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[ENDORSED]

Service of the within notice of appeal is hereby acknowledged this 30th day of June, 1930.

Harry R. Cooper,
Attorney for Plaintiff-
Respondent.

10

GROUPS OF APPEAL.

(Filed July 16, 1930.)

NEW JERSEY SUPREME COURT.

MONMOUTH COUNTY.

20

I. EFFIE ECKMAN,	}	Action at Law.
<i>Plaintiff-Respondent,</i>		On Appeal to the
v.		Court of Errors and
BRADLEY WOOD,		Appeals.
<i>Defendant-Appellant.</i>	}	Grounds of Appeal.

30

To Harry R. Cooper, Esquire, Attorney of Plaintiff-Respondent:

Sir:

Take notice that the following are the grounds of appeal in the above-stated cause:

1. The plaintiff was permitted to testify on her own behalf, over the objection of counsel for the defendant.

2. Defendant's motion to non-suit the plaintiff should have been allowed.

CARR & CARROLL,
*Attorneys for Defendant-
Appellant.*

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[ENDORSED]

Due and legal service of the within grounds of appeal is hereby acknowledged this 14th day of July, A. D. 1930.

Harry R. Cooper,
Attorney for Plaintiff-
Respondent.

20

SUMMONS.

(Filed Dec. 19, 1929.)

THE STATE OF NEW JERSEY TO BRADLEY WOOD:

You are summoned to answer the annexed complaint of I. Effie Eckman in an
(L. S.) action at law in the Supreme Court. And take notice that unless you file your answer to said complaint with the clerk of said Court, at Trenton, within twenty days after the service upon you of this writ and the annexed com-

30

plaint, the plaintiff may proceed in the suit and judgment may be entered against you.

Witness, HON. WILLIAM S. GUMMERE, Chief Justice of the Supreme Court, at Trenton, this 17th day of December, 1929.

FRED L. BLOODGOOD,
Clerk.

HARRY R. COOPER,
Attorney.

10

COMPLAINT.

NEW JERSEY SUPREME COURT.

MONMOUTH COUNTY.

20

I. EFFIE ECKMAN,

Plaintiff,

v.

BRADLEY WOOD,

Defendant.

Action at Law.
Complaint.

30 Plaintiff residing in Asbury Park, New Jersey,
says:

1. From September 1, 1923, to December 9, 1925, in the City of Philadelphia, State of Pennsylvania, plaintiff rendered services to Bradley Wood, at his special instance and request, consisting of nursing and household services, according to the bill of particulars hereto annexed, which services were rea-

sonably worth the sum of fifty (\$50) dollars per week.

2. From February 17, 1926, to December 14, 1929, at Philadelphia, Pennsylvania, and at Asbury Park, in the County of Monmouth and State of New Jersey, plaintiff rendered services to Bradley Wood, at his special instance and request, consisting of nursing and household services, according to the bill of particulars hereto annexed, which services were reasonably worth the sum of one hundred (\$100) dollars per week. 10

3. For said services said Bradley Wood undertook and promised to pay what said services were reasonably worth.

4. Said services were reasonably worth twenty thousand six hundred (\$20,600) dollars. 20

5. That at the request of the said defendant, plaintiff paid for and in his behalf, physicians' bills amounting to one hundred-eight (\$108.00) dollars, which said sum defendant promised and agreed to repay to the said plaintiff.

6. Plaintiff has duly demanded payment for her said services and for the said physicians' bills, but payment for said services and said bills has not been made. 30

Plaintiff demands as damages twenty thousand seven hundred eight (\$20,708) dollars, together with interest thereon and the costs and disbursements of this action.

HARRY R. COOPER,
Plaintiff's Attorney.

BILL OF PARTICULARS.

To services rendered Bradley Wood from September 1, 1923, to December 9, 1925, at his special instance and request, and for his use and benefit, said services consisting of taking care of his house and household, cooking and preparing meals, sweeping and cleaning house, washing and ironing, mending and nursing of Bradley Wood, and general housework, marketing and purchasing of household supplies and provisions, at the rate of fifty (\$50) dollars per week, and from February 17th, 1926, to December 14th, 1929, at the rate of one hundred (\$100) dollars per week.

10	Said services above enumerated being for one hundred eighteen (118) weeks at fifty (\$50) dollars per week.....	\$5,900.00
20	And for one hundred forty-seven (147) weeks at one hundred (\$100) dollars per week	14,700.00
	Paid for physicians, at the request of the defendant	108.00
		\$20,708.00

*Rule Denying Motion to Set Aside Service
of Process and Appointing Attorneys
for Defendant* 7

RULE DENYING MOTION TO SET ASIDE SER-
VICE OF PROCESS AND APPOINTING
ATTORNEYS FOR DEFENDANT.

(Filed Feb. 7, 1930.)

10

NEW JERSEY SUPREME COURT.

MONMOUTH COUNTY.

I. EFFIE ECKMAN,	} Rule Denying Motion	20
<i>Plaintiff,</i>		
v.		
BRADLEY WOOD,	} to Set Aside Ser-	
<i>Defendant.</i>		
	} Appointing Attor-	
	} neys for Defendant.	

The petition of the Market Street Title & Trust Company, guardian of Bradley Wood, defendant herein, appointed by the decree of the Court of Common Pleas of Philadelphia, Number 5, having been filed in this cause, and the Court having, on the 3rd day of January, 1390, entered a rule therein requiring the defendant to show cause before the Honorable Joseph L. Bodine, one of the Justices of the New Jersey Supreme Court, at Trenton, New Jersey, on Monday the 20th day of January, 1930, why the service of process on the defendant should not be set aside; and the Court having provided in

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8 *Rule Denying Motion to Set Aside Service
of Process and Appointing Attorneys
for Defendant*

said rule that the plaintiff and the petitioner have leave to take depositions to be used on the return of the rule, and depositions having been taken pursuant thereto; and the Court having read and considered said depositions; and it appearing to the Court that the summons and complaint herein were duly and personally served on the said Bradley
10 Wood on the 19th day of December, 1929, and that said Bradley Wood is so mentally incompetent as to be unable to understand the nature and effect of the present proceedings, and Carr & Carroll appearing for the Market Street Title & Trust Company, the petitioner, and Harry R. Cooper, appearing for the plaintiff;

It is on this day of January, 1930, ordered and adjudged as follows:

20 1. That service of the summons and complaint on the said Bradley Wood is good and sufficient and that the motion to set aside service of said process be and the same is hereby denied.

2. That said Bradley Wood is so mentally incompetent as to be unable to understand the nature and effect of the present proceedings.

30 3. That Carr & Carroll be, and they hereby are appointed attorneys for the said Bradley Wood, for the purpose of defending said suit.

4. In order that the said attorneys may have the means of properly preparing for the defense of said suit, it is ordered that the plaintiff appear for examination and make full discovery of all facts and

Rule Denying Motion to Set Aside Service 9
of Process and Appointing Attorneys
for Defendant

circumstances relating to the plaintiff's claim, and of such other matters as shall be necessary or proper in order to enable said attorneys to prepare a defense to said action before a Master in Chancery of New Jersey, at his office in Asbury Park New Jersey, at such time as said Master may on four days' notice to the plaintiff designate and appoint. 10

5. That a copy of this order certified by the attorneys for the said defendant, as a true copy, together with a copy of the Master's notice, be served on the plaintiff personally, or on her attorney of record, Harry R. Cooper, either personally, or by leaving the same at his office with the person in charge thereof, between the hours of 10 A. M. and 4 P. M. on any business day. 20

6. That the time for filing an answer be, and the same hereby is, extended to March 1, 1930, inclusive.

On motion of

CARR & CARROLL,
Attorneys for Market Street Title
& Trust Company, Petitioner.

J. L. BODINE,
J. S. C.

Entered Feb. 7, 1930.

On motion of

CARR & CARROLL,
Attorneys.

30

A true copy.

FRED L. BLOODGOOD,
Clerk.

ANSWER.

(Filed Feb. 25, 1930.)

NEW JERSEY SUPREME COURT.

MONMOUTH COUNTY.

10

I. EFFIE ECKMAN,

Plaintiff,

v.

BRADLEY WOOD,

*Defendant.*Action at Law.
Answer.

20

Defendant, a resident of Philadelphia, Pennsylvania, temporarily residing in Asbury Park, Monmouth County, New Jersey, a person of unsound mind and mentally incompetent, answering the plaintiff's complaint by his attorneys, Carr & Carroll, heretofore especially appointed for that purpose by rule of this Court, says that:

30 1. He denies the first paragraph of the complaint.

2. He denies the second paragraph of the complaint.

3. He denies the third paragraph of the complaint.

4. He denies the fourth paragraph of the complaint.

5. He denies the fifth paragraph of the complaint.

6. He denies the sixth paragraph of the complaint.

FIRST DEFENSE.

By an order of the Court of Common Pleas of Philadelphia County No. 5, in a certain proceeding therein pending entitled, "In the matter of the estate of Bradley Wood, March Term, 1929, No. 16162," made and entered on May 23, 1929, the Market Street Title and Trust Company, a Pennsylvania corporation having its principal office and place of business in Philadelphia, Pennsylvania, was appointed guardian of the estate of the said Bradley Wood upon the ground that the said Bradley Wood was so mentally deficient as to be unable to take care of his own property. Defendant further avers, by his attorneys, Carr & Carroll, that for a long time prior to May 23, 1929, said defendant was and still is at the present time, by reason of mental and physical illness and disability, incapacitated mentally and physically, and rendered of unsound mind and mentally incompetent to take care of his affairs, and that at no time mentioned in the complaint was the said defendant, Bradley Wood, mentally competent to enter into any contract or arrangement whatsoever regarding his support, care and maintenance or to make any agreement or promise with respect to compensating the plaintiff or any other person for the same.

SECOND DEFENSE.

That the services rendered by the said plaintiff were rendered voluntarily and without promise, expressed or implied, of reward or compensation for the same, and that the relation existing between the plaintiff and defendant was of such a character and nature, being a relation of support on one side and
 10 services on the other, as not to warrant an implied promise to compensate the plaintiff for services rendered to the defendant.

Attorneys for Defendant.

REPLY.

(Filed Feb. 26, 1930.)

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NEW JERSEY SUPREME COURT.

MONMOUTH COUNTY.

	I. EFFIE ECKMAN,	} <i>Plaintiff,</i>	Reply.
	v.		
30	BRADLEY WOOD,		

Plaintiff denies every allegation contained in the answer of the defendant.

HARRY R. COOPER,
Plaintiff's Attorney.

TESTIMONY.

NEW JERSEY SUPREME COURT.

MONMOUTH COUNTY.

————— 10

D. EFFIE ECKMAN,	}	Action at Law.
<i>Plaintiff,</i>		
v.		
BRADLEY WOOD,		
<i>Defendant.</i>		

—————

TESTIMONY

20

—————

Freehold, N. J., May 9, 1930.

—————

Before HON. R. V. LAWRENCE, Judge, and a jury.

—————

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APPEARANCES:

For plaintiff, HARRY R. COOPER, ESQ.

For defendant, MESSRS. CARR & CARROLL.

DR. GEORGE M. FERGUSON, sworn for plaintiff.

Direct examination.

By Mr. Cooper:

Q. Doctor, you are a practicing physician and surgeon in Philadelphia?

10 A. Yes, sir.

Q. And from what medical school did you receive your medical education?

A. I was graduated from the Jefferson Medical College in Philadelphia.

Q. In Philadelphia?

A. Yes.

Q. Did you have any other medical education besides that?

A. Yes, sir.

20 Q. Whereabouts?

A. After that I studied in Vienna for a year. After that I went with the German Hospital in Philadelphia, now called Lankenau Hospital. I was there two years and a half.

Q. About how long have you practiced in Philadelphia since you were admitted to practice?

A. Twenty-six years and a half.

Q. And you are still practicing there?

A. The same place where I started.

30 Q. Were you acquainted in 1928 with the defendant Bradley Wood?

A. Yes, sir.

Q. Did you attend him professionally in 1928?

A. 1928; yes, sir.

Q. Have you brought with you any memoranda from which you can tell us the dates on which you attended him?

A. I have a loose page from my ledger.

Q. Can you tell the dates without referring to that?

A. Well, January, sometime in January, without looking at this —

Q. Well, I mean without referring to the memoranda can you tell the exact dates or the number of days on which you attended him?

A. No, I could not.

Q. Is this memoranda in your own handwriting? 10

A. No, my bookkeeper.

Q. Taken from your own books?

A. Taken from my daybook.

Q. Made under your supervision?

A. Yes.

Q. Will you refer to that and tell the Court and jury the dates on which you attended Mr. Wood in Philadelphia?

A. The first date was January 21st.

Q. Of what year?

20

A. 1928. Shall I give you the dates?

Q. Yes, just run the dates off there.

A. 1928, the 21st of January, the 25th of January, and the 30th of January; February the same year, 4th, 10th, 13th, 14th, 16th, 18th, 20th, 23rd and 27th, in February; March the same year, 2nd, 5th, 10th, 13th, 16th, 19th, 23rd, 27th; then I missed one here, is on the 15th; April 3rd, 10th, 13th, 19th, 26th, 30th; May 1st, 3rd, 7th, 14th, 18th and 25th. All these are in 1928. June 1st, 4th, 8th, 12th, 16th, 22nd and 29th. And June was the last visit that I made to the house. All these visits were to the house. 30

Q. Where Mr. Wood was living at that time?

A. Yes.

Q. From what was he suffering, Doctor, if you know?

A. When I first was called in to see him he was suffering from a syphilitic condition, tertiary syphilis, late tertiary syphilis.

