

## New Jersey Court of Errors and Appeals

WILLIAM F. WOOSTER,  
*Plaintiff, Appellee,*

*and*

MARY C. EAGAN,  
*Defendant, Appellant.*

*Action at Law.*

*On Bill.*

### Brief for Appellant.

This action was brought in the Essex County Circuit Court for services performed by the wife of the plaintiff, for the decedent, Mary C. Eagan. Mrs. Wooster, the wife, who actually performed the alleged services, did not sue in her own name, but the action was brought by her husband.

This appeal is based upon two objections.

FIRST: There is no basis by statute upon which a husband can bring suit for household services performed by his wife where she made the contract.

SECOND: The evidence of the wife concerning the services performed by her was inadmissible. Under the statute, page 2218, which provides "this section shall not extend to permit testimony to be given by any party to the action as to any transaction with or statement by any testator or intestate representing any said action, unless, etc."

I. Upon the first point, of course, at common law, a husband had an absolute right to all of the moneys earned by his wife. That rule, as is well known, has been abrogated by statute. *Treat vs.*

*Wirts*, 34 Eq. 134. Later cases, however, seem still to cling to the common law rule where the services of a wife *as such* to others than her husband, still belong to the husband. That principle does not apply, however, where the contract is actually made by the wife with the consent of the husband. It clearly comes within the provisions of the statute, section four, Married Womens act, to the effect "that wages and earnings of any married woman, acquired or gained by her after the passage of this act, in any employment, occupation, or trade in which she is employed, and which she carries on separately from her husband, and all investments of such wages, earnings, money or property, shall be her sole and separate property as though she were a single woman." This was a separate contract.

Here is the contract.

Q Did you have any other conversation with her before you went there? A Well, that she would pay me well if I would come to take care of her. I didn't feel like coming in to take care of her, because the place was in such a condition I did not feel as if I could make it presentable to live in, she was so badly neglected. P. 15, l. 36.

Q Well, did you tell her that? A I told her that, and she said if I would come in I could do just as I had a mind to, and to come in and take care of her, and I could do what I felt like about the house.

Then again, page 16, line 36.

A Well, I just had the same conversation that I had with her when I told you about the agreement, to come in, she would pay me well if I would come, and to pay her \$2 a week while she lived, rent.

The complaint however sets out that the plaintiff, William F. Wooster, rendered services to Mary Eagan in her lifetime and at her request, paying nursing and household expenses according to the bill of particulars, annexed, and *that the said Mary Eagan promised to pay plaintiff what said services were reasonably worth*. Mr. Wooster performed no services, and he made no contract with the deceased. The Court, however, page 50, declined to direct a verdict on the ground that the action, if any, accrued to Mrs. Wooster, and that there was no evidence of any services performed by Mr. Wooster.

In *Garrison vs. Appleton*, 37 Atlantic, 150, it is held: "A wife cannot join with her husband or sue in her own name for the care, attendance upon or nursing of a sick boarder of her husband's in his household, though the services were her own exclusively."

The reading of that case, however, will disclose in Judge Depue's opinion, the following situation:

The husband, "in answer to the question, 'did he make any arrangement with you for nursing him?' testified that he said he would pay so much a week for board and any other expenses incurred, he would be willing to pay for it."

There the express contract was by the husband—here it is by the wife with the husband's consent, and the same principle must apply.

II. The evidence of the wife concerning the services performed by her, were inadmissible—it was really her suit.

The plaintiff Wooster must find himself upon the horns of a dilemma. He admits that he performed no services, and the record does not disclose an assignment of his wife's claim as in *Cullen vs. Wolverton*, 47 Atlantic, 626, 1900. In the opinion of

the Court of Errors, there is a side light upon one of the issues on appeal, namely, "manifestly the restriction of the provision is applicable to those persons only who are qualified to be witnesses, are the act itself, and those persons are parties to actions in which the other parties sue or are sued in represented capacity." The question then is who is a party to an action. The point in that case involves the right of an assignor of a claim to testify and the Court held that an assignor was not such a party as came within the statute "there is nothing in the language of an act, that by any possible construction, can include any persons who is not illiterate, or who does not appear upon the record." A party to actions are defined by Bouvier, 11 Ed. 284, "The term, parties, is understood to include all persons who are directly interested in the subject matter and issue, who have a right to make defense, control the proceedings or appeal from the judgment. Persons not having these rights are recorded as strangers to the Court." *Neither does he set up in his complaint the right to his wife's services by common law or otherwise.* He attempts to avoid the statute relating to the transactions with the deceased by bringing the action in his name and resorting to the testimony of his wife. If she were the plaintiff all her direct testimony from pages 12 to 46 would violate the statute. An objection was made to this testimony, but the objection was overruled by the Court and noted. Under all the circumstances this evidence, I contend, should not have been admitted.

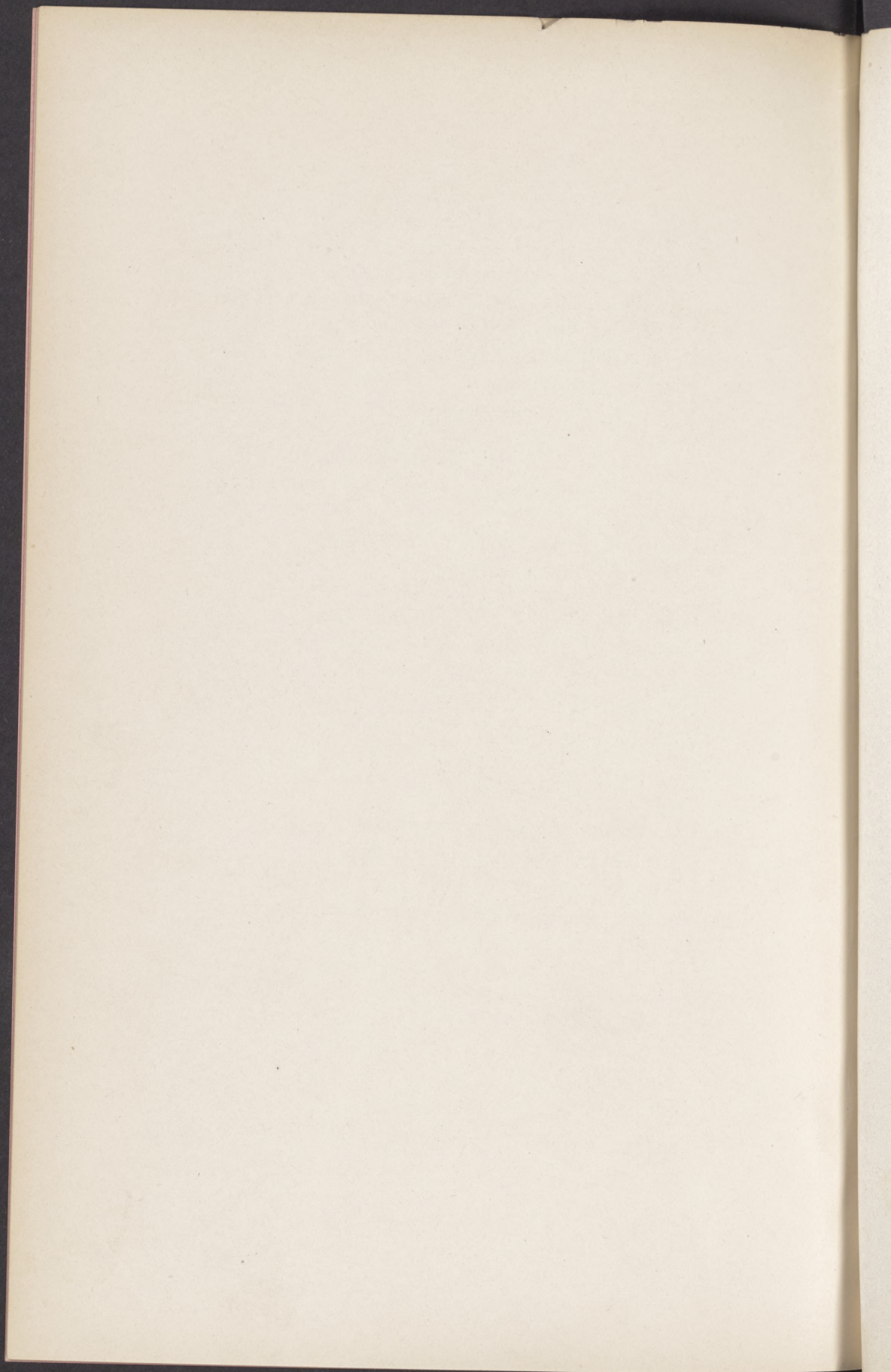
It is therefore, upon both of the grounds mentioned, respectfully submitted that the judgment should be reversed.

It will be noted by the Court that only the record of the plaintiff's case is printed. My understanding of the workings of the practice act makes this course possible, as the only errors complained of are contained in that part of the case, and for the further reason that no objection to the record has been made by the appellee.

Respectfully submitted,

JOHN A. BERNHARD,  
*Counsel for Appellant.*

November, 1915.



# New Jersey Court of Errors and Appeals.

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WILLIAM F. WOOSTER,  
Plaintiff-Respondent,  
and  
MARY C. EAGAN, Administratrix,  
Defendant-Appellant.

*Action at Law,  
On Appeal from  
Essex Circuit  
Court.*

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## Brief of Plaintiff-Respondent.

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ARTHUR B. SEYMOUR,

Of Counsel with Plaintiff-Respondent.

# New Jersey Supreme Court

WILLIAM F. WOOSTER,

*Plaintiff-Respondent,*

vs.

MARY C. EGAN, Administratrix,

*Defendant-Appellant.*

Action at Law.  
On Appeal.

## BRIEF OF PLAINTIFF-RESPONDENT

This appeal is based upon the admission of certain evidence by the wife of the plaintiff, the action being against the defendant in a representative capacity and the objection as stated in the grounds of appeal Case p. 2 and Case p. 12, l. 35) is that because the services were rendered by the wife, the benefit of which was in the husband under the common law, the wife stood in the same position in which he stood if he had rendered them, and the husband being ineligible to testify so therefore was the wife.

This question is settled in this Court in the case of Foley vs. Loughran, 60 N. J. L. 464, the syllabus of which is as follows:

1. The husband and wife, by the statutes of this state, are made competent and compellable witnesses for or against each other in any civil action, when either is a party thereto.

