appellant and referred to hereinabove, namely, that mere permission to have the plaintiff sworn as a witness in her own behalf opens the door to admit plaintiff's testimony. This is expressly provided for by the statute recited above and the cases upholding this are too numerous to cite.

The plaintiff, however, contends that defendant, by reason of examining plaintiff on the note and the judgment record, has waived the benefit of the statute and thus opened the door so that plaintiff could testify, not only with respect to those particular transactions, but to any transaction whatsoever that she had with the decedent. As set forth above, the only testimony elicited by the defendant with respect to the note transaction, was to have the plaintiff identify the signature thereon as her signature.

With respect to the judgment record, this matter was gone into fully by both plaintiff and defendant and after the pleadings had been properly limited to the point permitted by the Statute of Limitations, this proof and all testimony with respect thereto was withdrawn from the case and the jury instructed

by the Court, in its charge, to pay no attention whatsoever to any of said testimony. The latter, therefore, cannot be used by the plaintiff, it is submitted, as a basis of any waiver on the part of the defendant; and it will be further noted that no questions, whatsoever, were asked of the plaintiff with respect to this, except on information which appeared in the papers actually on file in the court, so that in no sense could this be considered as violating or waiving the statute.

It is respectfully submitted that plaintiff cites no cases which upholds her contention; true, plaintiff does cite three cases, but an examination of those cases will show that they in no way support the proposition advanced by the plaintiff.

The case of *Lowe v. Doremus*, 86 N. J. L. 325; 91 Atl. 321, is authority for the rule of law that defendant, although being sued in a representative capacity, may, if he so desires, call the plaintiff as a witness and have her testify to conversations and transactions of the decedent; the means employed in that case being interrogatories. The opinion in this case goes further and holds that the person being sued in a representative capacity is not required to testify, himself, before calling the other party as such witness; but those two rules are the extent of the authority in this case.

The case of *Messenger v. Patterson Savings Institution*, 91 N. J. L. 654; 103 Atl. 178, is authority for the following rule of law as set forth in the syllabus:

“Where plaintiff, in an action to recover on alleged contract with defendant’s intestate,

made a statement of what deceased had said in relation thereto, which was a direct response to question of defendant's counsel, held that defendant waived the rule of evidence set forth in the Evidence Act."

In other words, this case holds that where counsel for the person being sued in a representative capacity, asks a question of the other party to the suit and in getting a direct response to his question, also gets testimony regarding a transaction with or statement by the decedent, the person being sued in the representative capacity cannot complain of that fact and have that testimony stricken, but that testimony shall stand. The case in no wise holds, however, that the mere fact that this happened then opens the door and permits the other party not being sued in a representative capacity to testify to any transaction with or statement by the decedent.

The third case cited by appellant is the case of *Rowland v. Rowland*, 40 N. J. Eq. 281. What bearing the citation from this case given in the brief of appellant has upon the case now under discussion does not appear and frankly we submit that it has no bearing whatsoever on the questions involved in this case. In the *Rowland* case, it appeared that this was a foreclosure suit in which the mortgagee had died. An answer was filed setting up the defense of usury. The cause was referred to a Master and one of the witnesses was permitted to testify before the Master, without objection, to a number of important features, all of which involved transactions with and statements by the deceased mortgagee. It will be noted that there was no objection

made to this testimony at the time the testimony was taken before the Master. Thereafter a motion was made to suppress that testimony and the Chancery Court allowed an order to that effect. On appeal to this Court, the validity of the order suppressing this testimony was attacked and this Court held that the testimony, having been admitted without objection before the Master, should not have been suppressed and further that the only time such testimony would be suppressed was in the event that said testimony was opposed to public policy. It is respectfully submitted that there is nothing in this case germane to the situation now before the Court.

The above three cases constitute the only cases cited by plaintiff-appellant. The statute is clear. Numerous cases can be cited to support the trial Court in this case, among them being the following:

- Rogers, et al. v. McKenna, et al.*, 96 N. J. Eq. 386; 124 Atl. 777;
Welsh v. Hour, et al., 100 N. J. Eq. 417; 136 Atl. 327;
Baker v. Bancroft, 69 N. J. L. 223; 54 Atl. 563;
Dickerson v. Payne, 66 N. J. L. 35; 48 Atl. 528;
Fountain v. Lynn, 57 N. J. L. 503; 31 Atl. 982;
Howells v. Martin, et al., 101 N. J. Eq. 275; 137 Atl. 565;
Moosbrougger v. Swick, 86 N. J. L. 419; 92 Atl. 268.