Q. And did that condition require the attendance of a trained nurse?

A. It certainly did.

Q. Who was attending him at that time?

A. Miss Eckman.

10 Q. During your visits to the house between January 21, 1928, and June 29th, 1928, did you see anyone else attending him or giving him professional attention?

Mr. Carroll: Now, may it please your Honor, I object to this.

Mr. Cooper: I withdraw it as leading.

20 Mr. Carroll I object to this on the ground that before there can be testimony of this nature there must be laid a foundation or some foundation for the right of recovery by the plaintiff herself.

The Court: Well, I assume that the doctor is really called out of order.

Mr. Cooper: Called out of order by permission of the Court.

30 The Court: We are trying to accommodate him, that is all.

Mr. Cooper: Unless I connect it up there will be no case.

The Witness: I appreciate that very much.

By the Court:

Q. The question is whether it was necessary during the period that you saw Mr. Wood that he have the services of a trained nurse.

A. It was necessary.

Q. And did Miss Eckman act in that capacity?

A. She did more than that, sir.

Q. What did she do to your knowledge?

A. She acted as a trained nurse and a very efficient nurse; in addition to that she acted as a child's maid, you might say, to this man that was rather helpless. 10

Q. What did she do there? Just tell the jury what you saw and observed.

A. She had to get him up in the morning, dress him and put him to bed.

Q. And all that went with that, bathing him and caring for him?

A. Absolutely.

20

By Mr. Cooper:

Q. In view of his condition?

A. I don't see how any woman can do it, keep on doing it for the number of days that she had done it.

By the Court:

30

Q. Was it an extreme case, Doctor?

A. Well, yes, I would say so. It was the later stage.

Q. You said the tertiary period?

A. Yes, helpless.

By Mr. Cooper:

Q. By the tertiary period you mean the third and last stage?

A. The last stage.

By the Court:

Q. Was the man able to move around and walk,
10 himself?

A. When I first came there he did walk.

Q. And did he have locomotor ataxia?

A. Well, he had before, before I came there.

By Mr. Cooper:

Q. He had had?

A. Had.

Q. Would you say there was any difference in
20 his condition, either physically or mentally, between the time when you first attended him to the time of your last call?

A. He had made no improvement under my treatment.

Q. He had made no improvement?

A. No.

By the Court:

Q. How was his mental condition when you last
30 saw him?

A. Well, it is hard to describe just exactly how his mental condition was. It was poor.

Q. Was he coherent? Could he talk intelligently, with a connected and intelligent answer?

A. No, I don't think he could.

Q. All right.

By Mr. Cooper:

Q. You didn't attend him prior to 1928, did you, Doctor?

A. That was the first date I gave you, was the first call.

Mr. Cooper: Take the witness.

Cross-examination,

10

By Mr. Carroll:

Q. Doctor, you never saw Mr. Wood prior to January, 1928?

A. Never, sir.

Q. At whose solicitation did you visit him?

A. I was called in by Miss Eckman.

Q. By Miss Eckman?

A. Yes, the attending nurse.

20

Q. You say there had been some impairment of his mental faculties?

A. Some impairment?

Q. Some impairment of his mental faculties, yes.

A. Yes, sir; decidedly so.

Q. Would you say that he was in a condition to carry on and transact the ordinary business of life between the time you saw him, between January, 1928, and June, 1928?

A. In what capacity?

30

Q. Well, I mean could he be trusted? He couldn't go out of the house, could he?

A. Well, no. Miss Eckman had to take him when he went out, the nurse.

Q. He couldn't go out on his own responsibility to make purchases or anything of that sort?

A. No, I don't think he could do that.

Q. And could he conduct his affairs with respect to incurring obligations and paying bills and writing checks and that sort of thing?

A. He did write a check. He wrote all my checks that I received. I was paid.

Q. Wrote them himself?

A. Wrote them himself.

Q. Or just signed them himself?

10 A. Signed them.

Q. Who wrote them?

A. Now wait. I beg your pardon. It has been several years ago. Now I think he wrote them. I am not quite sure about that.

By the Court:

Q. You are shown some checks, Doctor, and
20 asked whether you recognize them.

By Mr. Carroll:

Q. Now, Doctor, your name is Dr. George M. Ferguson?

A. Yes.

Q. I show you a check dated February 6th, 1928, to your order for \$9.00.

A. Yes, sir.

Q. Is that one of the checks you have mentioned?

30 A. Yes.

Q. That is signed by Bradley Wood?

A. Yes.

Q. Do you know in whose handwriting the body of the check is?

A. I presume that is Miss Eckman's, I don't know for sure.

Q. You don't know?

A. No, I presume so. I received a check and endorsed them and got the money.

Q. I show you a check of Bradley Wood on the Market Street Title & Trust Company, dated March 1, 1928, drawn to your order for \$29.00. That check was given to you for professional services?

A. Yes, sir; I have got a receipt.

Q. Never mind the receipt. In whose handwriting is the body of that check, if you know? 10

A. I didn't see that written, so I presume it was Miss Eckman, I don't know. I can't say for sure.

Q. Is that Bradley Wood's signature?

A. Absolutely.

Q. And that check was honored on that signature?

A. Yes, and I have got it receipted here.

Q. Now I show you a check drawn April 2, 1928, on the Market Street Title & Trust Company, to your order for \$27.00, and ask you if you got that check. 20

A. I got it.

Q. And do you know in whose handwriting the body of that check is?

A. The same answer.

Q. So far as you know Miss Eckman wrote that?

A. I wouldn't say anything. I don't know. I know I received the money and cashed the check, that is all.

Q. Now I show you a check dated May 3, 1928, drawn to your order on the Market Street Title & Trust Company and signed Bradley Wood. The handwriting of the check is obviously different from the signature, is it not? 30

A. Absolutely.

Q. And do you know in whose handwriting the body of the check is?

A. The same answer.

Q. Well, now what does that mean, that you don't know?

A. I don't know.

Q. Are you familiar with Miss Eckman's handwriting?

A. I can't say that I am. You see I had forgotten. It has been several years ago.

Mr. Cooper: I don't think this is proper cross-
10 examination. No questions have been asked Dr. Ferguson which would call for this.

The Court: You spoke about his condition. You brought out progressively along your time.

Mr. Cooper: I presume to that extent it might be.

Q. I show you a check dated June 8, 1928, drawn
20 to your order, and ask you if you got that check?

A. I did.

Q. Do you know in whose handwriting the body of that check is?

A. The same answer.

By the Court:

Q. Did you see it written?

A. I didn't see it written.

30

By Mr. Carroll:

Q. I will show you, Doctor, some more checks.

A. You will only show me one more, because that
is all I got.

Q. July 9, 1928, \$27.00.

A. Yes.

Q. You make the same answer, that you don't know whose handwriting the body of the check is?

A. Yes.

Q. And at the time you treated Mr. Wood was there any person other than Miss Eckman in attendance upon him or connected with him in any way, shape or form?

A. Not that I recall.

10

By the Court:

Q. Who were the members of his household?

A. He was in an apartment at that time.

Q. An apartment?

A. A second floor apartment.

By Mr. Carroll:

Q. And what address was that, Doctor?

A. The address is 123 South 50th Street, Philadelphia. 20

By the Court:

Q. No one there other than Miss Eckman?

A. In the same apartment?

Q. In the same apartment?

A. No, sir.

Mr. Carroll: That is all.

30

By Mr. Cooper:

Q. Doctor, were the first checks that you received signed by Mr. Wood, some checks that you received signed by Mr. Wood for this service?

Mr. Carroll: All those checks, Mr. Cooper, were signed by Mr. Wood.

The Court: It is admitted that the checks indicated were signed by Mr. Wood.

Mr. Cooper: That is all, Doctor.

10

Dr. Joseph Ackerman, sworn for plaintiff.

Direct examination.

By Mr. Cooper:

Q. Dr. Ackerman, you are a practicing physician and surgeon?

A. Yes.

20

Q. Where do you practice, Doctor?

A. Asbury Park.

Q. Have your office there?

A. Yes.

Q. Where did you receive your medical education?

A. Philadelphia, Hahnemann College.

Q. How long have you been practicing in Asbury Park?

A. Thirty years.

30

Q. Were you acquainted with Bradley Wood?

A. Yes.

Q. Are you still attending him professionally?

A. Yes, sir.

Q. When, Doctor, did you commence to attend him, if you know?

A. I don't remember the date; between two and three years ago he came down here in the summer.

Q. And what location did you attend him or are you attending at the present time?

A. At the present time I am attending him at 207, I think it is, First Avenue.

Q. Asbury Park?

A. Asbury Park.

Q. Now during the two or three years that you have been attending him will you describe his condition to the jury, commencing, beginning with his condition at the time you started attending him and bringing him down to date? 10

A. Well, his condition has been getting progressively worse, so that he requires more attention now than he did when I first saw him. When he first came to me he was living in the Kentucky Hotel on First Avenue and was at that time on the second floor, and Miss Eckman used to bring him around to the office in a wheelchair. At the present time he lives on the same floor and cannot in any way get upstairs. 20

By the Court:

Q. Why, Doctor?

A. On account of paralysis of his limbs.

Q. Locomotor?

A. Yes.

30

By Mr. Cooper:

Q. And that paralysis is the result of the disease from which he is suffering?

A. Yes, sir.

By the Court:

Q. You diagnosed the case as Dr. Ferguson did, did you, Doctor?

A. Yes, sir.

By Mr. Cooper:

Q. And his condition under such circumstances
10 would become progressively worse, would it not?

A. Yes.

Q. And has so become?

A. And has so become.

Q. How heavy a man is Mr. Wood?

A. I should imagine he weighs around 230
pounds, in that neighborhood.

By the Court:

20 Q. How tall?

Mr. Carroll: May it please your Honor, may it be understood that this is submitted subject to the arrangement that it may be stricken out?

The Court: Yes, absolutely.

A. He was about five feet ten or eleven.

Q. And weighs 200 pounds?

30 A. Yes, sir.

Q. Is he able to walk?

A. No, sir.

By Mr. Cooper:

Q. How long has he been unable to walk, Doctor?

A. He has been unable to walk without assistance before I ever saw him.

Q. And how long has he been confined to the house?

The Court: To your knowledge.

Q. To your knowledge.

A. Well, being confined to the house, he gets out on the porch, you know, now. 10

Q. Well, either confined to the house or getting out on the porch?

A. He is confined to the house, has been for the past two years, at least.

Q. In the condition in which he has been for the past two years has he required the attention of a nurse?

A. Yes, sir.

Q. And who has nursed him, if you know?

A. Miss Eckman. 20

Q. You have called at the house quite frequently where he has been confined?

A. Yes, sir.

By the Court:

Q. And have you seen anyone else there besides Miss Eckman; if so who and how many times?

A. I have seen different people there that have been in there visiting Miss Eckman or called in 30 when she was about to go away. She has gone away two or three times since I have been attending him and had some other nurse to take care of him for a day or two at a time.

Q. But that has only been while she has taken a day or so away?

A. Just temporarily.

Q. What length of time would that involve?

A. Oh, sometimes over night, sometimes two nights; and she has been away twice or three times to my knowledge.

By Mr. Cooper:

10 Q. Doctor, will you describe the nature and character of the service that Miss Eckman has rendered to Mr. Wood under your supervision and observation?

A. Well, she is a bodyguard and a nurse and a servant.

Q. Just what have you seen her do in and about the house in relation to the patient or to the house?

A. Housework, washing, ironing.

20

By the Court:

Q. Cooking?

A. Cooking, cleaning house.

Q. Taking physical care of Mr. Wood?

A. Taking physical care of Mr. Wood.

Q. Wash him and bathe him?

A. Yes.

Q. Clothing him, undressing him?

30 A. And he is not an easy man to handle.

Q. Putting him to bed, getting him out of bed?

A. Moving him around in a wheelchair.

Q. She did all that?

A. Yes.

Q. You have seen her do all of it?

A. Yes, I have, different times.

By Mr. Cooper:

Q. And, Doctor, has his condition recently necessitated a great deal of work in changing his bedding and things like that?

A. Constantly. In fact, the last time I was in there the bedding had to be changed.

Q. And that was done by Miss Eckman?

A. Yes, sir.

10

By the Court:

Q. How old a man, Doctor, approximately?

A. Sixty-five.

By Mr. Cooper:

Q. Doctor, did Miss Eckman pay you two bills aggregating—

20

The Court: I assume those payments will be admitted, won't they?

By the Court:

Q. How much were they, Doctor, do you remember?

A. I don't recollect; no, sir.

By Mr. Cooper:

30

Q. Subject to connecting it up by Miss Eckman I will ask you, if I may be permitted to, if all the bills paid to you by him, if they were so paid, were reasonable in amount.

A. Yes.

Mr. Carroll: Oh, we will admit that those bills were paid, yes, no trouble about that.

The Court: \$108.00 apparently.

Mr. Cooper: I think I have them here, may it please the Court.

10 By the Court:

Q. Doctor, are you familiar with the value of services rendered in such a case as this by Miss Eckman? What are such services usually worth in your neighborhood?

A. Why, I think graduate nurses now receive \$8 a day for twelve hours work.

20 By Mr. Cooper:

Q. What do you say is the price that they now receive for twenty-four hour duty?

A. I think it is either ten or eleven, I am not positive.

By the Court:

30 Q. In other words, from \$8.00 to \$10.00 for the services rendered of the nature and character that we are talking about here?

A. \$10.00 to \$12.00, I will say.

Q. And that does not include housework, does it, Doctor?

A. No, just nursing.

Mr. Carroll: Have you those bills available?

By Mr. Cooper:

Q. Let me ask you this, Doctor: Is it usual Doctor, when a trained nurse is employed, for the employer to furnish someone to do the housework or is that in addition to the trained nurse's services?