2. The wife or husband of a plaintiff who sues or is sued in a representative capacity, is a competent and compellable witness in such action to testify to the transactions with or statements by any testator or intestate represented therein.

3. The first section of the "Supplement to the act concerning evidence" (Pamph. L. 1880, p. 52; Gen. Stat., p. 1407) qualifies any party to any action to be examined as a witness therein,

notwithstanding such party may sue or be sued in a representative capacity; and the proviso to that section "that the supplement shall not extend so as to permit testimony to be given as to any transaction with or statement by any testator or intestate represented in said action," simply circumscribes the extent to which testimony may be given under that act, and is a limit only upon the operation of the act, and excludes only the party to the action from giving such evidence, and does not in any sense exclude or restrict the testimony of the wife or husband of such party as to such evidence.

On page 471 of the opinion the Court says:

The evidence shows that the engagements for the board, care and nursing of these children were made between the wife of the plaintiff, who was their grandmother, and the defendant. All of the arrangements appear to have been made between them. The wife of the plaintiff was not engaged in any business whatever, and was only acting in behalf of her husband as the head of the household.

There is no contention in the case that this action was not rightly brought in the name of the husband. The facts in proof in this case clearly demonstrate that the right of action, if any existed, was in the plaintiff as the head of his household. Some of the evidence tends to show that Gibbons, during his lifetime, made some payment on account of the board and care of the children.

It seems that the cited case is parallel with the case at bar and therefore upon the authority of the cited case the judgment of the Circuit Court in the case at bar should be affirmed.

Respectfully submitted,

ARTHUR B. SEYMOUR,  
*Attorney for and of Counsel  
with Plaintiff-Respondent.*

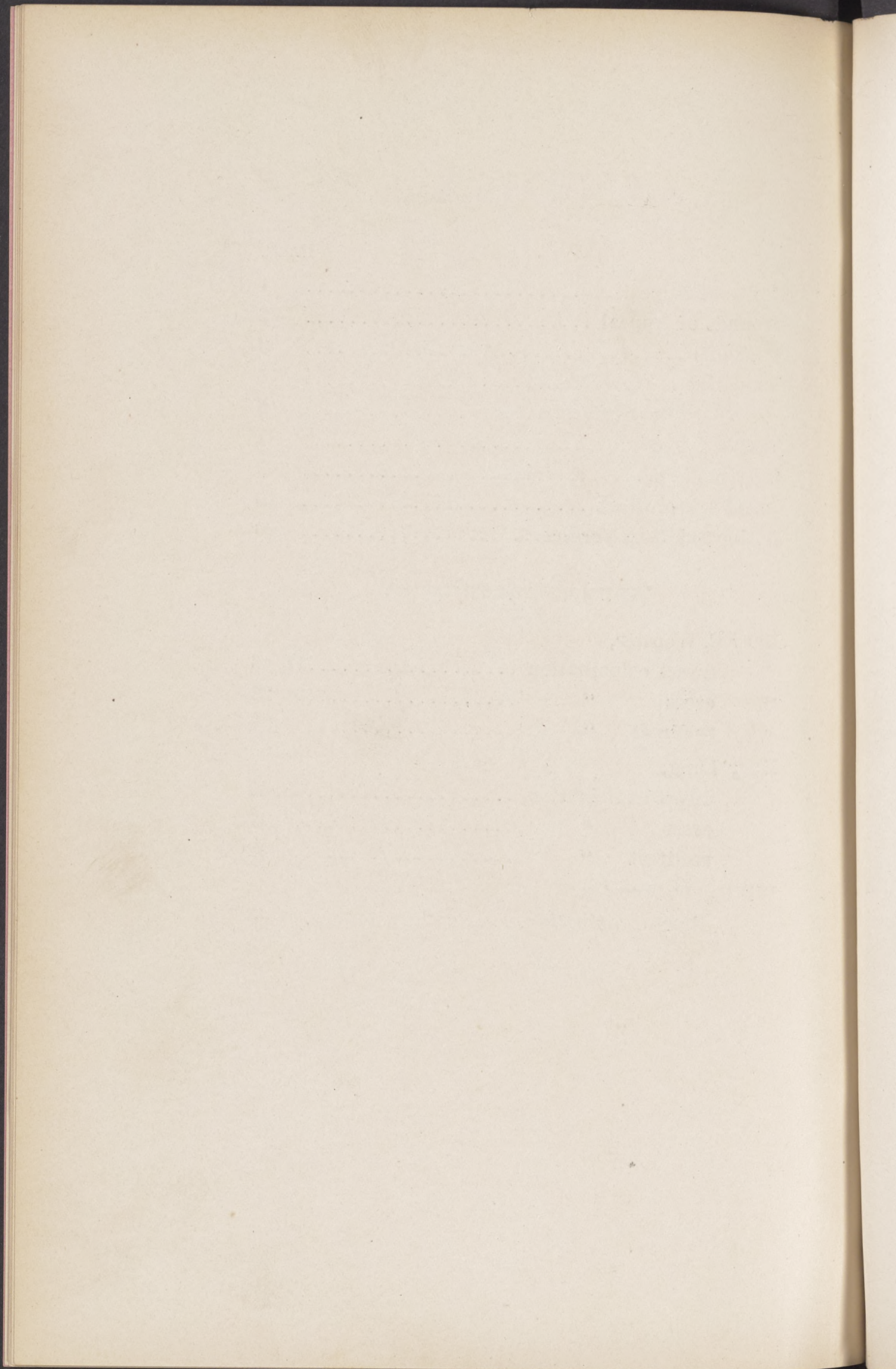


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**Notice of Appeal.**

Filed June 10, 1915.

**ESSEX COUNTY CIRCUIT COURT.**

10

WILLIAM F. WOOSTER,

*Plaintiff,*

*Action  
at Law.*

*and*

MARY C. EAGAN, Administrator of  
MARY EAGAN, deceased,

*Defendant.*

*Notice of  
Appeal.*

To Arthur B. Seymour, Attorney of Plaintiff.

20

Please take notice that the defendant appeals from  
the whole of the judgment entered in this case to the  
New Jersey Court of Errors and Appeals.

Dated June ninth, nineteen hundred and fifteen.

JOHN A. BERNHARD,

*Attorney for Defendant.*

30

40

*Grounds of Appeal.*

**Grounds of Appeal.**

Filed July 1, 1915.

**New Jersey Court of Errors and Appeals**

10	WILLIAM F. WOOSTER, <div style="text-align: right;"><i>Respondent,</i></div> <div style="text-align: center;"><i>and</i></div> MARY C. EAGAN, Administratrix, <div style="text-align: right;"><i>Appellee.</i></div>	}	<i>Action at Law.</i>  <i>Grounds of Appeal.</i>
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To Arthur B. Seymour, Attorney of Plaintiff.

20 Take notice that the defendant appeals from the whole of the judgment entered in this case on the following grounds:

1. The following question was permitted to be asked of a witness, Mary E. Wooster, wife of the plaintiff:

2. Q You were there four years, nine months taking care of her and eleven months after she died?

3. An exception was noted to the court's refusal to strike out the words "taking care of her" as being a transaction with the deceased, and therefore in violation of the statute.

4. Q How did you come to go to live with Mrs. Eagan? What were those conversations?

5. Q Now what did you do for Mrs. Eagan under the arrangement you made?

6. Q How did Mrs. Eagan come to give you the \$50.00, what did she say?

7. Q Do you know what is the reasonable value of such services as has been testified were rendered in this case?

40

*Summons.*

8. The defendant further noted as a ground for appeal the introduction of evidence by the witness, Mary Wooster, of reasonable value of such services as \$10.00 a week.

9. The defendant also noted as a ground of appeal, refusal of the court to non-suit and at the close of the plaintiff's case and to direct a verdict at the close of the defendant's case upon the request of the defendant for the reason that the plaintiff had not produced legal evidence to support the allegation in the complaint. 10

JOHN A. BERNHARD,  
*Attorney for Appellant.*

THE STATE OF NEW JERSEY to Mary C. Eagan, Administratrix of Mary Eagan, deceased. 20

YOU ARE SUMMONED to answer the annexed complaint of William F. Wooster in an action at law in the Essex County Circuit Court. And take notice that unless you file your answer to said complaint with the Clerk of the Court at Newark within twenty days after the service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit, and judgment may be entered against you. (And see notice endorsed hereon.) 30

Witness, William S. Gummere, Judge of the said Court at Newark, this twenty-ninth day of May, nineteen hundred and fourteen.

JOSEPH McDONOUGH,  
*Clerk.*

ARTHUR B. SEYMOUR,  
*Attorney.*

*Summons.*

STATE OF NEW JERSEY, }  
 ESSEX COUNTY. } ss.

JOHN E. GIVENS, Deputy Sheriff of the County aforesaid, being duly sworn, on his oath deposes and says that on the 3rd day of June, A. D. 1914, he delivered personally to the said defendant, Mary C. Eagan, a true copy of the within summons and complaint with a ten days' notice endorsed thereon.

J. E. GIVENS,  
*Special Deputy.*

Subscribed and sworn to this 6th  
 day of June, A. D. 1914.

GEO. E. CARPENTER,  
*Master in Chancery of New Jersey.*

20

Served the within summons and complaint with a ten days' notice endorsed thereon June 3, 1914, personally upon Mary C. Eagan, the within named defendant, at her place of business, 47 Market street, Newark, N. J.

JOHN F. MONAHAN,  
*Sheriff.*

By J. E. GIVENS,  
*Special Deputy.*

30

40

*Complaint.***Complaint.**

Filed May 29, 1914.

## ESSEX COUNTY CIRCUIT COURT.

WILLIAM F. WOOSTER,

*Plaintiff,**vs.*MARY C. EAGAN, Administratrix of  
MARY EAGAN, deceased,*Defendant.**Action  
at Law.*

10

*Complaint.*

1. Plaintiff residing at 54 Parrow street, Orange, New Jersey, says that from March 1, 1909, to December 10, 1913, plaintiff rendered services to Mary Eagan, deceased, in her lifetime, at her request, being nursing and household services, according to the bill of particulars hereto annexed. 20

2. For said services said Mary Eagan, deceased, in her lifetime, undertook and promised to pay plaintiff what the services were reasonably worth.