And cases cited therein.

A reading of the Court's charge in this case, beginning at page 73, S. C., will show that all questions involved were presented to the jury. The Court explained the case fully to the jury and explained to them the issues involved. On the one hand, the plaintiff, through her independent testimony, claimed an amount due from the estate. The defendant alleged payment and showed that the estate had paid the note a month or two months after the death of the decedent and further showed (page 72, S. C.), that the decedent had considerable more money in cash actually in the bank than was alleged to be due; in fact, counsel for the plaintiff conceded that this was true. There was also testimony produced by the defendant to show that plaintiff worked for numerous other families and did not, in fact, work solely, if at all, for the defendant's decedent. These matters, therefore, were disputes of fact and were in all respects properly submitted by the trial Court to the jury as such. Beginning on page 74 and continuing to the bottom of page 76, S. C., the Court very clearly states the issues and, to a certain extent, refers to the testimony with respect to the issues involved. It will further be noted that the only exception taken to the charge of the Court was an exception taken on behalf of the defendant and this exception was by reason of the Court's failure to state that the evidence of the note itself could be considered evidence of an account stated between the parties as of the date of the note which was February 4, 1929 (page 69, S. C., line 16), at least 18 months after the conclusion of the services claimed to have been rendered. Apparently the plaintiff had no fault to find

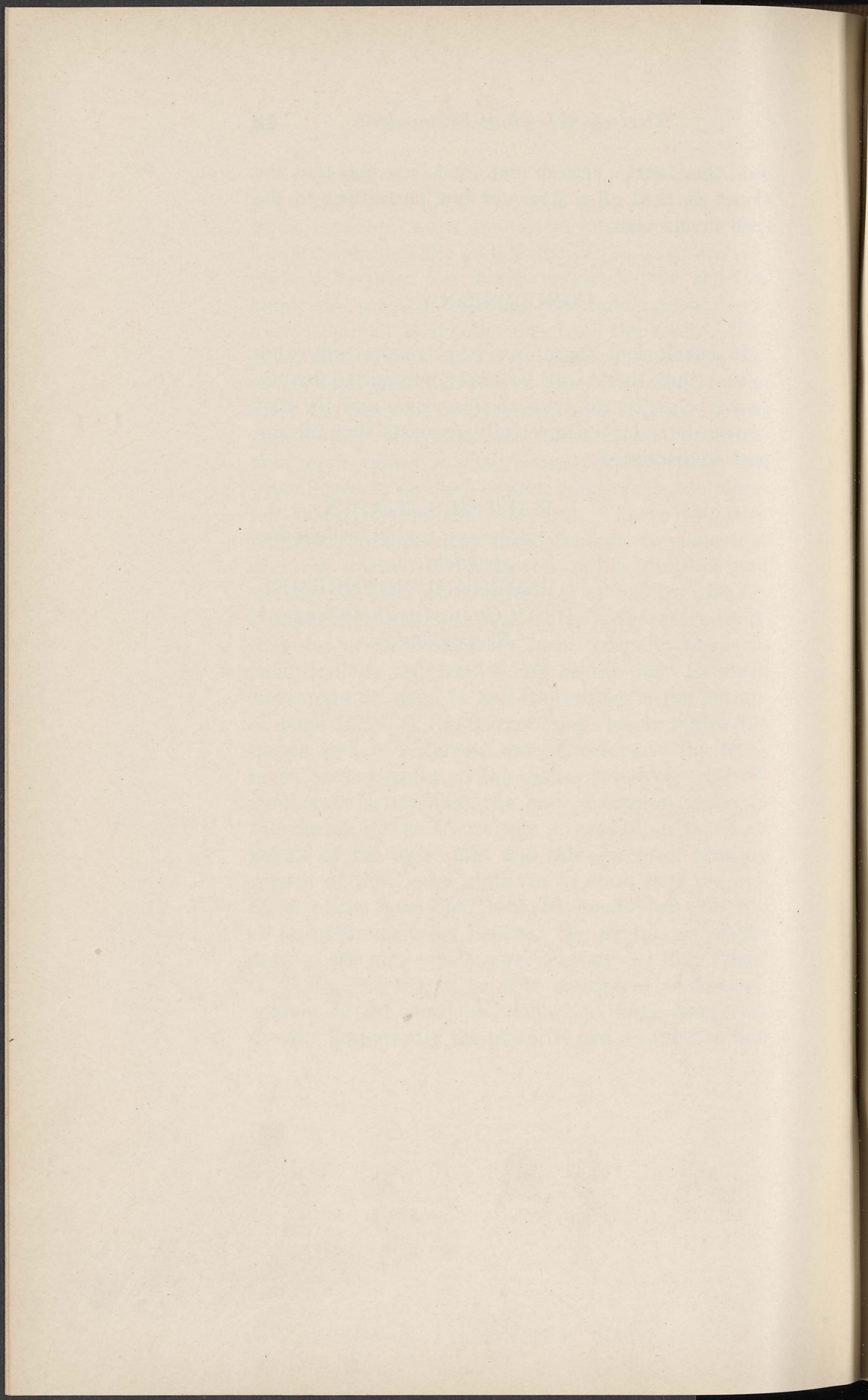
with the Court's charge and must have felt that the Court covered all matters of law pertaining to the case in his charge.