A. You can't find many trained nurses that will do housework.

Q. It is customary for the customer to furnish board and lodging for the trained nurse while she is in his employ? 10

A. Yes.

Mr. Cooper: Cross-examine.

The Court: Cross-examine.

Cross-examination.

20

By Mr. Carroll:

Q. Doctor, in March, 1929, was Bradley Wood's mental condition such that he could intelligently transact business?

A. What kind of business?

Q. Financial business appertaining to him.

The Court: Drawing checks.

30

Q. The receipt and disbursement of money.

The Court: Depositing money.

Q. Opening a bank account.

A. No, I wouldn't say so.

Q. When was it that you were first called in to attend Bradley Wood?

A. I don't recollect the exact date but I think it was 1927 or 1928, when they first came to Asbury Park.

Q. They were temporary visits that Miss Eckman and Bradley Wood paid to Asbury Park?

A. Yes.

10

By the Court:

Q. How long is this man going to live, in all reasonable probability, Doctor?

A. He might live six hours and he might live six years.

Q. Will he live beyond that period?

A. I wouldn't think so.

Q. Talking about reasonable probability, six
20 hours or six years. All right.

By Mr. Carroll:

Q. Now from November, 1928, on down to the present time would you say that he was mentally competent to transact financial business, understand the nature of it?

A. No, sir.

30 Q. These bills that you say were paid by Miss Eckman, were they paid in cash or by check?

A. I don't recollect. I think by check.

Q. And would you know by whose check?

A. I don't recollect.

Q. And what were the dates of those bills?

A. I don't recollect that.

Mr. Cooper: I am looking for them now, Mr. Carroll. I had them here, I think.

Q. At whose solicitation, Doctor, did you come to visit Bradley Wood?

A. I don't recollect, the first time I saw Bradley Wood, whether I called at the Kentucky Hotel or whether he came around in a wheelchair.

Q. And was he accompanied by Miss Eckman?

A. He was.

10

By the Court:

Q. Has he had any other caretaker, as it were, to your knowledge since you have known him?

A. No, sir.

Q. Always been Miss Eckman?

A. I think so, with the exception of two or three times when she has been away and she has had others—

20

Q. As you have indicated?

A. Yes.

By Mr. Carroll:

Q. Doctor, you say that you visited him at the Kentucky Hotel in Asbury Park?

A. Yes, sir.

Q. Do you know when that was?

A. I don't recollect the date. I think it was in the summer of 1928.

30

Q. Were there any other hotels or boarding houses where they were making temporary visits where you visited Bradley Wood?

A. I don't think I visited him in any other hotel but Kentucky.

Q. And Miss Eckman was a resident of the hotel there with Bradley Wood?

A. I suppose so.

Q. I mean she was staying at the hotel also?

A. She was there; yes, sir.

The Court: We will take it for granted that the doctor's bills were rendered for services and that they were reasonable.

10

(Bills produced by Mr. Cooper.)

By the Court:

Q. Doctor, referring to the bills that you rendered and which were paid, what are the dates?

A. August 1, 1929, was paid August 28, 1929.

Q. For how much?

20

A. For \$84.00.

Q. And the other?

A. Here is one dated January 1, 1929, for \$24.00, that is not receipted. I don't know whether that has been paid or not. I presume that was in this one.

Q. You think that was included in the second?

A. I think so.

By Mr. Carroll:

30 Q. You mean the \$24.00 bill is included in the \$84.00 bill?

A. I mean that probably that was paid between that time.

Q. Doctor, with respect to this \$84.00 bill, dated August 1, 1929, how did Miss Eckman come to pay that to you personally?

A. I don't know.

Q. Did you go and ask her for it?

A. I did not; no, sir.

Q. You didn't send a bill there to the house and then follow it up with a personal demand on her for payment?

A. Oh, no.

Mr. Carroll: That is all.

10

Re-direct examination.

By Mr. Cooper:

Q. Doctor, were the services which you rendered to Bradley Wood as set forth in these two bills—

Mr. Carroll: There is no doubt about the two bills.

20

Mr. Cooper: If there is no dispute about their being reasonable I will offer them in evidence.

The Court: There is no question about them. He earned them.

(Bills marked Exhibits P1 and P2.)

Mr. Carroll: Those checks paid Dr. Ferguson, may they be marked for identification?

30

(Checks marked Exhibit A for identification.)

LOUIS OTTENBERG, sworn for plaintiff.

Direct examination.

By Mr. Cooper:

- Q. Where do you live?
10 A. 205 First Avenue, Asbury Park.
Q. And is that next door to where Miss Eckman
and Bradley Wood are now living?
A. Directly next door.
Q. And how long, to your knowledge, have Mr.
Wood and Miss Eckman lived at that address?
A. I believe it is about January, 1929.
Q. And between January, 1929, and December 14,
1929, have you had occasion to visit that house on
20 more than one occasion or have you gone into the
house?

By the Court:

- Q. Did you ever visit there?
A. Yes, I have been in there.
Q. When was that?
A. I have been in there various times. I am an
agent on the premises there and had occasion.
Q. Agent for the house itself?
30 A. There is rear bungalows and I am agent for
those bungalows.

By Mr. Cooper:

Q. How often have you been in there during that
period, would you say, Mr. Ottenberg?

By the Court:

Q. Between the time that she moved in and now?

A. The present time?

Q. Yes.

By Mr. Cooper:

Q. And December 14, 1929?

A. I don't know.

10

By the Court:

Q. Once a week, once a month or twice a month?

A. No, I have possibly been in there a dozen or fifteen times altogether.

By Mr. Cooper:

Q. Was Mr. Bradley Wood attended by anyone while you were in there? 20

A. By Miss Eckman.

Q. Did he have anyone there in the house with him?

A. Attended by Miss Eckman.

Q. And was anyone there beside her?

A. No, no one else, sir.

Q. Did you observe anything there as to his condition or as to the nature of the service?

30

Mr. Carroll: May it please your Honor, this testimony, it is understood, comes in subject to the objection previously made?

The Court: That is so. If it is not properly connected of course it will be stricken.

Q. What do you say that you observed as to her attending Mr. Wood and as to the character of the service on the various visits that you made, and as to his condition?

A. I have been in there various times and know that Miss Eckman has been nurse, cook, and I know that she has washed for him.

10 By the Court:

Q. What was his condition as you saw it?

A. The man is paralyzed.

Q. Paralyzed, helpless, can't move around?

A. Can't move around.

Q. Sits in a wheelchair?

A. In a wheelchair or in another chair.

Q. Another chair?

A. And most of the time in bed.

20 Q. Have you seen him in bed?
A. Yes.

By Mr. Cooper:

Q. Could he get in or out of bed without assistance, if you know?

A. Positively.

Q. Have you observed anyone assist him either out of bed or in bed?

30 A. I have observed Miss Eckman taking him in and out of bed.

Mr. Cooper: Cross-examine.

Mr. Carroll: No questions.

MISS ELIZABETH MADIGAN, sworn for plaintiff.

Direct examination.

By Mr. Cooper:

Q. Miss Madigan, what is your occupation or profession?

A. I am a registered trained nurse. 10

Q. Where did you graduate?

A. I graduated from Kings Park Mental Hospital in 1916, Flower Hospital, New York City, in 1926.

Q. And since that time have you been engaged in professional nursing?

A. Always.

Q. Are you familiar with the usual and reasonable charge of a trained nurse for twenty-four hour duty in the case of an infectious disease?

A. In infectious or mental diseases the charge is \$10 for twenty-four hours in this part. 20

Mr. Carroll: It is understood that this is subject to the same objection?

Mr. Cooper: Absolutely.

Q. And is that the usual and ordinary charge in Asbury Park?

A. That is the charge. 30

By the Court:

Q. You work in Asbury Park?

A. I have worked here for about two years.

Q. All through that?

A. Through Monmouth County.

By Mr. Cooper:

Q. And that is in that the usual and reasonable charge?

A. That is the usual charge fixed by the State Nursing Association.

Q. What has your observation been in performing the duties of a trained nurse as to whether or not it is customary for the employer to furnish
10 other help for housework, such as cooking and mending and taking care of the house?

A. A nurse takes care of anything that is infectious. She disinfects linen and utensils that may be used, and that is all that she does.

By the Court:

Q. Do they do housekeeping?

20 A. Nurses don't do housekeeping.

By Mr. Cooper:

A. That is entirely beyond the scope of her duties, is it not?

A. Yes.

Q. Do you know anything about the charge which such a person usually makes for such services in your observation and experience?

30 A. Well, I would positively say that they couldn't get anyone to work for them for less than \$4 a day.

Q. Is that the usual charge in Asbury Park and vicinity?

A. For laundresses and people like that, yes, by the day.

Mr. Cooper: Cross-examine.

Cross-examination.

By Mr. Carroll:

Q. You are a trained nurse by profession?

A. Yes.

Q. And you know the ways and habits of those charitable ladies?

A. Yes.

Q. Is it usual or unusual for a trained nurse under an employment to work from 1923 to 1929 without compensation? 10

Mr. Cooper: Objected to. That is not proper cross-examination.

The Court: I don't see why you object to that.

A. Well, it would depend on the circumstances, I should think.

Q. Is it usual or unusual? 20

A. It is not an ordinary thing in these United States of America.

By the Court:

Q. To work for nothing?

Mr. Carroll: That is all.

Mr. Cooper: That is all. 30

(The next witness was called out of order on the part of the defendant.)

ANTHONY MICALI, sworn for defendant.

Direct examination.

By Mr. Carroll:

- 10 Q. Mr. Micali, where do you live?
A. 1045 South 53rd Street, Philadelphia.
Q. And do you know Bradley Wood?
A. Yes, sir.
Q. Did you know him when he was employed by
the Prudential Insurance Company?
A. Yes, sir.
Q. At 52nd and Market Streets?
A. Yes, sir.
Q. How long did you know him there?
20 A. Since March 27, 1920.
Q. Until the time he quit?
A. Yes, sir.
Q. Did you know him in a social way as well as
in a business way?
A. Up till the time he quit us in the business;
after he quit in a social way.
Q. Will you explain briefly what you mean by
that?

30

By the Court:

- Q. They were all business?
A. They were all business till I saw him —
Q. All social afterwards?
A. That is the idea.

By Mr. Carroll:

Q. When did you say that he stopped working for the Prudential Company?

A. He stopped working for the Prudential Company in 1925, around the fall.

Q. The fall of 1925?

A. The fall of 1925.

Q. Now prior to the fall of 1925, will you tell us to what extent he had been in daily attendance at 10 his business duties?

A. He was an assistant superintendent for the Prudential Insurance Company; he had charge of eight men and he was active on duty every day supervising the work of his eight men.

Q. Up until the fall of 1925?

A. Yes, sir.

Q. Would you say in what month?

A. Well, about either October or November, I can't recollect. I know it was that fall. 20

Q. Prior to November, 1925, was he away sick to any extent?

A. In the spring of the year he was sick for a while.

Q. For how long?

A. About either four or five weeks.

Q. But he was not constantly away?

A. No.

Q. You had had conversations with Bradley Wood from time to time? 30

A. Up to the time that he left for Asbury Park I saw him nearly every week.

Q. Do you know when it was he left for Asbury Park?

A. Do I know what?

Q. When it was he left for Asbury Park?

A. Well, the first time he left was during the

summer, he came here for a few months, that is the time that he took sick, he had his first stroke, and Dr. Ackerman attended to him.

By the Court:

Q. 1925?

A. No, it wasn't 1925, it was about 1926 or 1927.

10 Q. 1926 or 1927?

A. I got a special delivery letter one night from Miss Eckman that Bradley Wood was pretty ill and they didn't expect him to live; and when I saw Ackerman I asked him and he said he only had a few hours to live, but it is wonderful the way he came around.

By Mr. Carroll:

20 Q. Now, Mr. Micali, do you recall Wood having any stock in any building and loan association in Pennsylvania?

Mr. Cooper: Objected to as immaterial.

The Court: Well, of course, counsel opened on that subject. He seems to think it is material. It may be.

30 Mr. Cooper: I couldn't very well get his opening.

The Court: It may be, however, that the ability to pay may have some relevancy and materiality.

Mr. Cooper: I don't think so, may it please the Court.

The Court: I will think it over. In the meantime I am going to allow him to state.

Mr. Cooper: I ask an exception.

The Court: You may have it.

(Objection noted for plaintiff as ground of appeal.)

Mr. Cooper: I don't know that it hurts me any, but it seems to me that whether a man is worth six cents or six million is immaterial.

10

A. Yes, I do.

Q. Do you know in how many associations?

A. Well, I know of two, because he got me to join both of them. He was a very thrifty man.

Q. Do you recall his stock maturing and his receiving any large sums of money from the association? 20

Mr. Cooper: I think that is objectionable.

The Court: Counsel may state his purpose. What do you want to show?

Mr. Carroll: Our purpose is to show that during the period of time covered by this claim this man withdrew from the bank during each year a sum of money between \$2,500 and \$3,000, that practically that money was disbursed by Miss Eckman. 30

The Court: In other words, you think she may have had some benefit of it? For that purpose it is competent.

Mr. Carroll: I think it is practically a joint establishment, with an agreement to support on one side and an agreement to nurse on the other.

The Court: I think I will allow it. In other words, there may be some suggestion of part payment.

10 Mr. Cooper: I have no objection if that is the reason, to show part payment.

The Court: Well, that is evidently the idea. In other words, she had already received some money. Proceed.

By the Court:

Q. How much was it?

20 A. Well, the amounts I don't know. I know he had some building and loan and insurance.

By Mr. Carroll:

Q. In point of time do you know when it was?

A. Well, during the time that he got ill now. While he was in Philadelphia he got some, I think, before he left for Asbury Park.