3. The same were reasonably worth one thousand eight hundred and sixty dollars.

4. The said Mary Eagan, deceased, in her lifetime, paid the plaintiff fifty dollars which he has credited against the amount herein claimed. 30

5. The said Mary Eagan is dead and the defendant has been appointed administratrix of her estate by the Surrogate of Essex County.

6. Plaintiff duly presented his claim with said defendant, who disputes it.

Plaintiff demands, as damages \$1,860.00 with interest thereon from December 10, 1913.

ARTHUR B. SEYMOUR,

*Attorney of Plaintiff.*

40

*Complaint.*

## BILL OF PARTICULARS.

The following is a copy of the bill of particulars mentioned in the within complaint.

10	March 1, 1909, to December 10, 1913, to services rendered by William F. Wooster and Mary Wooster, his wife, consisting of housekeeping and nursing services and general personal services, 248 weeks at \$7.50 per week.	\$1,860.00
	Credit by cash.....	50.00

Balance due .....	\$1,810.00
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Judgment will be claimed for the sum of eighteen hundred and ten dollars with interest thereon from the tenth day of December, A. D. 1913.

ARTHUR B. SEYMOUR,  
*Plaintiff's Attorney.*

20

Estate of Mary Eagan,  
to

Mary Wooster, Dr.

March 1, 1909, to December 10, 1913, to services as housekeeper and nurse and general services, 248 weeks at \$7.50 per week .....	\$2,360.00
Credit by cash .....	50.00

30

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\$2,310.00

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX. } ss.

Mary Wooster, of full age, being duly sworn, according to law, upon her oath says, that she is the claimant in the annexed claim named; that her claim against the estate of Mary Eagan is just and true; that there are no off-sets, credits or allowances against said claim, except such as are set forth in the

40

*Answer.*

foregoing statement; and that the sum of two thousand three hundred and ten dollars is now due and owing to deponent from the estate of Mary Eagan, deceased.

MARY WOOSTER.

Sworn and subscribed to before me  
this 15th day of April, 1914.

ELIZABETH E. VALENTINE,  
*Notary Public of N. J.*

10

**Answer.**

Filed

ESSEX COUNTY CIRCUIT COURT.

WILLIAM F. WOOSTER,

*Plaintiff,*

*vs.*

MARY C. EAGAN, Administratrix of  
the Last Will of MARY EAGAN,  
deceased,

*Defendant.*

*Action  
at Law.  
Answer.*

20

1. The defendant denies the allegations contained in the first paragraph of the bill of complaint, except the place of residence of the plaintiff.

2. The defendant denies the second, third and fourth paragraphs of the bill of complaint. 30

3. The defendant admits the fifth and sixth paragraphs of the complaint.

FIRST DEFENSE.

First Count: Defendant says the bill of particulars attached to the complaint is for services alleged to have been rendered by the plaintiff, William F. Wooster, and Mary Wooster, his wife, and that there is no specific statement of services alleged to have been rendered by the said William F. Wooster. 40

JOHN A. BERNHARD,  
*Attorney for Defendant.*

*Answer.*

## ESSEX COUNTY CIRCUIT COURT.

	WILLIAM F. WOOSTER,	} <i>Plaintiff,</i>	} <i>Affidavit of Merits.</i>
	<i>vs.</i>		
10	MARY C. EAGAN, Administratrix of the Last Will of MARY EAGAN, deceased,	} <i>Defendant.</i>	

STATE OF NEW JERSEY, }  
 COUNTY OF ESSEX. } *ss.*

20 Mary C. Eagan, being duly sworn on her oath according to law on her oath says, that she is the defendant in the above stated action; that she believes that she has a just and legal defense to said action on the merits of the case.

MARY C. EAGAN,  
*Administratrix.*

Sworn and subscribed to before me  
 this 9th day of June, A.D., 1914.

30 CECIL H. MACMAHON,  
*A Master in Chancery of  
 New Jersey.*

*Judgment.***Judgment.**

Entered June 2, 1915.

## ESSEX COUNTY CIRCUIT COURT.

27733 No. 404.

WILLIAM F. WOOSTER,

*Plaintiff,**Action  
at Law.*

10

*vs.*

MARY C. EAGAN, Admx.,

*Defendant.**On Verdict  
by a Jury.*

## Judgment for Plaintiff:

Amount ..... \$928.00

Costs ..... 68.50

Total ..... \$996.50

20

Arthur B. Seymour, Attorney of Plaintiff.

This action was tried before Judge Nelson Y. Dungan, with a jury at the Essex County Circuit Court on June , 1915.

The cause having been heard and submitted to the jury, they return their verdict as follows:

They find in favor of the plaintiff, William F. Wooster, and assess the damage against the defendant, Mary C. Eagan, at the sum of nine hundred twenty-eight dollars.

30

Whereupon, it is adjudged that the plaintiff recover of the defendant the sum of nine hundred twenty-eight dollars and costs, which are taxed at the sum of sixty-eight dollars and fifty cents, making in the whole the sum of nine hundred ninety-six dollars and fifty cents.

Judgment entered and signed June 2nd, 1915.

WM. S. GUMMERE,

*Judge.*

40

*Certificate of Clerk.*

**Certificate of Clerk.**

ESSEX COUNTY CLERK'S OFFICE.

STATE OF NEW JERSEY, } ss.  
COUNTY OF ESSEX.

10 I, JOSEPH McDONOUGH, Clerk of the Essex County  
Circuit Court, County of Essex in the State of New  
Jersey, do hereby certify that the foregoing is a true  
and correct copy of the Notice of Appeal and tran-  
script of entire proceedings, and judgment in the  
case of William F. Wooster *vs.* Mary C. Eagan, *et al.*,  
and the same is taken from and compared with the  
original papers and record and as the same now re-  
mains on the files of said office.

20 In testimony whereof, I have hereunto set my hand  
and affixed the official seal of said Court and County  
at Newark, N. J., this 15th day of June, A. D. 1915.

JOSEPH McDONOUGH,

(SEAL)

*Clerk.*

Mary E. Wooster, *direct.*

ESSEX CIRCUIT COURT.

WILLIAM F. WOOSTER, }  
                   *vs.* }  
 MARY C. EAGAN, Adm'x. }

Transcript of shorthand notes of testimony, and  
 so forth, taken in the above stated cause, upon the  
 trial thereof, at the Court House, Newark, N. J., on  
 June 2, 1915. 10

Before Hon. Nelson Y. Dungan, Judge, and a jury.  
 Arthur B. Seymour for plaintiff.  
 John A. Bernhard for defendant.  
 Jury drawn and sworn.  
 Mr. Seymour opened for plaintiff.  
 Mr. Bernhard opened for defendant.

MARY E. WOOSTER, sworn for the plaintiff. 20

*Direct examination* by Mr. Seymour.

Q Mrs. Wooster, are you the wife of the plaintiff  
 in this case? A Yes, sir.

Q Wife of William F. Wooster? A Yes, sir.

Q And did you know Mary Eagan in her lifetime?

A All my life, yes, sir.

Q Was she a widow, or single woman? A Widow.

Q Widow of Thomas Eagan? A Yes, sir.

Q Did she have any children? A Yes, sir; she  
 did, two, one Mary Eagan's father and the other  
 Michael Eagan. They are both dead. She had no  
 living children. The daughter died two years before  
 she died. 30

Q (*By the Court.*) She had this grandchild?

A She had three grandchildren.

Q (*By Mr. Seymour.*) The defendant in this case,  
 Mary C. Eagan, is the grandchild? A Yes, sir.

Q And she had two other grandchildren? A Yes,  
 sir. 40

*Mary E. Wooster, direct.*

Q And all are living? A Yes, sir.

Q Are you related to Mrs. Eagan? A I am grand-niece of Mrs. Eagan.

Q When did Mrs. Eagan die? A She died 1913.

Q Do you remember the date? A The 10th of November.

10 Q And where did she live when she died? A 54 Parrow street, Orange.

Q And who lived with her in that house? A Well, my husband and I lived with her, and a little girl; four years nine months and ten days.

Q Your little girl? A Yes, my little girl; three of us in the family.

Q Who owned that house? A Mrs. Eagan owned it.

20 Q When did you go to live there? A Well, I was there four years, nine months and ten days; I went there the 1st of March, 1913—no, 19—I went there in 1910, I guess, wasn't it?

Q How long did you say you were there altogether?

A I was there four years nine months and ten days taking care of her, and then I was there eleven months after she died, caretaker of the house, and my rent was paid while I stayed there; the grandchild said I would not have to pay rent only until the estate was settled up and I would get my rent.

30 *Mr. Bernhard.* That is objected to.

*The Court.* It will be stricken out.

Q You were there four years nine months and ten days taking care of her, and eleven months after she died? A Yes, sir.

*Mr. Bernhard.* I ask that the words "taking care of her" be stricken out as being a transaction with the deceased. If it be true that the common law has not taken away the husband's right to

*Mary E. Wooster, direct.*

the wife's services, then the wife would stand in the same position in which he stood if he had rendered them. That being so the husband would not be permitted to testify to transactions, or agreements, between him and the deceased. I object to it for the further reason that it has not yet been proven that there was any agreement between the deceased and the plaintiff in this case to pay for services. 10

*The Court.* Is that not so, Mr. Seymour? Can this wife testify to anything on the stand that the husband could not testify to?

(Argued.)

*The Court.* I do not find anything in the statute making any exception. The person rendering the services is not the plaintiff in the case. Supposing in the case of a contractor who had done, say, mason work, or carpenter work, for a deceased person, is there any reason why the people who actually did the work for the plaintiff in the case could not testify to those services? 20

(Argued.)

*The Court.* Is not that the relation in a case of this kind that the husband and wife occupy? It is upon the theory that the husband is the master of the wife that he is entitled to her services, and the income of her services, isn't it? I am inclined to overrule the objection. I will overrule the objection, and I suggest that you object to a sufficient number of questions involving transactions with the deceased, if Mrs. Wooster's testimony goes to that extent, to properly raise the question upon appeal, if you think the court's ruling is not correct. 30

An exception to this ruling is noted by the defendant as ground of appeal. 40

*Mary E. Wooster, direct.*

Q Where did you live before you went to live with Mrs. Eagan? A Central Place.