CONCLUSION.

In conclusion, therefore, it is respectfully submitted that there was no error committed by the Court below in the trial of this cause and for that reason defendant respectfully requests that the appeal be dismissed.

WALTER S. KEOWN,
Attorney for Defendant-Respondent.

GEORGE D. ROTHERMEL,
Of Counsel with Defendant-Respondent.



New Jersey Court of Errors and Appeals

EMMA R. BOOTH,
Plaintiff,

v.

KATHERINE C. KEEGAN, Adm. of the estate of
FRANCIS C. TULL, *deceased,*
Defendant.

BRIEF OF APPELLANT.

FACTS.

Plaintiff sues to recover the value of her services as housekeeper and for board which she furnished the defendant's decedent between the months of June, ~~1927~~¹⁹¹⁹ and December, 1927. Her allegations were substantiated by four witnesses who testified consistently that plaintiff kept house for defendant's decedent. While the plaintiff was employed by the Fairfield Estates as a lot saleswoman, she brought Mr. Tull to look over a property. Defendant's decedent stated that he would be satisfied with the property, and would take it, providing Mrs. Booth

would keep house for him; the deal was consummated and he bought the property. She then proceeded to perform her household duties in accordance with the above understanding (p. 23, ll. 1-35; p. 24, ll. 1-21).

Decedent stated, in the presence of Mrs. Noll and Mrs. Peets, two witnesses for the plaintiff, that Mrs. Booth was his housekeeper, and that he could not pay her while she was housekeeping, but he expected to take care of her (p. 31, ll. 25-30; p. 34, ll. 3-10).

TESTIMONY.

The plaintiff herself took the stand in her own behalf. She testified, without objection on the part of the defendant's counsel, that she did general housekeeping work; she sewed, cleaned, washed dishes, everything in general, while Mr. Ross and his family and Mr. Tull and she herself were living together.

On cross-examination the plaintiff testified first concerning a note bearing her signature, payable to the order of decedent. Then he examined her on a certain lawsuit brought by the decedent against the plaintiff in 1927 (p. 41, ll. 10-15; p. 42, ll. 20-31; p. 43, ll. 1-35; p. 44, ll. 1-20).

The plaintiff was recalled for the purpose of correcting her answers to certain questions propounded to her by defendant's counsel concerning the judgment recovered against her by the decedent. Objection was raised and sustained, to which ruling plaintiff's counsel took an exception (p. 47, ll. 1-35; p. 48,

ll. 1-20). This ruling came as a surprise, for the reason that the Court stated that it would permit the witness to correct any misstatement she may have made in answering the question asked prior to noon recess (p. 48, ll. 20-35).

Plaintiff's counsel then proceeded to examine her on her relations with decedent. A series of questions pertaining to transactions were asked (p. 49, ll. 1-35; p. 50, ll. 1-35). Objection was taken to each question, and sustained. Counsel for the plaintiff excepted to the Court's ruling on the grounds, (1) that the mere permission to have the plaintiff sworn as a witness in her own behalf opens the door to admit plaintiff's testimony, and (2) counsel for defendant having examined her on other transactions between her and the decedent, the transactions involved in the present suit may now be testified to by her (p. 51, ll. 1-35; p. 52, ll. 27-35; p. 53, ll. 1-35; p. 54, ll. 1-10).