Q. And do you know what he did with that money?

30 A. That I don't know.

Mr. Carroll: Cross-examine.

Cross-examination.

By Mr. Cooper:

Q. Where do you live, Mr. Micali?

A. 1045 South 53rd Street, Philadelphia.

Q. And you were served with a subpoena to come down here?

A. No, sir.

Q. Who asked you to come down?

A. The Market Street Title & Trust Company. 10

Q. How much did they pay you for coming down?

A. Not a penny.

Q. You were at Mr. Wood's house last night, were you not?

A. Yes, I went to see Mr. Wood.

Q. And you went with someone?

A. Yes, my wife, which I always do go.

Q. I am simply asking you one question; I want a yes or no answer to it. Did you make any statement there last night in Miss Eckman's presence in regard to seeing Mr. Wood? 20

A. In regard to seeing Mr. Wood?

Q. Yes.

A. No, sir.

Q. Did you not say in the presence of Miss Eckman to your wife or anyone else, "Let's see ——" either these words or words substantially to this effect: "Let's see if we can see Bradley first and so get something from him before Mary gets in the house"? 30

A. No, sir.

Q. You say you didn't say that?

A. No, sir.

Q. Are you connected with the Market Street Title & Trust Company in any way?

A. No, sir; only a checking account I have there.

By the Court:

Q. Depositor?

By Mr. Cooper:

Q. Who do you work for now?

A. Prudential Insurance Company.

10 The Court: Anything more?

Mr. Cooper: That is all.

(Adjourned till May 12, 1930, at 10.00 A. M.)

20

30

Freehold, N. J., May 12, 1930.

(Trial of the cause resumed at 10.00 A. M.)

D. EFFIE ECKMAN, called for plaintiff.

Mr. Carroll: May it be put into the record that 10
the witness is called on her own behalf? I object to
her being sworn on the ground that the defendant
here is legally disqualified and cannot be sworn as
a witness, and therefore she cannot be sworn on
her own behalf.

The Court: That is not my understanding of the
rule. I don't know of any disqualification, Mr. Car-
roll, at all.

Mr. Cooper: There must be proof before the 20
Court of the insanity.

Mr. Carroll: May it please your Honor, we heard
the testimony of Dr. Ferguson and Dr. Ackerman on
Friday afternoon, and there was also a stipulation
entered into between Mr. Cooper and myself with
respect to this man's mental condition, so I think
that the man's mental capacity here is quite firmly
established in this case.

Section 3 of the Evidence Act provides that no 30
party shall be sworn in any case when the opposite
party is prohibited by any legal disability from be-
ing sworn as a witness.

The Court: You see your difficulty is that this
man has not been disqualified. In other words, I

am reading just a few lines from one of your citations. (Reads.)

Mr. Cooper: This stipulation which Mr. Carroll speaks of having been entered into does not disqualify this witness to testify.

10 Mr. Carroll: The question of whether the witness is mentally incompetent to testify is primarily one for the trial judge to determine. For instance, that stipulation was entered into at my suggestion in order to save the party's estate the expense of bringing down to Freehold those experts by whom he had previously been examined, and their depositions are on file in this case, being the basis of the order made by Justice Bodine appointing me counsel in this case. Dr. Ackerman's testimony is in and also that of Dr. Ferguson, and I think that this stipulation shows a condition here which would war-

20 rant your Honor in saying that Bradley Wood is so mentally incompetent that he cannot appreciate the significance or obligation of an oath or come here and testify on his own behalf. Now, as to there having been an adjudication of lunacy or an adjudication of insanity, the adjudication is not needed or required, because the protection of the statute is extended because of the man's mental condition.

30 The Court: I am going to allow the plaintiff to testify, but I am going to confine her testimony entirely to what she has done. I will not permit her to testify to any conversations with Mr. Wood.

Mr. Carroll: Your Honor will allow me an exception?

The Court: You may have it.

(Objection noted for defendant as ground of appeal.)

Mr. Cooper: I assume, then, under your Honor's ruling that we must rely upon an implied promise instead of express?

The Court: Yes.

10

D. EFFIE ECKMAN, sworn for plaintiff.

Direct examination.

By Mr. Cooper:

Q. Prior to September 1, 1923, where did you live?

A. Hazel Avenue.

20

Q. In what city?

A. Philadelphia, Pennsylvania.

Q. And prior to that date were you acquainted with Bradley Wood?

A. Yes, sir.

Q. What, during the last years, has been your occupation or profession?

A. A graduate nurse.

Q. And where did you receive your training in such profession?

A. St. Joseph's Hospital, Philadelphia, 17th and Girard Avenue.

30

Q. Did you graduate from there?

A. I did.

Q. Prior to September 1, 1923, did you have a conversation with Bradley Wood as the result of which —

Mr. Carroll: Objected to.

Mr. Cooper: I am not asking the conversation. I must show some reason for it.

The Court: Go about it in the other way. What is the date you speak of?

Mr. Cooper: September 1, 1923.

10

By the Court:

Q. From September 1, 1923, where did you live?

A. 4924 Hazel Avenue.

Q. And whose home was that?

A. It was a rooming house.

Q. All right. Anyone else living there, or you living with anyone?

A. Yes, Mrs. Oberholtzer.

20

Q. Do you know Bradley Wood?

A. Yes.

Q. During that period did you have any relation with him at all, association?

A. Yes, sir; I nursed him.

Q. Go ahead and tell your story. You knew him. When did you begin nursing him?

A. If you will permit me I will.

Q. Well, I am, very gladly.

30 A. In 1918, during the flu, I nursed him during a serious case of flu, congested lungs, kidneys in a bad shape, high fever.

By Mr. Cooper:

Q. Now directing your attention to the year 1923, did you also nurse him in that year?

A. Yes.

Q. Now when did those services commence? That is what the Court and jury want to know.

A. They began the first of September.

Q. 1923?

A. Yes.

Q. And for what period did they extend? I will withdraw that question. Was there an interruption in the service, that is, between 1925 and 1926, was there some interruption in the service? 10

A. Yes, there was.

Q. Now over what period or what time did the first period of your nursing extend, from 1923 to when?

A. To the 9th of December, 1925.

Q. And what did you do for Mr. Wood during that period of time?

A. I gave him—he went to Dr. John H. Musser, of Philadelphia, at that time, at the present time 20
New Orleans

Q. What did you do for Mr. Wood during that period?

A. He ordered high up colon irrigations, or in plain language, a high enema. Perhaps the jury won't understand.

Q. How many times a week was it necessary for you to perform that service?

A. Three times and sometimes oftener, occasionally oftener. 30

Q. Did those services extend over that entire period which you have just spoken of?

A. Yes.

Q. What else did you do for Mr. Wood during that time?

A. I massaged his limbs.

By the Court:

Q. Were you living in the same apartment, staying in the same apartment with him?

A. No, sir; not at that time.

Q. Go on.

A. I massaged his limbs every evening.

By Mr Cooper:

10

Q. How long did that take?

A. About an hour.

Q. What else did you do for him while you were living at Philadelphia?

A. I prepared his meals, I gave him his medicine; I washed all of his laundry, which consisted of his shirts, underwear, socks and handkerchiefs, but not his collars, and did the shopping.

Q. What else did you do about the house?

20

A. Well, that was all that was expected for me to do about that house, because that was in a rooming house. The lady herself attended to her own household duties.

Q. During this period of time was Mr. Wood confined to his bed or did he go to his —

A. No, sir; he was not. Part of the time he was, but not all the time.

30

Q. Were you familiar with the compensation which graduate nurses received in Philadelphia during that period for such work as you performed for him?

A. Yes, sir.

Q. And what was the compensation?

A. The compensation was \$50 a week for a twelve hour day.

Q. Did you work twelve hours or more for Mr. Wood during that period?

A. We considered a twelve hour day work was there before seven o'clock to prepare his breakfast, so he could get to his depot, get to the office first. He had to go to the office first.

Q. He was employed where at that time?

A. Prudential Insurance Company.

Q. Did he get his lunch out or come home for lunch?

A. Sometimes he came home, when he felt very badly he came home for lunch.

10

Q. And when he came home who prepared his lunch?

A. I did.

Q. Who prepared his supper for him?

A. I did.

Q. And then you say you massaged him and gave him what medical attention was necessary?

A. I massaged his limbs; yes, sir.

Q. Now directing your attention to February 17, 1926, where was Mr. Wood, if you know, between 20 December, 1925, and February, 1926?

A. In Dunwoodie Home, a house. He went there to rest.

Q. You are claiming no compensation for services rendered to him between 1925 and February, 1926?

A. No, sir; although I visited him and did everything necessary for him. I claim no compensation for that time.

Q. Referring to the date of February 17, 1926, did you from that period on commence to nurse Mr. 30 Wood?

A. Yes, sir.

Q. Describe his condition from February 17th down to December, 1929.

Mr. Carroll: I object to that, may it please your

Honor. I don't know whether the witness is qualified to answer the question.

The Court: We will ascertain.

Q. Describe his condition ——

The Court: She may describe his condition if she knew.

10

Q. Describe his physical condition and mental condition, if you can, from February 17, 1926, to December 14, 1929.

A. Mr. Wood was of a very restless nature, and repeatedly I was told to go wherever he went, not to leave him alone. The Prudential Insurance doctor himself told me to do that.

Mr. Carroll: I object to that.

20

The Court: Strike that out.

Q. Not what other people told you ——

The Court: You saw him.

Q. What was his condition, what did you do? That is what the Court ——

30 A. His condition was of a restless nature, very restless.

By the Court:

Q. What was his physical condition at that time?

A. He carried a temperature averaging from 90 —seldom it was normal.

Q. Well, did you render services to him as a nurse?

A. Just a minute, your Honor. Yes, sir; here is my —

Q. No, you don't have to show that.

By Mr. Cooper:

Q. Don't get worked up or nervous. Just take it easy. What did you do for Mr. Wood over this 10 period of time?

A. I took his temperature every day, I bathed him, I prepared some of his meals.

By the Court:

Q. You just take your time and tell us in your own way. I will tell these lawyers not to say anything at all. You keep out of the picture, Mr. Cooper, and counsel will do the same thing, unless 20 he thinks he is being hurt. You go on and tell it just as if you were sitting in a corner and telling it in your own way.

A. You give me a question, Mr. Cooper.

The Court: You tell the story just as you told it to him.

By Mr. Cooper:

30

Q. From February 17, 1926, to December 14, 1929, which is the period of which I am now inquiring, now just take it easy and tell the jury what you did and Mr. Wood's condition during that period.

A. Mr. Wood came home from the Dunwoodie Home, and he was wandering around the streets

looking for a room and he came to me and says, "I can't ——"

Mr. Carroll: I object to what he said to her.

By the Court:

Q. Leave out the conversation.

10 A. "I can't get a room." He says, "They tell me——"

Q. Never mind that, madam. I told you not to give his conversation.

A. I beg your pardon. I don't understand the law.

Q. Don't give his conversation, but where did you go with him, where were you from time to time, what did you do for him?

20 A. I went to Dr. Musser's with him every time he went and I carried out all his orders. I took his temperature, which ranged from 99 2-5ths to 101, and sometimes 102 every day. I took that temperature for a period of three years or more, and I bathed him and I gave him his medicine. I prepared his nourishment, I prepared his meals.

Q. Did his condition improve at all, Miss Eckman?

A. No, your Honor.

Q. Steadily worse?

30 A. The only thing that improved, your Honor, was his blood pressure.

Q. Well, go on.

A. That was when I took him to Dr. Musser 268. I reduced it to practically normal by the treatments, the cold irrigations, removing the poison from the intestinal tract, which causes a lot of high blood pressure.

Q. Has he been able to help himself?

A. He was able to help himself, he used to walk about with a cane.

Q. Until when?

A. Until February of 1929.

Q. Last year.

A. Yes.

Q. And since then what has been his condition?

A. He had a grippe cold and went to bed and he was in bed at the time the gentleman visited him 10 from Philadelphia.

Q. Has he been able to walk since February, 1929?

A. Yes, he walked from the bed to the —

Q. Chair?

A. Chair.

Q. What has been his mental condition?

A. Well, his mental condition varies. In the mornings it was almost normal; in the evenings when he had—afternoons, after two o'clock, it began to waver, and he began to get irritable, and those things that were not normal. 20

Q. When did you come down to Asbury Park?

A. We came down to Asbury Park in 1927.

Q. And what was Mr. Wood's condition at that time?

A. Then he could walk. I used to take him by the arm and he had a cane.

Q. What sort of care did he require then?

A. He required the same care all through, and 30 more added to it as it grew worse. His bowels began to run.

Q. You needn't go into details.

A. And all those things which required a great deal of care.

Q. You gave him all that sort of attention, did you?

A. All. I did all those things, washed and cleaned up things. The laundress wouldn't accept them unless they were.

Q. So as a matter of fact, you have been looking after him physically as a nurse since September 1, 1923?

A. Yes, sir.

Q. With the exception of the time that he was at the Dunwoodie Home; is that correct?

10 A. Yes.

Q. And he remained there at the Dunwoodie Home until December 9, 1925; is that right?

A. He went to the Dunwoodie Home in December 9, 1925. The Prudential Insurance Company put him on disability the first of December.

Q. All right. Now he remained at Dunwoodie until February 17th?

A. Yes.

20 Q. 1926?

A. Yes, sir.

Q. Then he came out and where did he go to live?

A. He went to live on North 52nd Street. He couldn't stand the noise there and he was looking for a more quiet —

Q. Quiet place?

A. Residence.

Q. Did you continue to care for him?

A. Yes, sir.

30 Q. And you have done it ever since?

A. Yes, sir.

Q. What sort of work have you done besides nursing?

A. I have done besides nursing, established a little home for him here in Asbury Park, and I do all the household duties of that home.