Q What city? A Orange.

Q Where did Mrs. Eagan live when you first went to live with her? This same house? A 54 Parrow street.

Q She lived there until she died? A Yes, sir.

10 Q How did you come to go to live with Mrs. Eagan?

*Mr. Bernhard.* I object because this tends to prove a transaction with the deceased within the meaning of the statute.

*The Court.* The objection will be overruled.

An exception to this ruling is noted by the defendant as ground of appeal.

20 Q How did you come to go and live with Mrs. Eagan? A Well, my husband went there occasionally to bring water, and such things to her, as she was unable to bring her own water, as she had no improvements in the house whatsoever, no water or anything of the kind, and I used to carry water across the street for her, and sweep up for her occasionally as she was unable to do anything of the kind herself. And she said to him—

Q (*By the Court.*) Did you hear her say it? A No, sir; I didn't hear it.

30 *The Court.* Then do not tell it.

*Witness.* And she asked him to come to the place—

Q (*By the Court.*) One moment, did you hear her say it? A No, sir, I did not.

*The Court.* That will be stricken out, do not tell anything you didn't hear Mrs. Eagan say yourself.

40 Q (*By Mr. Seymour.*) Well, did you see Mrs. Eagan and have any conversation with her before you

*Mary E. Wooster, direct.*

went to live at that house? A Yes, sir, I did have conversation with her.

Q How long before you went to live at that house did you have this conversation? A Well, I had several times.

Q You had a conversation yourself with Mrs. Eagan? A Myself, personally.

Q And who was present at those conversations? A Well, at that conversation I did have with her Mrs. Lang came in accidentally, a neighbor, that lives over me at the place, the last conversation I had before I moved in with Mrs. Eagan, Mrs. Lang was present. 10

Q And you had a few conversations before that?

A Yes, sir.

Q When no one else was present? A No.

Q What were those conversations?

*Mr. Bernhard.* Objected to because that would be in contravention of the statute. I object, secondly, that the conversation would not be binding upon the defendant in this case. 20

*The Court.* The objection will be overruled.

An exception to this ruling is noted by the defendant as ground of appeal.

Q What were those conversations? Begin with the first. A Well, she said she was feeble, that she was unable to take care of herself any longer, and if I would come in to take care of her, and I could do just what I was a mind to, and do what I could for her, if I did come in I should pay \$2 a week while she lived, as she had no income but what I would give her. Then I made up my mind, first, I would not come; then again I said "All right, I would go." 30

Q Did you have any other conversation with her before you went there? A Well, that she would pay me well if I would come to take care of her. I didn't feel like coming in to take care of her, because the 40

*Mary E. Wooster, direct.*

place was in such a condition I did not feel as if I could make it presentable to live in, she was so badly neglected.

Q Well, did you tell her that? A I told her that, and she said if I would come in I could do just as I had a mind to, and to come in and take care of her, and I could do what I felt like about the house. Then  
10 I made up my mind I would come in, so I did go in.

Q What was Mrs. Eagan's condition of health at that time? A Well, she was just able to get around with assistance; some days she was better than others; other days she would not get up at all; she was up and down continually; she was very feeble, she was on a crutch all the time; she couldn't take her own teapot from the stove at that time.

Q Are you describing her condition at the time you went to live there when you say she could not get  
20 around, and could not even take her teapot from the stove? A She had to be helped most all the time.

Q Was that her condition when you first went there? A Yes, and her condition grew worse all the time.

Q Why did she need the crutch? A She broke her hip sixteen or eighteen years ago, and she always had to have a crutch since.

Q Was her husband living at the time? A No, her husband was dead about twenty-two years, I  
30 think. She had nobody living but herself; she was all alone, with the exception of two boarders—not boarders, but roomers—she had with her—she was all alone at home.

Q How old was Mrs. Eagan when she died? A She was about ninety years old I should judge.

Q Ninety? A Yes.

Q And what conversation did you have with Mrs. Eagan when Mrs. Lang was present? A Well, I just had the same conversation that I had with her when  
40 I told you about the agreement, to come in, she would

*Mary E. Wooster, direct.*

pay me well if I would come, and to pay her \$2 a week while she lived, rent.

Q Well, did she say at that time how she would pay you? A Out of the property when she was dead; she had no means.

Q Was there any particular amount mentioned? A No, she didn't mention any particular amount.

Q Now, you say you lived at that time in Central place, Orange? A Yes. 10

Q Did you then move up to— A Yes, sir.

Q Who went with you? A My husband and little girl, thirteen years old.

Q And did you live there then continuously until eleven months after Mrs. Eagan's death? A Yes.

Q What sort of house was that, how big was it? A Well, it was a six-room house, small rooms.

Q One-family house? A One-family house.

Q What improvements in it? A No improvements whatsoever. 20

Q Water? A The last two years, I think, I lived in there, she had the water put in, but up to then there was no water in the house at all, no improvements whatever, nothing.

Q Now, what did you do for Mrs. Eagan under the arrangement you made? A Well, I did everything—

*Mr. Bernhard.* I renew my objection at this point for the reasons stated before. 30

*The Court.* The objection will be overruled.

An exception to this ruling is noted by the defendant as ground of appeal.

Q First, as to the house itself, what did you do? A Well, I did everything possible to do for an invalid woman, such as washing—

*The Court.* That answer will be stricken out.

A (Continued.) I did washing, and putting her to bed, getting her up in the morning, giving her meals at certain times, her meals were irregular. 40

Mary E. Wooster, direct.

Q How often did you do washing? A Well, I think I did washing every day; I had to.

Q (*By the Court.*) How is that? A I did washing sometimes every day for her.

Q Why? A Well, she had no control of herself, and of course I had to wash all the time.

10 Q (*By Mr. Seymour.*) Well, did you have to get her up from the very first time you went there until she died, when she wanted to get up? A No, not all the time; sometimes she would be able to get up, and other times she wouldn't.

Q Do you mean from the beginning down to the end? A Yes.

Q How often did it occur that she would not be able to get up and dress herself? A Well, sometimes she would not be able to once or twice a week, and maybe she would, I couldn't exactly tell the time.

20 Q That was the situation during all the service? A All through my service.

Q How about going to bed? A I had to put her to bed, help her go to bed, and help her get up.

Q Would you have to help her to bed every night? A Most every night.

Q What would you do when you put her to bed? A I had to undress her and tuck her in bed and help her out, and help her in.

30 Q What would you do when she got up? A Dress her, help wash her, and comb her.

Q As to putting her to bed, did that also continue during the whole length of your service? A Yes, that was my duty all the time.

Q How many meals a day would you give her? A I would give her three meals a day, and if she wanted anything extra I would give her milk, whatever she did want, lying in an invalid chair.

40 Q Where would Mrs. Eagan eat? A Well, I had to serve meals in bed, a great many times; she would sit by the fire, sometimes, she didn't want to come to

*Mary E. Wooster, direct.*

the table; once in awhile she would come to the table with us on certain occasions, not always, very seldom.

Q Who furnished these meals? A Well, we furnished certain meals, but she got her own groceries.

Q What groceries did she get? A Such as tea, sugar, bread; that is all, nothing more.

Q Would she eat anything besides tea, sugar and bread? A Why, certainly, yes, she was very hearty up to the last. 10

Q Who furnished that food? A I did, but I didn't put any claim in for it.

Q Whatever services did you render as to keeping house? A I beg your pardon, Mr. Seymour.

Q What other services did you render as to the keeping of the house? A Well, I don't know; as I say I took care of her and did everything she has to do.

Q I am not talking about services to her person, I am talking about services about the housekeeping. A I had to do my own housekeeping, take care of my own family. 20

Q Did you do any housework as to her rooms? A Why, yes.

Q What did you do? A I whitewashed them, painted them, cleaned them, scrubbed them, swept them, kept them in order every way. Got her ready the first Friday in every month to clean while I was there.

Q Who made the bed? A I did. Did the housework, everything, there was nobody else to do it but me. 30

Q What floor did Mrs. Eagan sleep on? A On the first floor back of the kitchen, by the fire.

Q What other rooms are on the first floor? A The kitchen, her bedroom, a back kitchen, the front kitchen.

Q Where was the dining-room? A We made a dining-room out of the front kitchen, we called it a dining-room. 40

Mary E. Wooster, direct.

Q That was on the first floor? A Yes, sir.

Q (*By the Court.*) What rooms did she occupy?

A Well, her furniture occupied the whole house. I could not say that she kept any—her particular room was her bedroom, but her furniture was all over the house, in every room, with the exception of my bedroom.

10 Q (*By Mr. Seymour.*) Was Mrs. Eagan sick at any time during the time you were living at her house rendering services? A Oh, yes, she was sick several times during the summer, she got summer trouble; she was sick in bed; I could not say exactly how long, but I know she was sick quite a long time.

Q Was she sick several times? A Several times in the summer time.

Q When she was sick could she get out of bed, or not? A No, sir, she had to be helped all the time, she couldn't get out of bed.

20 Q What services did you render her then as to her sickness? A Well, of course, she had to be attended to like a child, of course, she was unable to help herself.

Q Could she use the toilet without assistance? A Why, no, she never could use the toilet without assistance, I had to help her back and forth; it was very seldom she could go.

30 Q And what do you say as to the way Mrs. Eagan mussed her bed these times? How often would that happen? A Of course, she had no control of herself, and that was expected from a woman of that age.

Q How often would that happen? A Oftentimes happened two or three times a day, when she would be sick and feeble, and could not help herself; maybe several times through the week; once every day; then sometimes I would get it cleaned, and have to do the same thing over again. My neighbors know that.

40 Q When she was well would she use the toilet in the rear yard? A Yes, sir, by helping her she could, by taking her out and bringing her in.

Mary E. Wooster, *direct.*

Q Who would do that? A I had to do it; I did it.

Q At these times when she was sick did she have a nurse? A Never had a nurse but me.

Q And during the time you were there was any other assistance rendered to her by relatives, or servants or friends? A No relatives whatever.

Q You did it all? A I did the whole thing.

Q Do you know whether Mrs. Eagan could write or not? A No, never. 10

Q Could she sign her name? A No.

Q You say Mrs. Eagan died the latter part of 1913? A Yes.

Q Just before her death did she undergo a long period of final sickness? A Nine months and ten days.