Defendant then put on James J. Cain, teller of the Haddon Heights National Bank, who testified that the amount due on defendant's note was paid by plaintiff from the funds in the bank standing to the credit of the estate of Francis D. Tull, decedent (p. 64, ll. 20-35; p. 65, ll. 1-35). On cross-examination plaintiff's counsel attempted to cross-examine the witness on the transaction between plaintiff and decedent represented by that note, but was prevented by the Court's ruling, to which exception was taken.

Plaintiff's counsel recalled her and examined her on the summons and complaint in which Mr. Tull, the decedent, appears as plaintiff and she as defendant, and in which he sued her for the amount of a promissory note, \$754, made by her to the order

of the decedent (p. 66, ll. 20-35; p. 67, ll. 1-35; p. 68, ll. 1-35). The plaintiff then testified with respect to the \$300 note (p. 69, l. 20).

Counsel for defendant then objected to a conversation she had with the decedent. When the Court sustained the objection, counsel for plaintiff called the Court's attention to the fact that this transaction involving the note of \$300 having been introduced by defendant, plaintiff had a right to testify to it (p. 70, ll. 1-35). She then testified that she told decedent before he died, that she did not intend to pay another penny on that note, "Because you owe me so much money" (p. 70, ll. 20-30). Counsel of defendant assumed that he would have the benefit of his objection to the whole answer, but there is no ruling on that point by the Court (p. 70, ll. 32-33).

ARGUMENT.

The verdict of the jury of no cause of action was evidently based on the Court's rulings, adverse to the plaintiff, which prevented her from showing the arrangement which she had made with the defendant's decedent, *after* plaintiff's counsel had examined her on the note of \$150 which was paid by defendant as administratrix of the estate of Francis D. Tull, dec'd, and also *after* he had examined plaintiff on the suit arising out of a note of \$754 made by plaintiff to the order of decedent.

Plaintiff's counsel respectfully submits that the Court's ruling was error. Where plaintiff, in a suit

against the personal representative of the deceased to recover on an alleged contract with defendant's intestate, made a statement of what the deceased had said in relation thereto, which statement is a direct response to a question of the defendant's counsel, the defendant is regarded to have waived the benefit of the rule of evidence made for her protection. Moreover, counsel will not be permitted to indulge in speculating upon receiving a favorable answer to his question, and, if disappointed therein, be allowed to disavow the result of his own act by having the answer stricken.

Messenger v. Paterson Savings Institution,
103 Atl. 178; 91 N. J. L. 654;
Lowe v. Doremus, 86 Law, 325; 91 Atl. 321.

At the taking of testimony, the evidence of the non-representative party was received without objection, although in all important features it related to transactions with, and statements by the decedent. The testimony was suppressed, and this left the case of the non-representative party without any substantial testimony to support her case.

Testimony, to be subjected to such judicial excision, must be such as would be incompetent upon one of the grounds included by legal writers upon evidence among classes of testimony excluded from reasons of public policy. The exclusion of this kind of testimony does not rest upon any consideration of its effect upon the particular litigation in which it is offered. On the contrary, the admission of such testimony was of incalculable value in eliciting the truth in the action, but it is, nevertheless, excluded because the mischiefs resulting to the public from

the fact that such testimony may be compelled, is supposed to be of more importance than the ascertainment of the truth in the particular case. In this case the admission of the supposed testimony was not opposed to any public policy.

Rowland v. Rowland, 40 N. J. Eq. 281
(E. & A.).

Plaintiff respectfully submits that the judgment of the New Jersey Supreme Court in this cause be reversed and a venire *de novo* be awarded.

FRENCH & FRENCH,
Attorneys for Plaintiff.
PHILIP WENDKOS,
Of Counsel.

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TESTIMONY

For Plaintiff.

Edward Henry Sharpe:

Direct

14

Cross

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Joseph J. Smith:

Direct

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Cross

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Benjamin A. Farman:

Direct

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the fact that such testimony may be compelled, is supposed to be of more importance than the ascertainment of the truth in the particular case. In this case the admission of the supposed testimony was not opposed to any public policy.

Rowland v. Rowland, 45 N. J. Eq. 371
(E. & A.).

Plaintiff respectfully submits that the judgment of the New Jersey Supreme Court in this case be reversed and a venire *de novo* be awarded.

FRENCH & FRENCH
Attorneys for Plaintiff
PHILIP WYKOWSKI
Of Counsel