By Mr. Cooper:

Q. Consisting of what?

A. Consisting of washing, marketing, getting in a few little supplies.

By the Court:

Q. Preparing the food?

A. Preparing the food.

10

Q. Keeping house?

A. Keeping house, cleaning.

Q. Taking entire care of Mr. Wood, serving his meals?

A. Serving his meals.

Q. Looking after his clothing?

A. Yes, sir.

Q. Mending and so on?

A. Yes, and darning.

Q. Darning?

20

A. Everything that was necessary.

Q. Do housewives still darn, madam?

A. Yes, in my estimation.

Q. I thought everything was done by electricity now, and we had socks without any holes in them.

A. I don't know that.

Q. You don't find it so?

A. No, sir. I wish I did.

By Mr. Cooper:

30

Q. Go ahead.

The Court: Go ahead.

Q. Go ahead with your story.

A. I took him out in a wheelchair and then I

couldn't get the chair over the steps unless I paid a man to take him down, and I didn't feel that I could afford that, so I got him a house chair that I could push and I pushed him out on the porch. The rocking-chair was getting a little too heavy for me to pull.

By the Court:

- 10 Q. How large a man is he? Is it Mrs. or Miss Eckman?

By Mr. Cooper: Miss Eckman.

Q. How large a man?

A. He weighed between 160 and—well, he weighs about 165, your Honor.

Q. How tall?

A. Five feet, six.

- 20 Q. And how old is he now?

A. He was born in 1866.

Q. Sixty-four?

A. Sixty-four in January, the 29th day.

By Mr. Cooper:

Q. Miss Eckman, are you any relation of Bradley Wood in any way?

A. No, sir.

- 30 Q. You are not related to him in any way?

A. No, sir; I am only acting in the capacity of a graduate nurse.

By the Court:

Q. Have you been paid anything for your services?

A. No, sir.

Q. At any time?

A. No, sir.

Q. Don't you ever receive any pin money or spending money?

A. No, sir.

Q. From Mr. Wood? Never have?

A. He doesn't know women need that.

Q. He doesn't know women need pin money?

A. No, sir.

Q. I am not so sure. Every man.

10

By Mr. Cooper:

Q. The expenses of running a home have been partially paid by Mr. Wood, have they not?

A. Yes, sir.

By the Court:

Q. When you needed money, Miss Eckman, where did you get it?

20

A. I would ask him if I could draw a check in the account.

By Mr. Cooper:

Q. And you did draw it?

A. And when he could write he would tell me to make the body of the checks and he would sign them.

30

By the Court:

Q. What moneys did you draw that way, for what purpose?

A. Oh, about \$25 a week, perhaps \$20.

Q. \$20 or \$25?

A. Yes, anywhere along there.

Q. What did you use it for?

A. Why, for the household expenses and food.

Q. Never used any of it for your own services?

A. No, sir.

Q. Never credited any of it?

A. No, sir; I did not.

10 Q. So at no time has Mr. Wood paid you anything?

A. No, sir.

Q. From the very beginning?

A. No, sir.

Q. For your services?

A. No, sir; I had a little money of my own. I bought my own clothes. Of course, if I had a uniform to be washed I would go to the laundry; that belongs to his laundry.

20 Q. Do you wear a uniform?

A. Sometimes, not often, because it got too dirty.

Q. Tell us about the episode of that check that you drew for \$20,000, \$10,000, whatever it was.

A. I never drew any check for \$10,000, your Honor.

Q. Do you know anything about it?

A. No, sir.

The Court: What was the amount, Mr. Cooper?

30

Mr. Cooper: I understood \$108 is one check that I heard mentioned.

The Court: They were Dr. Ackerman's checks.

Q. But you never knew anything about a large check being drawn?

A. I never did.

Q. Transferring his money from a bank in Philadelphia to Asbury Park?

A. There was no \$10,000 check transferred there.

Q. What was the sum?

A. I don't remember what sum. Oh, you have it. I know what you mean. It was a transfer. I will tell you if you will let me begin at the beginning.

Q. All right.

A. The Prudential Insurance Company did not 10 approve of the way that he banked his money at the Asbury Park & Ocean Grove Bank. I didn't do that. Mr. Harold Winsor put the money in joint account there. He said it took Mr. Wood so long to write a check, to sign his name.

Q. You had nothing to do with that at all?

A. I had nothing to do with that transaction. I didn't want to sign a check. I said, "Remember, Mr. Winsor, this is a Prudential check and they don't want such transactions, you know they 20 don't." He says, "It must be done and we are here and we do this. It is a power of attorney." But they never got a power of attorney.

Q. You never signed it?

A. No, I didn't sign it, I never saw one.

Q. And how long was the account carried in the joint account, joint names?

A. It was only carried a short time.

Q. Then what happened?

A. The Prudential Insurance inspector came 30 down and he went back and told them a story, what I don't know.

Mr. Carroll: Objected to.

The Court: Strike it out.

A. As a result they discontinued Mr. Wood's disability compensation.

By Mr. Cooper:

Q. And when was that?

A. That was the first day of December, 1928.

Q. And since that time has he received any money from the Prudential Insurance Company to carry
10 on the household?

A. They reinstated it in March, late in the month of March, 1929.

Q. And then after that did you receive it?

A. Said they didn't understand and reinstated it.

Q. And after that did you receive some then from the insurance company?

A. Yes, sir; I received it then until the first of August of the same year.

Q. And then what happened?

20 A. The Prudential Insurance Company sent his disability compensation to the bank.

Q. And you got none of that?

A. I had no funds to maintain Mr. Wood from last August.

Q. How has he been maintained?

A. My own savings of hard work for thirty years as a graduate nurse.

Q. You have been using it for that purpose?

A. Yes, sir.

30 Q. How much have you used?

A. All of it.

By the Court:

Q. What does it amount to, have you any idea?

Mr. Cooper: I don't know, your Honor. Strange

as it may seem, we are not making any claim for that in this suit.

A. No, sir; I am only telling you how he was maintained.

Mr. Cooper: Just a moment. Miss Eckman is only claiming in this suit what she has actually earned as a nurse and these two bills.

10

By Mr. Cooper:

Q. I show you, Miss Eckman, Exhibit P1 for the plaintiff, and ask you if you paid that bill to Dr. Ackerman?

Mr. Carroll: I object to that, may it please your Honor. It doesn't appear that there was any legal obligation or any moral obligation resting on this plaintiff to pay that bill.

20

The Court: I am not so sure. She may explain the circumstances.

By the Court:

Q. Why didn't Mr. Wood pay those bills himself?

A. He didn't have any money.

30

Q. Didn't have the money?

A. The Prudential Insurance Company didn't send him any money.

The Court: In view of the circumstances, I think I will allow it.

A. The first of August, 1929, was the second withdrawal of his disability compensation. It was sent to the bank. I paid this bill so that I could tell that doctor to come again.

Q. How much?

By Mr. Cooper:

Q. What is the amount of the bill?

10 A. \$84, your Honor.

Q. I show you plaintiff's Exhibit 2, and ask you if you paid that to Dr. Ackerman.

A. I requested Dr. Ackerman to send his bills monthly, please. When they get so large they are hard to pay.

Q. Did you pay this bill?

A. I paid this bill.

Q. Out of your funds or Mr. Wood's?

20 A. Out of my own funds, and I paid it when he was in the house and he didn't receipt it. I wanted to take it over to have it receipted, but I seldom went to the doctor's office. I did remember it when he was there.

Mr. Cooper: That is all. Cross-examine.

RECESS TILL 1.05 P. M.

(Trial of the cause resumed at 1.05 P. M.)

D. EFFIE ECKMAN, resumed.

Further direct examination.

By Mr. Cooper:

10

Q. Miss Eckman, is Mr. Wood now confined to his bed?

A. Yes, sir.

Q. How long has he been in that condition?

A. Since last March.

Q. You mean March——

A. In the month of March, 1928—1929.

Q. Do you know what is the usual charge of a trained nurse in an infectious case such as this is 20
in the vicinity of Asbury Park?

A. I do.

Q. What is it?

A. \$12 a day, twenty-four hour day.

Q. And in addition to that is it customary, do you know, to hire a housekeeper to perform the usual services in and about the house?

A. Yes.

Q. Do you know what such a housekeeper gets?

A. They work eight hours a day, \$4 a day; fifty 30
cents an hour for an eight-hour day.

Q. That is \$4 a day?

A. \$4 a day.

Mr. Cooper: Cross-examine.

Cross-examination.

By Mr. Carroll:

Q. Miss Eckman, how long prior to September 1, 1923, had you known Bradley Wood?

A. Well, I first met him in the hospital in 1899.

Q. Was he a patient there?

A. No, sir; he was visiting one of my patients
10 in the typhoid fever ward.

Q. And you first met him in 1899?

A. Yes, sir.

Q. And your acquaintanceship has continued with him ever since?

A. No, sir; not that long. I met him afterwards. Or course, he recognized me and knew me, but I was in the hospital three years.

Q. I know, but since you first met him in 1899
20 you have known him continuously ever since, haven't you?

A. I have known him ever since, but I wouldn't say continuously, if you mean —

Q. Now, in 1923, September 1st, he was living on Hazel Avenue?

A. No, sir; he was living at 5319 Ludlow Street.

Q. And you were living on Hazel Avenue?

A. Yes, sir.

Q. Well, when was it that you and he first took
30 up your accommodations at the same apartment or in the same house?

A. After he came from Dunwoodie Home.

Q. I know, but when was that?

A. 1926.

Q. In 1926?

A. Yes, sir.

Q. What month of 1926 was that?

A. I don't quite remember what month.

Q. Was it in the early part of the year?

A. It was in the early part of the year.

Q. So prior to the early part of 1926 you and he had not dwelt together in the same apartment or the same house?

A. No, sir.

Q. Now between September 1, 1923, and the early part of 1926 you attended him; what time in the mornings would you go to his apartment?

10

A. I would leave the house at half-past six, and if the service was good I would get there in twenty minutes.

Q. And then you would spend what time of day there?

A. The entire day, from 9.30 to 10.30 at night.

Q. From 9.30 to 10.30 at night?

A. All depended on how much I had to do for him after supper.

Q. And then you would go home and come back again the next morning?

20

A. Went home to bed, sure.

Q. And that condition continued from September, 1923, down into the early part of 1926?

A. No, sir; that continued only fourteen months.

Q. Fourteen months?

A. Yes, sir.

Q. Well, then was the gap in between the time when he was in the Dunwoodie home?

A. But I attended him just the same.

30

Q. Now, from September 1, 1923, down until 1926, was he away from his business all the time?

A. No, sir.

Q. Well, to what extent was he away from his business?

A. He was away from his business, I guess, about

four weeks at the beginning of the illness in September.

Q. And after those four weeks would he go back to business?

A. He was better able to go back to business.

Q. Now you say he had an illness in September, 1923, lasting about four weeks?

A. Yes, sir.

Q. And then he went back to business?

10 A. Yes, sir.

Q. Now how long was he back at business?

A. He attended to his duties until they put him on permanent disability.

Q. And when did you say that was?

A. In 1925, December 1st.

Q. So that allowing for four weeks in September, when he had this illness, he was at his place of employment every day?

A. Yes, sir.

20 Q. Until November, 1925?

A. Yes, sir.

Q. What were you doing at his apartment when he was away at work?

A. I was preparing his meals and doing his washing and mending and making his bed and getting things ready in general for the treatments when he came home. It took me all day to do that.

Q. It did take you all day to do that, from half-past six in the morning until half-past ten at night?

30 A. I had to prepare his breakfast and get him to his office. I used to leave the house at half-past six in order to get there by ten minutes of seven.

Q. What time did he leave the house to go to his job?

A. Well, that varied. I couldn't tell you, because I never watched the clock, but it was usually as soon as ten minutes of eight.

Q. Ten minutes of eight to get to the office?

A. Yes, sir.

Q. And would he come home for his lunch in the middle of the day?

A. Sometimes, frequently; I have forgot.

Q. How long did he remain at his lunch hour?

A. Until he had his lunch, and then he went back to his duties.

Q. How long would that be, about an hour?

A. Perhaps.

Q. What time did he come home for his dinner in the evening?

A. He came back about five o'clock.

Q. And for that period you are claiming \$50 a week?

A. Yes, sir.

Q. Do you know whereabouts he had his money deposited during that period?

Mr. Cooper: Objected to as incompetent and immaterial. 20

The Court: Well, it is cross-examination. In view of counsel's opening, I think I will allow it.

Mr. Cooper: I don't think it is cross-examination. There has been nothing brought out that —

The Court: I will allow it.

(Objection noted for plaintiff as ground of appeal.) 30

Q. Do you know where Mr. Wood kept his money from September, 1923, down until the early part of 1926?

A. Yes, sir.

Q. And where?

A. I remember because he took me to the bank with him.

Q. I know, but where was it?

A. 52nd and Market Street.

Q. The Market Street Title and Trust Company?

A. The Market Street Title and Trust Company.

Q. You knew he had a checking account there?

10 A. I presume he did, because he paid all his bills by check.

Q. And he had a savings account there, too, didn't he?

A. I don't know whether he had it there at that time or not. I think he did; yes, sir.

Q. Now, between 1923 and 1926, Mr. Wood was able, you say, to draw his own checks?

A. Yes, sir.

Q. And attend to his own business?

20 A. Yes, sir.

Q. Well, now how comes it that you worked all that time from 1923 to 1926 without receiving any compensation?

A. Well, I was willing to wait a reasonable time for the compensation.

Q. Did you ever mention it to him?

A. Certainly.

Q. And he put you off?

A. Yes, sir.

30 Q. And none the less you continued to work there?

A. Certainly.

Q. For three years or more?

A. Certainly.

Q. He paid his other bills, didn't he?

Mr. Cooper: Objected to as immaterial.