Q And during that nine months and ten days was she confined to her bed? A Yes.

Q All the time? A Yes. 20

Q Could not get up? A Well, yes, I helped her up, tried to get her up in the kitchen by the fire, and when she got rested I would bring her back again; I did that as a rule Sundays.

Q That was the only day? A The only day.

Q How long would she stay up when you got her up that way? A Well, a very few minutes, she wasn't able to stay.

Q And during that nine months was she confined to her bed? A Yes, sir. 30

Q Did she have a physician? A Yes.

Q Who was he? A Dr. O'Brien.

Q During those six months did Dr. O'Brien take care of her? A Yes, when she needed him.

Q Did your husband live with you all this time at this house? A Yes, sir.

Q You are still married to him? A Yes.

Q Did Mrs. Eagan ever pay you any money? A Yes, she paid me \$50 one time.

Q And was anybody present then? A Her daughter. 40

*Mary E. Wooster, direct.*

Q Her daughter? A Yes.

Q What is her name? A Mary Eagan.

Q She is not living now, is she? A No.

Q How did Mrs. Eagan come to give you the \$50, what did she say? A She called me into her room and called her daughter in, and said "I will give Mary \$50 now, and then, Mary, hereafter, you will have to  
10 pay Mary after my death out of the property." But she didn't say any amount, and the daughter said, "All right, mama, I will see to it."

*Mr. Bernhard.* I object to that, what the daughter said could not bind anybody, and what the deceased said comes under my former objection.

*The Court.* I am inclined to receive all of this testimony relative to transactions in the presence of the deceased, and statements in the presence of the deceased, under your objection.  
20

An exception to this ruling is noted by the defendant as ground of appeal.

Q What was it you said her daughter said? A She said "All right," she would see to it.

Q Well, did she ever pay you herself, the daughter? A Well, she didn't live, she died before my aunt died.

Q Did you have a talk with Mary Eagan, this defendant here, in August of 1913, in the presence of Mrs. Eagan, the old lady? A No, not that I remember of, if I did.  
30

Q Well, did you have any talk with Mary Eagan, this defendant, about the settlement of your claim?

*Mr. Bernhard.* I object to that.

A Oh, yes, I did after my aunt died.

Q When was that? A Well, about a month after she died, in August.

Q And what was the conversation?  
40

*Mary E. Wooster, cross.*

*Mr. Bernhard.* I object to that. The administratrix cannot bind the heirs of the estate by anything she said, unless it is shown they authorized it, or ratified it.

*The Court.* Suppose the statement went to the extent of saying "I will pay you"; do you think that should be received here as binding the estate?

*Mr. Seymour.* We are trying to put in recognition on her part on the validity and justice of this claim. 10

*The Court.* I will sustain the objection.

Q Did you have any conversation with this defendant, Mary Eagan, before the death of Mrs. Eagan, the old lady? A Oh, yes, I did.

Q Now, one moment; was that conversation in the presence of Mrs. Eagan, the old lady? A No.

*Cross examination by Mr. Bernhard.* 20

Q You lived at Central Place before you moved to Parrow street? A Yes, I did.

Q How many rooms had you at Central Place? A I had four rooms.

Q How many rooms had you when you moved to Parrow street? A I had my bedroom, that I know of, and the use of the house.

Q How many rooms were there in the house? A There were six rooms. 30

Q On the first floor how many? A Three.

Q What were they used for? A Her bedroom, the dining-room and back kitchen.

Q Who used the bedroom? A Mrs. Eagan.

Q On the second floor there were three bedrooms? A No.

Q What were there? A Two bedrooms.

Q The dining-room was also the sitting-room, wasn't it? A Yes—no, it wasn't.

Q It wasn't? A No, the sitting-room was upstairs; there was parlor and two bedrooms upstairs. 40

*Mary E. Wooster, cross.*

Q The dining-room, as you call it, was the third room downstairs? A We called it our living room.

Q You called it the living room? A Yes.

Q You also called it your dining-room? A Yes.

Q That extended across the front of the house, didn't it? A Well, part way, yes, not all the way.

Q All except the hall? A Well, yes, the hall.

10 Q The hall was on one side? A Well, I guess it was.

Q Well, you were there for three or four years?

A Yes, I understand it.

Q Back of this front room, or living room, was the kitchen and the bedroom? A Yes.

Q The table at which you ate was in the front room, wasn't it? A Yes.

Q And it was by a window, wasn't it? A Yes.

20 Q And that is the table at which you all ate? A It was between two windows.

Q And that was the table at which you all ate, wasn't it? A My family ate there.

Q And Mrs. Eagan ate there? A Very seldom.

Q When she did eat there she ate at this table?

A Yes, she did when she ate.

Q And frequently you all ate at the table, didn't you? A No.

30 Q Are you sure about that? A Sometimes we did, on certain occasions, when she felt able to come to the table.

Q And how often was that? A Very seldom.

Q What do you mean by very seldom? A When she was able to come.

Q Between March 1, 1909, and December 10, 1913, how many times did she eat at that table? A I could not tell, I never kept count.

Q You were there every day? A I was there every day, but I didn't keep count.

40 Q You were there every day, weren't you? A I was there every day.

*Mary E. Wooster, cross.*

- Q Are you sure about that? A I am certain.
- Q Not mistaken? A Not mistaken.
- Q Never left her alone? A Never.
- Q At no time? A At no time.
- Q Had you two sisters? A Had seven.
- Q One lived at Rutherford? A Yes.
- Q Did you visit her? A I did.
- Q During the time? A Yes. 10
- Q Then you were away? A But I didn't leave her alone.
- Q How long were you away? A I was away four days at a serious case.
- Q Were you away any other time? A No, I wasn't.
- Q When was that? A I don't know exactly the time, I didn't really keep count.
- Q How many times from March 1, 1909, to December 10, 1913, did Mrs. Eagan eat at this table? A I couldn't tell you the exact time, I never kept count of the time. 20
- Q Once? Was she there once? A Yes, certainly was.
- Q Was she there twice? A She may have been there twice.
- Q Do you think she was there as many as half a dozen times? A I think probably she was.
- Q Do you think she was there as much as fifty times? A No, I don't think she was. 30
- Q From March 1, 1909, to December 10, 1913, you are sure she did not eat at the table fifty times? A No, I would not say she did.
- Q Will you say she did not? A No; I say I couldn't keep count the length of time, or what time.
- Q Who paid for the groceries— A I paid them; I paid my grocery bills all the time.
- Q Who paid for the groceries that were eaten at the joint table? A I did.
- Q Did you ever make a charge against Mrs. Eagan for them? A Never, never. 40

*Mary E. Wooster, cross.*

Q Did not Mrs. Eagan purchase her own groceries? A She did, and she paid for them by her own hand, but I paid for them from my pocket book.

Q Where were those groceries eaten, at the table, or where? A In the bed most of the time.

Q Did she always eat her meals in bed? A Most always.

10 Q From the time that you started to live there did she begin to eat her meals in bed? A She got her meals in bed, and out of bed, she got her meals by the stove, sometimes, when she was cold.

Q She sometimes cooked her own meals, didn't she? A No.

Q Never cooked her own meals? A No.

Q At no time while you were there? A No, she wasn't able to do it.

Q You are sure about that? A Sure about it.

20 Q And you went there in March, 1909? A Yes.

Q Don't you know that just before you went there, in February, 1909, that she had two or three roomers, occupying bedrooms upstairs that you afterwards occupied? A She did?

Q Don't you know that? A No, she did not.

Q You say she did not? A She did not.

Q Do you say she had nobody there? A She had had one man there.

Q He occupied a room, didn't he? A He did.

30 Q And after he moved out you moved in? A She put him out.

Q She had a man there? A She had him there, but he took a woman in there, and she put him out.

Q How long was he there? A I don't know.

Q You used to visit Mrs. Eagan, didn't you? A Occasionally.

Q What do you mean by occasionally, once a month? A Maybe once a month; I visited her quite often when I lived in Central Place.

40 Q When you lived in Central Place did you visit her once a month? A I did, and once a week; and

*Mary E. Wooster, cross.*

I sent her dinner to her every night while I lived in Central Place.

Q How long did you live in Central Place? A I lived there for five months and some odd days.

Q By whom did you send it? A By my little girl, and the neighbor's child, upstairs.

Q By your little girl? A Yes, my little girl.

Q Every night? A Every night.

Q Ever charge her for that? A Never; and I did her washing just the same.

Q You also did the washing? A I did.

Q After you had been there awhile water was put in, wasn't it? A It was a long while.

Q Yes, but it was put in there two years before Mrs. Eagan died, was it not? A Well, I could not say exactly the time.

Q And also a toilet was put in at the same time? A The same time, yes.

Q Did you have more work to do after those improvements were put in than you did before? A I had the same work to do, but I had less water to carry.

Q During the summer of 1909, 1910, 1911, 1912, was not Mrs. Eagan about? A With help, yes.

Q What help did she have before you came there? A The help that she had occasionally when the neighbors helped her around.

Q Who were they? A Mrs. Garrigan, Mrs. Kussy, and her daughter.

Q Do you know whether or not she was able to get around herself without help? A No, sir, she was not.

Q How do you know if you were not there? A I was there.

Q How do you know it if you were not there? A I say I was there.

Q I am speaking of the time before you came there. A I never could tell what she did when I wasn't there.

*Mary E. Wooster, cross.*

Q Do you mean to say, Mrs. Wooster, that Mrs. Eagan never moved around at any time without your assistance? A Yes, she did, by falling down.

Q Did she ever move around at any time without your assistance when she did not fall down? A She would try, I would have to be behind her in case she fell; she might move around a little, but she couldn't  
10 get out in the yard; by holding on against the wall, she could.

Q Do you mean to say—the summer before she died you say she was sick, do you mean to say she was not out on the front porch, and out in the yard, moving around? A Not the nine months before she died.

Q Didn't she have her picture taken sitting on the front porch the summer before she died? A She did, but how did we get her there?

Q Just answer that question, is that so? A By  
20 carrying her out in the chair.

Q She did have it, didn't she? A On a Sunday afternoon. She didn't have it taken, no; the man didn't take it.

Q Well, he was there to take it. A Yes.

Q And she was sitting there? A Yes.

Q And she was sitting on the front porch? A  
Yes.