The Court: I will allow it.

(Objection noted for plaintiff as ground of appeal.)

Q. He paid his other bills, didn't he?

A. I presume so, I don't know. I didn't ask him.

Q. Well, you were there in the daytime all day long; no creditors came around trying to collect from him, that you know of, were there? 10

A. Oh, yes, the milk bill.

By the Court:

Q. Did he get behind with the milk bill?

A. No, sir; he paid it.

Q. Of course, the milkman would be on the job, you know that?

By Mr. Carroll: 20

Q. You were living at a separate address altogether during that period from 1923 to 1926?

A. Yes, sir.

By the Court:

Q. How did you clothe yourself, supply your financial needs during the period? 30

A. Because I had a good supply, your Honor.

Q. Didn't you buy any clothes for three years?

A. Not very often. I didn't wear many clothes, only uniforms. I am no society lady. I have occasion only for a street dress, coat, hat and uniform. I am usually on duty.

By Mr. Carroll:

Q. Prior to taking up these services for Bradley Wood you had earned your own living as a trained nurse, hadn't you?

A. Certainly.

Q. And what was the custom for trained nurses to be paid every week?

10 Mr. Cooper: I object to it. I think it is entirely irrelevant.

The Court: Oh, no, I am going to allow an interrogation here, especially under cross-examination, to interrogate whether there was any sort of intent to charge this man.

Mr. Cooper: I withdraw the objection.

20 The Court: In other words, such a claim is naturally subject to scrutiny and inspection, in view of this present condition. I will allow a full investigation.

(Question repeated.)

A. Not necessarily.

Q. Well, what was the custom, as far as you know it, as to whether trained nurses were paid by the

30 people for whom they were employed to nurse?

A. Well, I only know what my own custom is.

By the Court:

Q. What was it?

A. If people had the money and could pay they

paid. If they didn't, I was willing to wait. Where there is sickness there are many expenses and large ones.

By Mr. Carroll:

Q. Or didn't Mr. Wood have the money between 1923 and 1926, as far as you know?

By the Court:

10

Q. Could he have paid you?

A. He could have, your Honor, but it would have taken all for me.

By Mr. Carroll:

Q. You knew, then, that a charge of \$50 a week would have taken every penny of Mr. Wood's income? 20

A. No, I didn't say it would take every penny, but it would have taken the greater part of his weekly income.

Q. You knew what his weekly income was?

A. No, I didn't know exactly what his weekly income was. I never knew what it was.

Q. Then how do you know that \$50 a week would have come pretty close to exhausting his entire weekly income?

A. It usually does exhaust a man's income that 30
hasn't got a very high salary.

Q. Well, did you know what his salary was?

A. No, sir; I didn't. For that reason I was lenient with him.

Q. Did you make any inquiries to ascertain?

A. No, sir; I didn't.

Q. Did you ask him?

A. No, sir; I didn't. I trusted him.

Q. Well, did you make any inquiries at all to determine whether or not Mr. Wood was able to pay you \$50 a week?

A. No, I didn't. He said he would pay me what I asked, and I told him what the salary was and that settled it.

10 Q. Why didn't you make any inquiry?

A. Why should I if I trusted the man himself?

Q. Well, now when he didn't pay you why didn't you leave?

A. I wouldn't leave a dog if he was sick to die without any attention. Why should I leave the man?

Q. Wasn't there any institution in which he could have been placed?

20 Mr. Cooper: Now that is objected to, may it please your Honor. This guardian has not made any effort to put him there.

The Court: You haven't asked the question I thought you were going to ask. Proceed.

Mr. Carroll: Does your Honor allow that question?

30 Mr. Cooper: Objected to.

The Court: I will allow it, yes.

(Objection noted for plaintiff as ground of appeal.)

By the Court:

Q. Was there an institution that he could have been placed in?

A. Yes, there are institutions, your Honor.

Q. Well, why did you feel you were under an obligation to continue to do this work for nothing? Now the laborer is worthy of his hire. You have heard that expression, haven't you?

A. Yes, sir.

Q. Why did you continue to work in this—may I say—difficult service without any pay at all?

A. The institutions that they put patients in and the care that they get in there were objectionable to him.

Q. You were friendly with him, were you?

A. I would be friendly to anybody that was sick, your Honor, if I could help them, and so —

Q. Even though you were not being paid?

A. I have taken care of many a one and have never been paid until they were well enough to set out and try to help themselves.

The Court: Proceed.

A. I have thirty years' experience, your Honor.

By Mr. Carroll:

Q. But what did you understand, speaking now of the period between 1923 and the early part of 1926, what did you understand or gather that Mr. Wood's weekly income was?

Mr. Cooper: I think, may it please your Honor, that there has been sufficient latitude along that line.

A. I don't understand the question.

The Court: She doesn't understand the question, she says.

A. I don't know what he means.

Q. I say what was your idea or notion between 1923, September 1st, and the early part of 1926, as to what Mr. Wood's weekly income was?

10 A. I had a notion —

Mr. Cooper: Objected to as immaterial, in line with what she has testified to.

By the Court:

Q. Did you know what it was?

A. No, sir, your Honor.

20 The Court: She says she doesn't know.

A. I didn't question people about their income. They wouldn't tell me if I did.

By Mr. Carroll:

Q. Were you able to form any idea —

A. No, sir; I was not.

30 Q. Won't you let me finish the question, please, Miss Eckman?

A. I beg your pardon.

Q. Were you able to form any idea through your attendance on Mr. Wood between September 1, 1923, and the early part of 1926 as to what his weekly expenses were?

A. No, sir.

By the Court:

Q. Did you ever render a bill to Mr. Wood?

A. No, sir.

The Court: Proceed.

By Mr. Carroll:

Q. Who paid the rent of the premises?

10

A. Where?

Q. At the places where he was living.

A. I paid my own rent.

Q. No, who paid the rent of his room?

A. He paid it himself.

Q. You had nothing to do with expending any of his money between 1923 and 1926?

A. No, sir.

Q. Did you ever see his check book during that period?

20

A. No, sir.

Q. Did you ever see his deposit books during those periods?

A. No, sir.

Q. Well, you said you went to the bank with him?

A. Yes, sir.

Q. On how many occasions?

A. I didn't take his check book or his bank book; I looked at it, though.

30

Q. On how many occasions did you go to the bank with him?

A. I couldn't tell you.

Q. Between 1923 and the early part of 1926, did you go to the bank with him on more than one occasion?

A. Oh, yes, I went more than once.

Q. Well, how many times?

A. I couldn't tell you.

Q. A great many times?

A. I couldn't tell you.

Q. So many times that you can't recall?

A. No.

Q. Well, would it a frequent or infrequent thing?

A. I didn't keep any account of them.

10 Q. For what purpose did you go to the bank with him?

A. For no purpose whatever, no purpose. He was going to the bank to do business. He went in the bank and did business. I waited until he was through. If it was warm I stayed outside, if it was cold I went inside, if it was wet I went inside.

Q. During this period between September, 1923, and the early part of 1926, Mr. Wood was very much under your observation, was he not?

20 A. As a nurse, yes.

Q. Well, as a housekeeper, too?

A. Yes.

Q. And there wasn't very much he did that you didn't know of, was there?

A. Oh, yes. I didn't interfere with his business at all. I am not a bookkeeper nor nothing of that kind. I didn't do that.

30 Q. Well, now in the early part of 1926 you and he took up your accommodations in the same apartment?

A. No, sir; not "you and he."

Q. Well, now you start the second part of your claim here from February 17, 1926, to December 14, 1929, you claim \$100 a week?

A. Yes, sir.

Q. Now on February 17, 1926, where was Mr. Wood domiciled, or where was he living?

A. Perhaps at Hazel Avenue.

Q. Don't you know?

A. Yes; I can't recall. It is a long time and my brain is tired. I have done night and day work since then.

Q. How did you fix the date of February 17, 1926, as the beginning point for the second part of your claim?

A. How?

Q. Yes.

10

A. I fixed it by the time he left Dunwoodie.

Q. Then how do you know that he left Dunwoodie —

A. And when he went to Dunwoodie.

Q. How do you know he left Dunwoodie the 17th of February?

A. He went to Dunwoodie December 5, 1925, and he was there ten weeks.

Q. And it was when he came out of Dunwoodie that the second part of your claim begins?

20

A. Now I recall what you mean; yes.

Q. And you can't tell where he was living then?

A. He came from Dunwoodie and went on North 52nd Street.

Q. And did you go there with him?

A. No, sir.

Q. Well, as long as you and he were in Philadelphia, were you always in one apartment, in one house, and Mr. Wood in an apartment in another house?

30

A. Different sections of the city altogether.

Q. And you continued to go to his place every day?

A. I did.

Q. At half-past six in the morning and stay there till about half-past ten at night?

A. Yes, sir.

Q. And in February, 1926, he had been put on the disability list of the Prudential Insurance Company?

A. No, sir; he was not.

Q. When did he go on the disability list?

A. December 1, 1925.

Q. That is what I mean. So in February, 1926, he was on the disability list of the Prudential Insurance Company, was he not?

10 A. He was put on disability, yes, in 1925.

Q. All right. Now in November, 1928, you and he came down to Asbury Park and opened the present establishment, didn't you?

A. No, sir; we didn't.

Q. When did you come to Asbury Park, I mean to take up your permanent residence at the place where you are living now?

A. Just please don't interrupt me and I will tell you.

20 Q. All right.

A. He came to Asbury Park sometime in July.

Q. Of what year?

A. 1927.

Q. Yes, but you were not living at your present address then?

A. No, because he didn't have the present address then to live at.

Q. I understand that; that was just a temporary visit?

30 A. No, it was not a temporary move.

Q. Well, then what was it?

A. He came down to Asbury Park to live here.

Q. And where did he live?

A. He lived at the Kentucky Hotel.

Q. You were with him?

A. I was with him.

Q. All right.

A. And there is where he had a stroke.

Q. All right. Now that was in July, 1927?

A. He became paralyzed —

Q. Now wait, Miss Eckman.

Mr. Cooper: Let her answer.

Q. It was in July, 1927, wasn't it?

A. What do you mean was in July, 1927?

10

Q. You say that he came to the Kentucky Hotel in Asbury Park and had a stroke?

A. Yes.

Q. In 1927?

A. Yes.

Q. Now what month was of 1927 was that?

A. Well, if it was in July, 1927, naturally it would be in July.

Q. And you were with him, weren't you?

20

A. I brought him down. I didn't pay the expenses, but I came with him because he wanted to.

Q. Now, prior to July, 1927, he had been living in Philadelphia?

A. On Hazel Avenue.

Q. And you had been living in Philadelphia?

A. Yes, sir.

Q. And this same arrangement that you have already described was in operation, that is, you would go to his place —

30

A. What arrangement?

Q. You would come to his place about seven o'clock or so in the morning and stay till half-past ten or so at night?

A. I don't know what you are talking about now, sir. I didn't say that.

By the Court:

Q. After you got to Asbury Park did you stay with him altogether or did you live elsewhere and go to see him certain hours in the day?

A. No, sir, your Honor, I stayed with him.

Q. Stayed with him at the Kentucky Hotel?

A. At the Kentucky Hotel.

Q. And from then on until he rented the present
10 house where he lives?

A. Yes, sir.

By Mr. Carroll:

Q. And when you came down to Asbury Park in July, 1927, you had still not received any compensation whatever, had you?

A. No, sir.

Q. You were still trusting him for the money?
20

A. And I would trust him still if there was any money to go with.

Q. Now how long did you stay at the Kentucky Hotel?

The Witness: I think those bills are on the top of the case there, Mr. Cooper.

(Bag produced to witness by Mr. Cooper.)

30

A. From July 29 to October 17th.

Q. Then you went back to Philadelphia?

A. Yes, to get his disability compensation, he went back.

Q. How long did he stay in Philadelphia after returning from Asbury Park in October, 1927?

A. Until he got his disability compensation.

Q. When was that in point of time?

A. I went back in October and I asked him—he spoke to Mr. Micali about it. Mr. Micali said he couldn't get any disability compensation on his group policies.

Q. Pardon me, but what I want to know is after he went back to Philadelphia in October, 1927, how long did Mr. Wood continue to stay in Philadelphia?

A. I am trying to tell you. He said he wasn't ready——

10

Q. Is it a matter of weeks or months?

The Court: Don't interrupt her talk. Let her go on.

A. I am trying to tell you the most important part of it.

The Court: You see he may not think it as important as you think.

20

A. It is very important, your Honor, when there is money put up for a sick person.

By the Court:

Q. The question is, how long he stayed in Philadelphia.

A. Oh. I was coaxing them from October 17th until the latter part of the year to write that letter to the company for Mr. Wood's disability compensation. I said, "Well, if you don't write it, then I will." He said, "No, don't do that. It must be a Prudential Insurance representative. I will speak to Mr. Shea."

30

Q. Now let me interrupt you. It is a very simple

question. How long did you stay in Philadelphia when you went back?

A. Who?

Q. That is what I thought, you didn't understand the question.

A. Well, from October to July.

Q. Then you came back to Asbury Park?

A. Yes.

10 By Mr. Carroll:

Q. That was in July, 1928?

A. Yes, sir.

Q. You came back to Asbury Park, and where is it that you lived down at Asbury Park, your present address in Asbury Park?

By the Court:

20 Q. Where did you live in Asbury Park?

A. He lives at 207 First Avenue now.

Q. Did you take that building, that house, in July?

A. No, your Honor.

Q. Where did you live when you came back in July, 1928?

A. I took him back to the Kentucky Hotel.

Q. All right. Now you stayed there?

A. By his request, of course.

30 Q. Did you not stay there?

A. Yes, your Honor.

Q. How long did you stay at the Kentucky Hotel?

A. Until November 8th.

Q. Now, where did you go after November 8th?

A. To 207 First Avenue.

Q. And how long did you stay there?

A. There yet.

Q. That is the place you have since been; all right.

By Mr. Carroll:

Q. Now, during all that time, during this period under discussion, there has been no other person in attendance upon Mr. Wood except yourself?

A. No, sir; only when I went to see my sick sister. 10
That was on several occasions.

The Court: Anything more, Mr. Carroll?

Mr. Carroll: Just one or two more questions.

Q. Now, when did you begin writing out checks for Bradley Wood that he would sign?

A. I couldn't tell you, sir, when I began. I did it when he requested it. 20

Q. Well, didn't there come a time when he couldn't request it?

A. No, sir; that time is not yet. He can request it now if he would choose.

Q. He can discuss these matters intelligently at the present time, can he?

A. Yes, sir.

Q. You have written checks for him which he signed, have you not?

A. I made out the body of his checks frequently. 30
Even when he was at work I have made out several and he signed them.

Q. And always at his request?

A. At his request.

Q. Did you ever suggest that a check be made out to your order?

A. No, sir.

Q. Now when you came to Asbury Park and opened up this establishment on First Avenue, in whose name is that house rented?

A. I don't know as I mentioned that it should be rented in any name. Perhaps I signed the checks. I gave him a check. I have the receipts, but I don't think I have them with me.

Q. By whom has the rent been paid?

10 A. Well, by both. When he had the money part of the bills was paid by him; sometimes his money when he was very sick or needed much attention, medical attention, it didn't reach to pay the expenses.

Q. Do you know what Mr. Wood was receiving from the Prudential Insurance Company monthly?

A. Naturally I couldn't help but know when I had to take him to the banks.

Q. I am speaking now of the time down in Asbury
20 Park.

A. Why, of course, he got that compensation when he was in Philadelphia.

Q. Do you know how much it was?

A. Why, certainly.

Q. How much was it?

A. That is pension money and compensation, disability compensation. It was \$211.77.

Q. \$211.77 a month?

A. Yes, sir.

30 Q. Now he has been in receipt of that since November, 1925?

A. I think since December.

Q. December, 1925?

A. But not monthly.

Q. Now that money has at all times until the appointment of the Market Street Title & Trust Company been available for his support, has it not?

Mr. Cooper: Just a moment before the question is answered. I desire to object to that portion that refers to any appointment of the Trust Company as guardian. I don't want to be bound by it.

The Court: You are bound by it, because it is admitted, no question about it.

Mr. Cooper: How is it admitted? 10

The Court: I understand it is in the record, isn't it?

Mr. Cooper: No, it is not, shouldn't be.

The Court: I understand you are going to prove it? 20

Mr. Cooper: I intend to object to it as incompetent and irrelevant.

The Court: This question is perfectly competent up to the time that a guardian was appointed. Counsel is going to prove that now. Assuming that it is going to be connected properly I will allow it.

By the Court: 30

Q. The question is, up to the time that the Trust Company in Philadelphia was appointed guardian.

A. What is the question?

Q. The question is, did he have enough money to support and provide for him?

By Mr. Carroll:

Q. He had \$211 and some odd cents a month, didn't he?

A. Yes, sir.

Q. Now can you give us an idea what the monthly expenses of the apartment in Asbury Park were?

A. I can't give you a full idea; no, sir.

Q. How much was the rent?

10 A. The rent was \$60 a month, winter months.

Q. \$60 a month, winter months?

A. Eight months.

Q. How much in the summer months?

A. \$125 for four months.

Q. \$125 for four months?

A. \$980 for the year.

Q. How much would you spend at that time for food?

20 A. I couldn't count it all up, even if I tried, because here in Asbury Park they don't give you bills, or receipted bills, when you purchase food.

Q. Aren't you able to form any approximate idea of how much it cost to feed you and Mr. Wood during this time in Asbury Park at this First Avenue property?

A. I never have any time to try to find out, sir.

Q. How much were the gas and electric charges, if any?

30 A. They rented there in the summertime; the electric is not much. The bills are lower; probably a dollar.

Q. And Mr. Wood didn't require any clothing to any extent, did he?

A. Well, where he was short on clothing he was heavy on bed linens and undershirts.

Q. And how much would you spend for bed linen and undershirts?

A. I can't try to estimate, because I didn't have money enough to furnish only one bed with four sheets and six pillowcases and two pair of blankets.

Q. Is that all the bed linen you had?

A. That is all, and that is what I am doing yet with my two pair, is to wash between laundry bills.

Q. Was the entire \$211 a month used for living expenses?

A. I don't know, your Honor; he didn't get it every month. It was given to him in bulk for several years. That is what the bank had. I had it. 10

The Court: Really the bank could tell, then, her disbursements and the amount of the charges.

A. He has not drawn any checks on the bank for a long time.

Q. You testified, did you not, that you were providing for him out of your own money?

A. This last year I have. 20

The Court: Anything more, Mr. Carroll?

Mr. Carroll: Just few more questions.

By Mr. Carroll:

Q. Do you know Mr. Melvin H. Reinheimer, in Philadelphia?

A. He is the gentleman Mr. Tumen referred me to, to go there; I was to go there when the bank had their — 30

By the Court:

Q. Do you know the gentleman, Madam?

A. Mr. Reinheimer?

Q. Yes.

A. Well, that is the way I know him. I saw him.

The Court: All right. She knows him at the bank.

By Mr. Carroll:

10 Q. Now you knew that the Market Street Title & Trust Company had been appointed guardian of Mr. Wood?

Mr. Cooper: Objected to.

The Court: Objection overruled.

(Objection noted for plaintiff as ground of appeal.)

20

A. I had nothing to do with that. I knew nothing about it.

Q. You knew it, didn't you?

A. Two days before I was to go I knew it; they were appointed.

Mr. Cooper: I would like to raise a further objection that that is an improper way to prove the appointment of a guardian.

30

The Court: Oh, it all goes to the validity of her claim, Mr. Cooper.

Mr. Cooper: If it is limited to that I have no objection, but if it is an attempt to prove the appointment of a guardian, I do.

The Court: No bills presented to the Trust Company by her for these services she alleges.

By Mr. Carroll:

Q. When the Market Street Title & Trust Company was appointed guardian in July, 1929, insurance moneys thereafter were collected by that company, were they not?

A. I suppose so. They didn't come to Bradley Wood, that is all I know, from the first of August. 10

Q. You were told, were you not, or requested by the Market Street Title & Trust Company to go before the board in Pennsylvania or to join with them in an application for an allowance for the support of Mr. Wood out of his estate?

Mr. Cooper: Objected to on the ground that it is incompetent, irrelevant and immaterial.

The Court: Objection overruled. 20

(Objection noted for plaintiff as ground of appeal.)

The Court: It will be allowed. That again is for the jury, to say whether there was a circumstance.

Mr. Cooper: The point is this: that this plaintiff was not bound to make an application to the Trust Company. 30

The Court: I agree with you, but it may really be that when the opportunity offered and she did not do it she may be called upon to explain why she didn't do it.

Mr. Cooper: If it is limited to that, I don't object to it.

The Court: That is the purpose, of course.

Mr. Cooper: If your Honor will limit it.

The Court: The purpose is to show by the introduction of writings the appointment of this guardian?
10

Mr. Carroll: I am going to show it by an exemplified copy.

Mr. Cooper: I am going to object to it.

Q. You had been requested by the Market Street Title & Trust Company to join with them in an application to the court in Pennsylvania to fix an allowance for the support of Mr. Wood?
20

Mr. Cooper: This suit is not for maintenance for Mr. Wood, it is for her services, and therefore it is absolutely incompetent, in my opinion.

The Court: An allowance to Mr. Wood would not only comprehend his own living expenses, but any nursing he would require. I will admit it. You may have an exception.
30

(Objection noted for plaintiff as ground of appeal.)

Q. Now do you understand the question, Miss Eckman?

A. No, sir.

By the Court:

Q. Were you requested to join with the Trust Company in applying to the court of Pennsylvania for an allowance for Mr. Wood?

A. When did they send that request?

Q. Did you ever receive such a request?

A. I haven't received, to my knowledge, any request of that kind, your Honor.

10

The Court: All right. She says she never received such a request.

By Mr. Carroll:

Q. Have you ever communicated with the Market Street Title & Trust Company about securing an allowance for Mr. Wood's support?

Mr. Cooper: The same objection.

20

The Court: The same ruling.

Mr. Cooper: An exception on the same ground.

(Objection noted for plaintiff as ground of appeal.)

(Question repeated.)

30

A. Why, no, sir. I have nothing to do with Mr. Wood with the Trust Company nor the guardianship.

Q. Didn't your attorney, Mr. Cooper, to your knowledge go up there and have an interview with the Market Street Title & Trust Company?

Mr. Cooper: Objected to. This witness can't testify to what I did out of her presence.

By the Court:

Q. Did you ever authorize Mr. Cooper to do that?

A. I employed Mr. Cooper as my attorney. He did the rest.

Q. You never gave him any specific instructions?

10 A. I told him—well, he had all to do I couldn't, because I don't understand law, your Honor. I give a case into a lawyer's hands, I expect him to attend to it. When it comes to a guardian I can't answer anything. I don't know anything about it.

By Mr. Carroll:

Q. Miss Eckman, this situation went along very smoothly, without your receiving any compensation
20 or making any claim for compensation so far as anybody knew, until the Market Street Title & Trust Company was appointed guardian; that is true, is it not?

Mr. Cooper: Objected to. It is not proper cross-examination.

30 The Court: I think it all relates to this whole controversy. What was she, merely friendly with this man? Was there ever any intention to charge? That is the recognized situation. If there was no intention to charge she is not entitled to recover. If it was a mere friendly relation continuing years back and she continued her relation with him, that is, the friendly relation, and had no intention to charge, it is very unusual, I may say, as a matter of comment.

The Witness: Undoubtedly I had intent to charge.

By the Court:

Q. All right. You rendered no bill to him at any time?

A. Certainly he knew the bill. He said, "It would put me out of business."

10

The Court: Anything more?

By Mr. Carroll:

Q. I would like that question answered.

The Court: I am going to stop you in a moment in the exercise of my discretion.

(Question repeated as follows: "Miss Eckman, 20 this situation went along very smoothly, without your receiving any compensation or making any claim for compensation so far as anybody knew, until the Market Street Title & Trust Company was appointed guardian; that is true, is it not?")

A. No, sir. I was just thinking—I am tired—it didn't go smoothly because in 1927 I had to draw on my own funds. Mr. Winsor sent a transfer for my own funds to pay the bills at the Kentucky 30 Hotel.

By the Court:

Q. Do you know of any reason why you should have paid his bills?

A. Because he was unconscious.

Q. He was so ill that he couldn't act intelligently?

A. Paralyzed and unconscious.

Q. Did he recover after that?

A. He did.

Q. Then why didn't you call his attention to that?

A. A long time after that.

Q. When he did recover consciousness so that he could talk intelligently, why didn't you tell him that
10 you had spent money for him?

A. I did, a lot of times.

Mr. Carroll: That is all.

Re-direct examination.

By Mr. Cooper:

20 Q. When did you receive information of the appointment of the Market Street Title & Trust Company as guardian of Mr. Wood?

A. In March—no, June 11th they sent a notice.

Q. June 11th of what year?

A. 1929.

Q. Now when did Mr. Wood go to Asbury Park to live?

A. In 1927, the summer of 1927.

Q. Has he been in the City of Philadelphia or
30 State of Pennsylvania from 1927 to the present time?

A. Once.

Q. When?

A. In the fall of—after his severe illness he went back to get his disability compensation.

Q. Well, now when was that in point of time?

A. In September—I can tell you on just one piece

of paper. (Refers to memorandum.) October 17th.

Q. Of what year? Last fall, or winter of what year?

A. Of 1927.

Q. Has he been in the City of Philadelphia or in the State of Pennsylvania since that date?

A. No, sir; he came back after he got his disability.

10

By the Court:

Q. You say he spent the winter there? October, 1927, he was there all winter and came back in June?

A. It took him all winter.

By Mr. Cooper:

Q. What year?

20

A. 1927 and 1928.

Q. When was the last time that he was in Philadelphia or in the State of Pennsylvania?

A. That is a long time.

By the Court:

Q. Not since June, 1928?

By Mr. Cooper:

30

Q. Not since June, 1928; is that right?

A. Yes, not since then.

Mr. Cooper: That is all. Plaintiff rests.

MOTION FOR NON-SUIT.

Mr. Carroll: Now, may it please your Honor, I move for a non-suit at the conclusion of the plaintiff's case upon the ground that there has been no proof here of any circumstances from which your Honor could imply a promise on the part of the defendant to pay. All you have here is the fact that a service has been rendered for a rather long period of time, and I don't think that the mere fact that a service has been rendered is sufficient to afford a ground from which you could imply a promise to pay. Now here you have a relation between the plaintiff and the defendant that has extended back from apparently many years ago. Now as your Honor suggested, this may have been a relation of intended support on one side and services to be rendered on the other; it may have been a meretricious relation; she may have been something in the nature of a volunteer; she may have just sort of fastened herself on Mr. Wood with the idea that his allowance should be used for the support of what might be termed the joint establishment.

Now it seems to me that the origin of this relation should be disclosed and that the circumstances, not from the point of services but the circumstances from which you might infer how the relation of debtor and creditor arises ought to be proved in this case. I refer your Honor to a very old case, *Force v. Haines*.