Q Who else was there? A Her grandchild was  
30 there, and I was there, and my little girl.

Q At that time do you mean to say she did not move about herself? A She moved by we carrying her in the rocking chair from the kitchen to the front porch; she didn't move without we moved her.

Q How often did she have a doctor during this period of nine months you mentioned? A I couldn't tell exactly how many times.

Q But you were there every day? A I certainly was.

Q And you knew when the doctor called? A I  
40 did, I was there to receive him.

*Mary E. Wooster, cross.*

Q Tell us how often the doctor called. A I didn't keep count; maybe once in three months, maybe once in two months, she was only helpless in her limb.

Q Isn't this a fact, that during the entire period of nine months during which you say she was ill, the doctor never came but once? A He came several times.

Q What do you mean by several times? A Once a month, once in two months, once in three months. 10

Q He never came more than once a month, did he? A He did not, because her constitution was very good indeed, she was only disabled in her limbs and body.

Q Which side did she carry the crutch on? A I think it was the right side.

Q Don't you know? You were there? A Yes, I was there.

Q Which side was it? A Her right. 20

Q Right side? A Yes.

Q During the four years that you were there where was the well? A There was a cistern in the yard, and it was dry, and there was a pump pumping water for washing, not for cooking; it ran dry, and the pump broke, so we couldn't use it anyhow.

Q There was a grocery store next door, wasn't there? A Yes, sir.

Q And during the time you were there Mrs. Eagan used to go to the grocery store, didn't she? A No. 30

Q Never? A Never.

Q Sure? A Certainly.

Q Who owned the grocery store? A Mrs. Garrigan.

Q How far away was it? A Right next door.

Q There was a little yard between the two? A About two feet.

Q And there was a front stoop to your house? A Yes.

Q And the rear stoop? A Yes. 40

*Mary E. Wooster, cross.*

Q There was a rear entrance from your house into the grocery store? A Mrs. Garrigan did that for my accommodation to carry water from her house.

*The Court.* Do you understand the question? Just repeat it.

Q It was a way by which you could go from your rear yard into the rear yard of the grocery store? A  
10 Yes.

Q Did not Mrs. Eagan frequently go there? A  
No.

Q By the back way? A No.

Q At no time? A No.

Q Sure? A Certain.

Q Is Mrs. Garrigan still there? A Yes.

Q Have you subpoenaed her as a witness? A Yes.

Q She will be here this afternoon? A Yes.

Q At one time you had a claim in this case, didn't  
20 you? A The same I have now.

Q Are you suing now? A Yes.

Q It is your suit, is it? Is this your signature, "Mary Wooster"? A That is my signature, yes.

Q You brought suit, did you, for \$2,310 against Mary Eagan estate? A \$7.50 a week.

Q Don't you know for how much you brought suit? A I might; it skipped my mind if I did.

Q Two hundred and forty-eight weeks at \$7.50 a week, is that right? A Yes.

30 Q And you filed a claim for that amount, didn't you? A Yes.

Q And I show you this paper, this is the claim, isn't it? A Yes—I don't know whether it is or not.

Q Will you please look at it and tell us. A I don't know.

Q But that is your signature? A That is my signature.

Q And you know what you signed? A Yes, I said.

*Mary E. Wooster, cross.*

Q Please look at that and see if that is— A I am looking at it.

Q Is this not the claim that you filed? A Yes. Same marked D. 1 for identification.

RECESS.

Q During the time that is mentioned was your husband away any length of time? A No. He went home two weeks to Vermont on vacation in the summer time. 10

Q Do you remember which year that was? A Well, he went home every year.

Q Always to Vermont? A Always.

Q About how long? A About two weeks.

Q During July or August? A August, I think.

Q Was your little girl there all the while? A Yes, she was there all the while. 20

Q Where did you live before you lived on Central Place? A In New street at the corner of Central street.

Q How long did you live on New street? A About a year.

Q How many rooms did you have there? A Five rooms.

Q When you speak of whitewashing and cleaning up the house you meant that you cleaned up your own room, don't you? A I mean I cleaned the whole apartment, my own room, and hers, too. 30

Q Which room do you mean as your room? A The only room I had was my bedroom, and her furniture was strewed all through the house.

Q You used the kitchen? A Yes.

Q You had the room upstairs? A I did.

Q Your daughter had a separate room? A She slept on a couch in the front room.

Q You called the room occupied by your daughter as one of your own rooms, didn't you? A Yes, if 40

Mary E. Wooster, cross.

the furniture was out of it I would call it my own room, but it was occupied by her furniture.

Q Why, your daughter used the room, and the furniture that was in it when you went there, didn't she?

A She used my couch that I put in that room for her use, and her furniture was in that room.

Q And you cleaned your daughter's room, then?

10 A Yes, sir.

Q And you used the room downstairs, the front room, didn't you? A Yes, sir.

Q And you cleaned that room? A I did.

Q So that outside of the rooms that you yourself did not use you cleaned only one room, you say, and that was— A I cleaned every room in the house.

Q You used every room in the house except her bedroom, didn't you? A I don't know; I cleaned every room in the house—

20 Q (*By the Court.*) The question is not whether you cleaned them; the question is whether you used all the rooms in the house but her bedroom? A I used the rooms, as I said, I used the kitchen, and the back kitchen downstairs and my bedroom upstairs and her bedroom.

Q (*By Mr. Bernhard.*) You used the back yard, and the front yard, didn't you? A Yes.

Q You used the back stoop and the front stoop, didn't you? A I did.

30 Q Was your husband's brother there with you for awhile? A For awhile, yes.

Q How long was he there? A I don't know how long; sometimes a month; sometimes more than that; he came and he went.

Q That was during the entire four years that you were living there, wasn't it? A Well, no, he only came to me the year my aunt died.

Q That was the year of 1913? A Yes.

40 Q And he stayed that time about a month or two, did he? A At a time.

*Mary E. Wooster, cross.*

Q Each time he came? A He would stay a month or two and then he would go away.

Q Do you remember the day that you moved into that house? A The date?

Q The day? A Oh, the day. Well, I went in there to clean; I didn't move the 1st of March, I went to clean the first of March.

Q You moved shortly after the first of March, did you? A I did, that week. 10

Q The day that you moved in was Mrs. Eagan about the house? A Yes, she was home.

Q So that there was a lapse of time from the date when the boarder went away until the date when you came in, wasn't there? A He went away the morning I came there to clean, to move in.

Q How long before you went in did the boarder leave? A He went that morning; I stayed there to clean that day, waited on my aunt, and then I moved in some time during the week. I had to clean first before I could go in, because it was in no condition to be occupied. 20

Q When was the first time you found Mrs. Eagan in bed after you got there, after you moved there? A Why, she was in bed every night.

Q Well, do you mean that? A Why, I didn't find her in bed.

Q She was not confined to her bed, was she? A Occasionally, I said, not all the time. 30

Q Now, when was the first time she was confined to her bed that you now recollect, after you first moved in? A Why, when she was sick.

Q Of course, we know that; can't you tell us whether it was the first month, second month, third month, fourth month? A I can't remember the month.

Q But you do remember there was an agreement to pay you for services, don't you? A I certainly do.

Q Having remembered there was an agreement to 40

*Mary E. Wooster, cross.*

pay you for services, and having in mind this was one of the services for which you were going to be paid, cannot you tell us what the date was? A I never kept account of the date.

Q Can't you tell us the first time she was in bed?

A I can't tell you the time.

10 Q Can you tell us the second month how many times she was in bed? A She was laid up in bed nearly every day; she would go to bed at twelve, go to bed at two, go to bed at three. Her hours were irregular; she spent a good deal of the time in bed.

Q What time did she usually get up in the morning? A Ten or eleven o'clock.

Q And then would she remain up the rest of the day? A Until two and three, sometimes four.

Q You don't mean to say she got up at ten, dressed, then undressed, and went back in bed again?

20 A I do.

Q How often did that happen? A A great many times, I could not tell you exactly how many times.

Q Did it happen once a week? A Yes, and twice a week, three times a week.

Q Three times a week? A Yes.

Q During the entire time you were there? A Yes.

Q Is that right? A That is certainly right.

30 Q What is the greatest length of time that Mrs. Eagan remained in bed while you were there, from sickness, or otherwise? A The longest time would be before she died; that was nine months.

Q You do not say now she remained in bed continuously nine months? A Only when I got her up to rest her.

Q That is what I am asking you? A That is what I say, only when I got her up to rest her.

40 Q She wasn't in bed when you got her up and dressed her, was she? A Was in bed; she was in bed nine months before she died.

*Mary E. Wooster, cross.*

Q She was not in bed nine months steadily before she died, was she? A She was in bed nine months before she died.

Q But you got her up and dressed her, you say?  
A I admit I did; I admit that; I have admitted it several times.

Q How many times did that happen during the nine months you speak of? A How many times I dressed her? 10

Q How many times did she get up and get out of bed during the nine months? A I could not tell the exact times in the nine months. Any time she wanted to get up I got her up and dressed her and put her in the rocking chair, and pulled her out in the kitchen by the fire.

Q She was a strong-minded woman, wasn't she?  
A Yes, I think she was.

Q Insisted upon doing a great many things herself, didn't she? A No, not that I know of. She did if she was able; she wasn't able. 20

Q In what way, then, would you say she was strong-minded? A Why, she was determined; she tried to do things she could not do; she made an effort, if she could, but she couldn't, she was unable to do so.

Q How do you account for the fact that she had been able to do so up to the moment that you arrived?

A She did in a way, by the help of the neighbors; the neighbors helped her a good many times. 30

Q You do not mean to say the neighbors came in in the morning before you moved there and helped her out of bed, do you? A I do.

Q How do you know? A I know because Mrs. Garrigan told me so; and she always admitted it to me.

Q When? A Several times.

Q Tell us what time, please? A I say several times. 40

*Mary E. Wooster, cross.*

Q Yes, but tell us one time, what year? A I don't know what year.

Q What month? A I don't know what month.

Q What day? A I don't know.

Q In whose presence? A In my presence.

Q Anybody else? A No.

Q To just you? A Me; I was the only one took  
10 care of her.

Q You say she gave you some money, do you? A She certainly did.

Q She gave you that to help bury your child, didn't she? A No, sir; she got that paid back to her. She didn't give it to me, she gave it to my husband.

Q When was that? A When we lived in Central place; and she was paid back.

Q Why didn't you make a claim for this money during her lifetime? A Because I didn't earn it.

Q Oh, I see. A I didn't earn it before I went  
20 there; after I went there I earned it.

Q Why didn't you make a demand for this money during her lifetime? A I did, she said she would pay me well.

Q Why didn't you get it in writing? A Because she was afraid they would take the property away from her. She was an ignorant woman and didn't know any better.

Q You don't mean that, do you? A I certainly  
30 mean it.

Q During the time you lived there she had a lawyer come to the house, didn't she? A No, sir, never, never; she had the doctors come there.

Q She never had a lawyer? A Never.

Q She gave a mortgage to pay— A Oh, yes; this girl brought a lawyer, excuse me.

Q You were mistaken about that? A Yes, but not to make a will. She had a lawyer there to make a mortgage on the house to put the water in.

Q Why didn't you have an agreement drawn up  
40 at that time? A Why, I didn't want to; I had no

*Mary E. Wooster, re-direct.*

dealings with this girl; I had transactions with my aunt.

Q I am speaking of the time the lawyer was there for your aunt? A The girl brought him there to the house.

Q The lawyer was there, wasn't he? A He was, but not on my business.

Q Did he come into the house? A He did, yes, into the back yard, in the back kitchen, but he didn't see my aunt. 10

Q Why, your aunt signed the paper? A No, sir, not then, not then, I beg your pardon.

Q Did your aunt sign a paper? A She did, when the mortgage was given, but not that day.

Q Then the lawyer came the second time? A The second time.

Q I understood you to say the lawyer was there only once? A No, I didn't, I said he was there twice. 20

Q Was he there twice? A He was there twice. He saw my aunt one time, and I helped her to the kitchen table, and signed the paper.

Q You were there both times, were you? A I was there all the time.

Q Why, upon either of those two occasions, didn't you have the agreement put in writing? A He didn't come on my business, he came on the mortgage.

Q If you had already had this agreement, and your aunt had not lived up to it, to pay you, why didn't you on either one of those two occasions have this agreement put in writing while the lawyer was there? A Because he didn't come on our business, he came on another business transaction. 30

*Re-direct examination.*

Q When was that visit of the lawyer's, do you know? A I don't know; about two years ago, I think in regard to bringing the water in.

Q How long before Mrs. Eagan's death was it? A Well, in about two years, I should judge. 40

*Mary Lang, direct.*

MARY LANG, sworn for the plaintiff.

*Direct examination* by Mr. Seymour.

Q Where do you live? A I live now in Vailsburg, Newark.

Q Where did you live before you moved to Vailsburg? A I lived in Ogden street, the last place I lived.

10 Q Ogden street, Orange? A Yes, sir.

Q Where did you live before you moved to Ogden street? A I lived in Hickory street.

Q Is that near Grove street, Orange? A Yes, sir.

Q Is Ogden street near Grove street? A Yes, sir.

Q How near Mrs. Eagan's house was the Hickory street house you lived in? A My house was right opposite the park, and it wouldn't take me ten minutes to go there.

20 Q That is the Ogden street house? A Yes, sir; and even from the Hickory street it wouldn't take me any further.

Q Do you know Mrs. Wooster? A I certainly do.

Q And Mr. Wooster? A I certainly do.

Q And Mrs. Mary Eagan, the woman that is dead? A Yes, sir.

Q How long did you know her? A I knew her between six and seven years.

Q Was she an old, or young woman? A She was quite an elderly woman; walked around with a stick.

30 Q What do you mean by walked around with a stick? A She could not walk without a cane.

Q Was she lame? A Yes, sir.

Q How long had she been lame? A I couldn't tell you how long, but as long as I knowed her she has been walking with a cane.

Q Did you ever visit her at her house, Parrow street? A Since Mrs. Wooster went there.

40 Q How many times would you visit her? A Sometimes three times a week, sometimes four times; sometimes I didn't go there—

*Mary Lang, direct.*

Q How long a period did your visits cover? A Sometimes two or three hours; sometimes one.

Q And how many years did your visits cover? A Well, since Mrs. Wooster lived there.

Q All the time she was there? A All the time she was there, I visited her up until now; even until the old lady died; I was with her when the old lady died.

Q Did you ever have a conversation with Mrs. Eagan about Mrs. Wooster? A Many, many times I did; the old lady told me she would be well paid for her work.

Q Did you hear any conversation between Mrs. Wooster and Mrs. Eagan? A Just before she went in there, when she was cleaning up.

Q How long was it before she went there, do you know? A Why within a week or two, before she cleaned it out—or after she cleaned it out, rather.

Q And was that before, or after, she went there to live that you heard the first conversation? A Just when she went there to ask her to come and stay there with her, when she was cleaning.

Q And what was the conversation you heard? A Well, she said she was getting so she was not able to take care of herself, and she would like to have some one come and stay with her, and if Mrs. Wooster would come and stay with her she would be well paid for her work when she got done with it.

Q And when Mrs. Wooster went there to live did you have any conversation with Mrs. Eagan about Mrs. Wooster being paid? A Well, I—not directly, but when she would be talking to the two of us she would always say, “Well, Mary need not worry about not getting paid for it, she will be well paid for what she is doing for me.”

Q How many times did you hear her say that? A I guess ten, at least.

Q How many times did you hear her say that during the last year of her life? A Quite many

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*Mary Lang, direct.*

times; I would not just be positive how many times; but I would be positive she said that most every time I went in the house, she said Mary Eagan would be well paid for it.

Q And did you hear her say it the week before her death? A Yes, sir.

10 Q Who did she say it to? A Both. Mrs. Eagan turned around and told us "What you are doing for me you will be well paid for, and I will see you will get well looked after."

Q Did you ever see Mrs. Wooster do any work there? A I certainly did, yes, sir.

Q What work did you see her do? A I see her do washing most every day, clean around her rooms, attend to everything she could for her, even give her her food, meals, and everything, carry it up for her.

20 Q Do you know whether or not Mrs. Eagan was sick at any time during the time that Mrs. Wooster was there? A Off and on all the time Mrs. Wooster was there.

30 Q Was she confined to her bed, or not, most of the time? A Well, sometimes she would get up in the morning and sometimes get up only a short time, and go back again; other times throw herself down on the bed, and get up again, until the last eight or nine months, until she was very bad, when she wouldn't get up, and then we would have to take and clean her, and put her back again, many times I helped Mrs. Wooster.

Q Clean her in what respect? A Why, she would wet her clothes and soil her clothes other ways; have to be all taken off and put in the wash.

Q Did you ever see Mrs. Wooster serve her with any meals? A I certainly did.

Q And where would Mrs. Eagan be then? A Many times in bed when she would be served with meals.

*Mary Lang, cross.*

Q Did you ever see Mrs. Eagan eat her meals at the table? A I did, yes, sir, within the six years I visited her.

Q How often? A Oh, quite considerable times, off and on; but she wouldn't sometimes get up until nine or ten o'clock, and I would see her having her meals then.

Q Do you mean in the daytime? A In the day- 10  
time, yes, sir.

Q And do you know whether Mrs. Eagan could walk without assistance? A Not without her cane, and many times without somebody else being on the opposite side from her.

Q What can you say as to her being able to get out of bed and dress herself, or undress herself and go to bed? Do you know whether she was able to do so, or not? A Sometimes was, sometimes wasn't.

Q What about the last year? A In the last year 20  
Mrs. Wooster had to take and help her all the time.

Q And before the last year did you ever see Mrs. Wooster help her? A I certainly did, yes, sir, on quite a few occasions.

*Cross examination by Mr. Bernhard.*

Q Did you know Mrs. Wooster before you knew Mrs. Eagan? A Yes, sir, well, to a certain extent I used to see Mrs. Eagan, but didn't know her to talk to her, about one year, until Mrs. Wooster and I got 30  
in the same house together; I was living there when Mrs. Wooster came to stay there.

Q Which house was that? A In Central place.

Q You and Mrs. Wooster lived in the same house in Central place? A Yes, sir.

Q How long a time? A Five or six months, about that extent.

Q That was what year? A Six years back; that would be 1901—1900, something like that.

Q Was it at that time you knew Mrs. Eagan by 40  
seeing her go about? A No; I have seen her many

*Mary Lang, re-direct.*

times before I went to Mrs. Eagan's house; many times see Mrs. Eagan before I saw Mrs. Wooster.

Q When was it that you knew Mrs. Eagan by sight? A Well, I should judge about seven years ago this May.

Q Was it before or after, the time that you and Mrs. Wooster— A Before.

10 Q What do you mean by "sight?" A Just by sitting by the window, and probably might see her pass the yard, going around the yard.

Q Alone? A Yes, sir, with her cane.

Q Unsupported? A Yes, sir.

Q And doing anything in particular? A That would be just when I was passing to the store, or something, you know.

20 Q And doing anything particular? A No, nothing particular; just taking walks, probably, as far as her—I don't know what you would call it—no bath, no toilet there then.

Q You saw her out in the yard the summer Mrs. Wooster went to live there? A Just before Mrs. Wooster went there, yes, sir.

Q And after Mrs. Wooster went there she went around the same way? A Well, for a short time, not always.

30 Q For a period of two or three years? A No, I don't think so; many times I helped her out myself when I would go there to visit Mrs. Wooster.

Q You have kept your friendship up and acquaintance with Mrs. Wooster, ever since? A Ever since, yes, sir.

Q Talked about this case with her? A Helped her out with this case off and on, when she was real bad.

*Re-direct examination.*

40 Q When you say you helped her out with this case what do you mean? A Sometimes she would be

*William F. Wooster, direct.*

taken so bad Mrs. Wooster would be tired out, and I would help her take and clean her and put her back in bed again.

Q You referred by "this case" to sickness? A Yes, sir, sickness; otherwise just go in and visit there.

*The Court.* I am inclined to think, from some examination of the rules of evidence that I have made since this morning, that the examination of Mrs. Wooster as to a conversation with Miss Eagan after she had qualified as executor, or administratrix in this case, should not be excluded it was excluded this morning; so if you think it is of sufficient importance to recall Mrs. Wooster for that purpose, I am inclined to reverse the ruling of the morning, and will do so. 10

WILLIAM F. WOOSTER, sworn for the plaintiff. 20

*Direct examination* by Mr. Seymour.

Q Are you the plaintiff in this action? A I am.

Q Are you the husband of Mary Wooster, the first witness who was on the stand? A I am.

Q How long did you live at the house known as the Eagan house, Parrow street, Orange? A A little short of six years, altogether, I believe.

Q Do you know when you and Mrs. Wooster went there to live? A Why, at about the 2nd or 3rd of March, 1909, if my memory serves me correctly. 30

Q Up to what time did you live there? A Well, we moved away from there the 5th of last November.

Q And that was after Mrs. Eagan's death, was it? A Yes.

Q About a year after? A About eleven months after, all but five days.

Q Mrs. Eagan died December, 1913, is that right? A Yes, sir.

Q (*By the Court.*) Died when? A December 10, 1913. 40

*William F. Wooster, direct.*

Q (*By Mr. Seymour.*) How long have you known Mrs. Eagan? A I have known her for, I guess, five or six years before we went there to live—oh, I guess more than that. I knew her twenty years ago. I knew her before I got married, and I have been married twenty years.

10 Q Do you know how old she was? A Well, she was quite an old lady.

Q And what was her physical condition while you lived there? A Very feeble.

Q Was she, or was she not, lame? A Yes, she was lame.

Q How long have you known her to be lame? A Well, I recall when she fell and broke her hip, and I have been going there on and off ever since.

Q How long ago was that? A I think seventeen or eighteen years ago.

20 Q Has she ever paid you any money for the services which your wife rendered? A \$50.

Q Anything else besides—

*The Court.* Mr. Bernhard, don't understand that your former objection made when Mrs. Wooster was testifying goes to the testimony of Mr. Wooster. Now, two or three questions have been asked which may be objectionable.

*Mr. Bernhard.* I assumed that what your honor said governed this line of testimony.

30 *The Court.* When I said that it related to Mrs. Wooster, because my ruling was that she was not a party to this suit. If there is any objection to Mrs. Wooster's testimony of course that same rule does not apply. I should not permit Mr. Wooster to testify to transactions with the deceased, of course, he is a party to the proceeding.

40 *Mr. Bernhard.* If my objection may be considered in time now, I ask that the answer be stricken out to the last question, and the last answer, as to transactions he had with Mrs. Eagan.

*William F. Wooster, direct.*

(Question read as follows: "Has she ever paid you any money for the services which your wife rendered? A \$50.")

*The Court.* Do you object to that?

*Mr. Bernhard.* I do, yes, sir.

*The Court.* The question and answer will be stricken out.

Q Has anybody paid you any money, in full or in part satisfaction of the claim which was put in against this estate, except the \$50 Mrs. Wooster has testified has been paid?

10

Objected to.

Objection sustained.

NOT CROSS EXAMINED.

*Mr. Seymour.* I rest, with the reservation, if I may have it, of calling another witness. Your honor will understand I was taken a little by surprise in calling this case. I ask the right to call another witness.

20

*The Court.* On what subject?

*Mr. Seymour.* The witness will testify as to work Mrs. Wooster has done in her presence. The witness is Mrs. Garrigan, who lived next door.

*The Court.* Is that all?

*Mr. Seymour.* That is the only one.

30

*The Court.* Then how do you expect to recover anything in this case but nominal damages, if that is all?

*Mr. Seymour.* Because I think the value of the services is for the jury.

*The Court.* Oh, no, this is a suit on contract; you must establish the value of the services. If the value of the services is not established you certainly cannot recover.

40

*Mary E. Wooster, direct.*

MARY E. WOOSTER, re-called for the plaintiff.

*Direct examination by Mr. Seymour.*

Q Mrs. Wooster, what was your occupation before you were married? A I lived out.

Q As what? A As a cook.

10 Q And did you ever live out as a general houseworker? A Yes, sir, I did.

Q And what services did you render as general houseworker when you lived out? A I cooked, washed, ironed, and cleaned, and did all the general work that should be done in a household.

Q And how much did you get for your services?

*Mr. Bernhard.* I object, until I have an opportunity to cross examine.

20 *The Court.* That cannot be the rule. The question may be as to whether or not her services gave her the knowledge of value of such services, but not what she got; that cannot be of advantage in this case, what she received for certain class of services that might, or might not, have been similar to the services rendered here.

Q How many years did you work as a general houseworker? A Well, about ten.

Q Ten or fifteen? A Yes.

30 Q What, in your opinion, is the value of the services which were rendered to Mrs. Eagan, the value per week, of the services rendered Mrs. Eagan?

*Mr. Bernhard.* I object, the witness is not qualified as an expert to give such testimony.

*The Court.* I do not think you have qualified her as yet, Mr. Seymour.

Q Did you ever do work taking care of—

*The Court.* She has not even said she knows the value of such services as were rendered to Mrs. Eagan.

40 Q Have you ever done any work taking care of sick people? A I have, such as confinement and

*Mary E. Wooster, direct.*

pneumonia cases, I have taken care of them, I have got \$10, \$12, \$15.

Q And do you know what is the reasonable value of such services as has been testified were rendered in this case?

*Mr. Bernhard.* Objected to.

*The Court.* The question is whether she knows.

*Mr. Bernhard.* Unless the witness has shown herself qualified, her answer whether she knows, or does not know, does not make any difference. 10

*The Court.* That may be. We are entitled to have her opinion as to whether she thinks she knows, or not. You may answer that yes or no.

A Yes, I know.

Q What in your opinion, is a fair charge for the services which were rendered to Mrs. Eagan as testified to by you? 20

*Mr. Bernhard.* I object, if your honor please—

*The Court.* Do you desire to cross examine her?

*Mr. Bernhard.* Yes, sir.

*The Court.* You may do so.

*By Mr. Bernhard.*

Q When did you come to this country, Mrs. Wooster? A Twenty-eight years ago.

Q The ten years which you say you lived out covered which country, this country or some other country? A I never lived out until I came to this country. 30

Q How soon after you came here did you begin to live out? A Yes, sir, I did.

Q Just as soon as you came? A Yes.

Q How long have you been married? A I have been married twenty years the 30th of July.

Q You have not lived out since you were married, have you? A No, I have not. 40

*Mary E. Wooster, direct.*

Q And the pneumonia cases that you speak of, you have not taken care of them since you were married, have you? A Yes, sir, I have.

Q Were they relatives? A Well, yes.

Q Then you have done no housekeeping for anyone else, nor acted as nurse for anyone else? A No.

10 Q Except those instances, since you have been married, have you? A No, only this relative, confinement and pneumonia cases.

*Mr. Bernhard.* Now, I rest upon my objection.

*The Court.* Well, I am inclined to think she has had sufficient experience to qualify her to testify to the value of her own services.

An exception to this ruling is noted by the defendant as ground of appeal.

*By Mr. Seymour.*

20 Q What, in your opinion, is a reasonable charge for these services that you have rendered to Mrs. Eagan, and that you have testified to? A Well, if I happened to do it for a stranger I would not do it for \$10 a week, but she was an aunt of mine, and I thought I would do it for a reasonable amount, because I liked her, and she did me.

*The Court.* You have given a long answer, and have not answered the question.

30 *Witness.* Well, \$10 I should think would be a reasonable amount.

Q Ten dollars for how long? A Well, for a patient that was sick in bed all the time.

Q Ten dollars a day or \$10 a week or \$10 a month? A Why, no, a week; but I would be willing to do it for less than that for a relative.

NOT CROSS EXAMINED.

*Mary Lang, direct.*

MARY LANG, re-called for the plaintiff.

*Direct examination* by Mr. Seymour.

Q What is your occupation, Mrs. Lang, now? A I am home just now, doing my own housework.

Q Before you were married what was your occupation? A Working in a factory before I was married.

Q Did you ever work at housework? A Well, 10  
yes, my mother's home until I did get married.

Q Your mother's home? A Just around my mother's home.

Q Did you ever work for others at housework? A Not before I was married.

Q Have you worked for others at housework since you were married? A I certainly have.

Q What have you done? A Done nursing, general work, took care of confinement cases. 20

Q (*By the Court.*) Do you mean general housework? A Yes, sir, that is, for a certain period of time, outside of my own home.

Q (*By Mr. Seymour.*) Was your housework done in connection with confinement cases, or was that separate? A Well, sometimes I did the work for others, sometimes I didn't, while I was nursing.

Q Did you ever go out houseworking without going out on confinement cases? A I did, yes, sir, I did housework, and did washing and ironing. 30

Q Go out by the day, or week? A Went out by the day.

Q Did you ever go out by the week? A No, sir; I never went out by the week. I have been two or three days at a time at one place.

Q And for how many years have you been doing that? A Been doing that this last fifteen years.

Q How often during the year, how many days a week, or month? A Well, for the last six years I have been going out steady mostly every day, two or three days a week, in the last six years. 40

*Motion to Direct Verdict.*

Q You have testified that you saw Mrs. Wooster do certain work for Mrs. Eagan around her house?

A Yes, sir.

Q What, in your opinion, is a fair charge for such work? A Well, if it was me charged I wouldn't do it, the work she was doing, for less than \$12 or \$15 a week, for the work I have seen her do.

*The Court.* The answer will be stricken out.  
10 Q That is not the question, what you would charge, but how much do you consider a fair charge a week for such services? A Well, of course, I don't know what my charge would be, but I know when I go out working I get my \$1.50 a day.

Q What do you consider would be a fair charge for those services? A I should say \$8 or \$10 a week, easy.

## NOT CROSS EXAMINED.

20 *Mr. Seymour.* I rest, with the reservation, if your honor will allow it.

*The Court.* Any objection to that, if this witness should come in?

*Mr. Bernhard.* I don't think so, your honor.

*The Court.* The plaintiff's case is closed with that exception, then.

## DEFENDANT RESTS.

30

## TESTIMONY CLOSED.

*Mr. Bernhard.* I move to direct a verdict on the ground that the cause of action, if any, accrued to Mr. Wooster and not to Mrs. Wooster, and that there is no evidence of any service performed by Mr. Wooster for which this action is brought. Therefore there should be a verdict for the defendant.

40 *The Court.* Motion for direction of the verdict of the defendant will be denied. An exception to this ruling is noted by the defendant as ground for appeal.