Now take this situation. I assume we do owe something to this admittedly incompetent man. Suppose he owned a house and some painter in the

neighborhood says, "It needs painting," and he goes and paints it and he came into court and gives the court the proof that he actually painted the house. Could that alone imply a promise to pay without some proof, something to show how the people came into relation with each other, how the situation arose from which a claim could be based, an implied promise to pay?

Now if your Honor is familiar with this case of *Disbrow v. Durand* —

10

The Court: That involves a family relation?

Mr. Carroll: Yes, it goes further and holds that there need not be an actual propinquity of kindred between two people.

The Court: Yes, it does hold that.

Mr. Carroll: Upon that ground I make a motion 20
for non-suit.

The Court: I incline to the view that there is a prima facie situation developed here involving the alleged services by a trained nurse to a gentleman who evidently required such services, and also that of a housekeeper. I must accept the testimony as I find it, that is to say, so far as this motion goes, that there was no relation whatever either in the nature of a family—the usual family association— 30
or that the relation was meretricious. I am not able to go along, in the absence of proof of any such relation. We simply have the naked statement here of this plaintiff that she was a trained nurse, the man became ill and she began treating him. Of course, her narrative is rather unusual, but I need

not refer to that now. In any event, I incline to the view that there is enough here to justify the Court in denying his motion as a matter of law. I rather think it is one of fact. The motion will be denied. You may have an exception. I may say I am unable to find that the *Force v. Haines* or *Disbrow v. Durand* is controlling here under the state of the testimony as it now appears.

- 10 (Objection noted for defendant as ground of appeal.)

DEFENDANT'S TESTIMONY.

- 20 Mr. Carroll: May it please your Honor, I offer a certified copy of the record of proceedings and order of the Court of Common Pleas of the County of Philadelphia showing the appointment of the Market Street Title & Trust Company as guardian of the estate of Bradley Wood, entered on June 10, 1929, certified and exemplified according to the Act of Congress.

The Court: You may show it to Mr. Cooper and see whether it is exemplified according to the Act of Congress.

- 30 Mr. Cooper: I object to it on two grounds: one is that it is immaterial, incompetent and irrelevant; the second is that it does not affirmatively appear that the court had jurisdiction over the person of Bradley Wood, and the testimony of Miss Eckman is that at the time this order was made Mr. Wood was not within the jurisdiction of the courts of

Pennsylvania; and unless it affirmatively shows within the recitals I think it comes within the doctrine that you can collaterally attack the jurisdiction of the court appointing.

The Court: Does it show that it acquired jurisdiction?

Mr. Cooper: It does not show in the exemplification, as I can see it. 10

Mr. Carroll: Well, it depends upon what the jurisdiction was.

The Court: Was he served?

Mr. Carroll: Oh, yes, he was served with notice and he filed an answer. I think jurisdiction is presumed here, your Honor. It is presumed that every court acts within its jurisdiction. This is guardianship of the estate and not of the person. 20

Mr. Cooper: That may be a presumption, may it please your Honor, but I think in this case it has been overcome at the present time by the evidence of Miss Eckman. It was testified that at the time Mr. Wood was not within the jurisdiction of the courts of Pennsylvania.

The Court: What have you to say to this, the decree? (Reads from decree.) 30

Mr. Cooper: But it doesn't show the jurisdiction.

The Court: I will allow it.

(Objection noted for plaintiff as ground of appeal.)

(Paper marked Exhibit D1.)

Mr. Carroll: I also would like to offer in evidence the stipulation which I have heretofore submitted to your Honor, entered into between Mr. Cooper and myself, and ask that it be marked.

10

(Paper marked Exhibit D2.)

GEORGE W. WELDY, sworn for defendant.

Direct examination.

20 By Mr. Carroll:

Q. Mr. Weldy, where do you reside?

A. I am a resident of Delaware County in Pennsylvania.

Q. Are you connected with the Market Street Title & Trust Company?

A. I am trust officer for the Market Street Title & Trust Company.

Q. How long have you held that position?

A. Since 1921.

30 Q. Did you know Mr. Bradley Wood?

A. I knew Mr. Bradley Wood for several years as a depositor of the bank.

Q. Now as trust officer of the Market Street Title & Trust Company, are you in charge of the guardianship of that company for the estate of Mr. Wood?

A. I am, sir.

Q. Now the guardian was appointed on June 10, 1929. Can you tell us what Mr. Wood's estate consisted of at that time?

Mr. Cooper: Objected to, may it please your Honor, as entirely incompetent, irrelevant and immaterial on direct examination. Now on cross-examination it may be material, but on direct I do not care whether the man is worth six cents or six 10 millions. The question is whether this woman is entitled to recover or not, and for the purpose of showing that his estate is less than the amount sued for, I think it has that tendency.

The Court: Objection overruled. Of course, there is this principle. I am going along with you on a generalization of that sort, but after all, if a man cannot afford to employ help at \$50 a week, then a guardian undoubtedly has a right to conserve 20 his estate. In other words, you have the theory, apparently, that his entire estate can be awarded to anybody and his entire support be thrown on his relatives. I disagree with you.

Q. Will you answer the question, please, if you remember it? You tell us what Mr. Wood's estate consisted of at the time the guardian took charge of it in June, 1929.

Mr. Cooper: Another objection is that it is incom- 30 petent, irrelevant and immaterial.

The Court: Objection overruled.

(Objection noted for plaintiff as ground of appeal.)

A. The complete estate which we valued and filed it in the Common Pleas Court of Philadelphia County was \$17,878.17.

Q. And what did that consist of?

Mr. Cooper: The inventory speaks for itself.

The Court: He is going to tell you.

10 Mr. Cooper: Let him put in the inventory.

The Court: I don't know how any of us would know unless we look at it. Go ahead. I will let you look at it.

A. 100 shares Keystone Company for Guaranteeing Mortgages, common stock, carried at par value, \$100.

20 50 shares Keystone Company for Guaranteeing Mortgages, preferred stock, carried at par value, \$5,000.

Cash in Market Street Title & Trust Company, checking account, \$74.19.

Cash in savings bank in the Market Street Title & Trust Company, No. 9163, \$12,503.98.

That was the total principal of his estate.

30 Q. Now those Keystone bonds and that Keystone mortgage stock and those Keystone mortgage bonds, have they been productive of any revenue since the guardian was appointed?

A. We received one dividend on the preferred stock.

Q. And what was the amount of that?

A. \$200.

Q. Any interest on the bonds?

A. Nothing else.

Q. Are you able to tell us what the value of that stock and those bonds is at this time?

A. I couldn't tell you for the reason that it is a mortgage company that has invested in mortgages in Philadelphia real estate, and that is rather a hard question to answer at this time as to value.

Q. Would you regard it as a certain or uncertain estate?

A. It is an uncertain estate at this time.

Q. And the only other asset is \$12,000 cash? 10

A. \$12,503.98, and \$74.19.

Q. And since the guardian was appointed has it received any income from the Prudential Insurance Company?

A. We have received from the Prudential Insurance Company \$2,131.

Q. That is what, retirement allowance on this policy?

A. That is right.

Q. And what is the amount of the retirement allowance that he receives monthly? 20

A. Monthly allowance on the policy of the Prudential Insurance Company, \$107.70; and the final payment on that would be November 1, 1930; and there is another monthly income of \$9.74, final payment, 11/30/35.

Q. This payment will stop on November 30, 1935?

A. Yes, on the second payment of \$9.74. The second payment will stop November 1, 1930. Then 30 there is a retirement allowance of the Prudential Insurance Company of \$94.33 a month.

Q. That would go on as long as he lives?

A. Yes.

Q. Now will you state whether or not the guardian has invested that \$12,000 or any part of it?

A. The total principal is invested outside of \$503.98.

Q. What annual income is received by the guardian now, on the investment plus the income from the Prudential Insurance Company?

Mr. Cooper: I think it is all immaterial.

10 The Court: That is not material.

Mr. Cooper: I object to it for that reason. I object to it on the ground that it is immaterial.

The Court: I will allow it to complete the record of his estate. You may have an exception.

(Objection noted for plaintiff as ground of appeal.)

20

A. The gross income on the investments was \$720 a year in addition to what he received from the Prudential. Of course, that will change after this year.

Q. Do you recall, I think, in March, 1929, some communication from the bank in Asbury Park having for its object the transfer of these funds to the bank in Asbury Park?

30 Mr. Cooper: Objected to as immaterial.

The Court: What do you want to show?

Mr. Carroll: I simply want to show the effort made to have this money transferred to a joint account in Asbury Park.

Mr. Cooper: How does that bind the plaintiff under the circumstances? I object to it.

The Court: I am not so sure about that. I will allow it.

(Objection noted for plaintiff as ground of appeal.)

The Court: Miss Eckman has testified to that, 10
that it was on the advice of Mr. Winsor.

Q. Now state very briefly, will you, Mr. Weldy, so we won't take any more time than possible?

A. In March—I don't know of the exact date; I didn't come into it until after we were appointed guardian—the matter was being handled by our banking department; but in the middle of March this company——

Mr. Cooper: I object to what some other department received. 20

The Court: Not unless you know it yourself. He doesn't know about that.

Mr. Carroll: Cross-examine.

Cross-examination.

By Mr. Cooper:

30

Q. You say your company was appointed in June, 1928?

A. That is right.

Q. Have either you or any of the officers of the

company made it their business to call on Bradley Wood since then?

A. Mr. Herbert (?), one of our officers, has been there.

Q. Has your company contributed anything to his support since that time, do you know?

A. We have not.

Q. Do you know whether he is alive or dead?

A. We know he is alive, yes.

10 Q. As of what time?

A. Just three days ago.

Q. That is from a report made to you by Mr. Micali?

A. That is right.

Q. After he had been here in court or before, do you know?

A. On Friday.

Q. Was it Friday or Friday night?

A. It was Friday morning.

20 Q. Are you sure it was Friday morning, or was it Saturday morning?

A. Friday morning.

Q. Did he mention anything that occurred in court on that day or his being in court?

A. No, he merely mentioned the fact that he was down to Asbury Park and saw Bradley Wood.

Q. And saw Bradley Wood?

A. Yes.

30 Q. Did he say anything about seeing Miss Eckman at that time?

A. No.

Q. So your company has not contributed a cent to this man's support since you have been appointed guardian?

Mr. Carroll: I object. I object to the form of the question.

The Court: He admits it.

Mr. Cooper: All right, if he admits it, that is all. May I ask this man one other question?

Q. Mr. Weldy, when did you first receive checks from the Prudential Insurance Company as guardian?

A. July 31st.

Q. And prior to that time the checks had been going to the support of Bradley Wood, had they not?

A. I couldn't answer that.

Q. Well, you haven't been getting them, had you?

A. No.

Q. And your company wrote a letter about that time to the Prudential Insurance Company demanding the payment of those checks to you, did they not?

A. Yes, or soon after the necessary qualifications, that we had been qualified.

Q. And since that time received the money that the Prudential Insurance Company had been paying to him for his support?

A. That is right.

Q. And no payment was made to the order of Miss Eckman for his support?

A. No, we had made payment several times —

Q. Never mind. You said it hadn't been paid. That is all.

FRANKLIN PYFER, sworn for defendant.

Direct examination.

By Mr. Carroll:

- 10 Q. Mr. Pyfer, where do you reside?
A. 223 South Melville Street.
Q. Philadelphia?
A. Yes.
Q. By whom are you employed?
A. By the Market Street Title & Trust Company.
Q. How long have you been so employed?
A. Since 1919.
Q. You were there then between September 1st,
1923, down to the present time?
A. Yes, sir.
- 20 Q. Have you had anything to do with the keeping
of books or records showing the accounts between
the Trust Company and its depositors?
A. Yes, I had charge of them.
Q. Did you personally know Bradley Wood?
A. Yes.
Q. You have seen him and met him as a customer
of the bank?
A. Yes, sir.
- 30 Q. Will you state whether or not he had a check-
ing account with the Trust Company?
A. He did.
Q. Did he also have a savings fund?
A. Yes, sir.
Q. Did you have anything to do with keeping the
records of his accounts?
A. Yes, sir.
Q. Have you there the original records of the

bank, showing the deposits made by him in the checking account and his savings fund and the moneys drawn against them?

A. I have.

Q. Will you turn, please, to the year 1923 checking account?

A. Yes.

Q. Now between September 1, 1923, and December 31, 1923, how much money was deposited in Bradley Wood's checking account?

10

Mr. Cooper: Objected to as immaterial.

The Court: I will allow it as developing the relation between the plaintiff and Mr. Wood, one of the incidental bits of evidence that may have a bearing upon the issue; in other words, if the man was in funds and did not pay for the services, the question will arise as to why, for the jury.

20

Q. Did you make a tabulation of this for this information that we want?

A. Yes, sir.

Q. I guess this is what you want then. (Paper shown witness.)

A. \$1,339.05.

Q. How much was withdrawn?

A. \$300.

Q. And what balance was left at the end of December, 1923?

30

Mr. Cooper: The same objection.

A. \$1,039.05.

Q. Now during the year 1924, how much money was deposited in Bradley Wood's checking account and how much withdrawn?

Mr. Cooper: May it be understood that my objection goes to this entire line, so that I need not repeat it each time?

The Court: Yes.

A. Deposits, \$1,791.65; withdrawals, \$200; interest, \$47.99; total credit, \$1,839.64.

10 Q. Is that the checking account?

A. Yes at the close of 1924, \$2,678.69.

Q. Now during the year 1925, how much money was deposited in his checking account and how much withdrawn?

A. 1925 deposits, \$700; interest, \$107.21.

Q. Have you got the savings account or checking account?

20 Mr. Cooper: Inasmuch as this is an attempt to impeach his own witness —

A. This is the savings fund account.

Q. Now have you got the checking account now?

A. Yes.

Q. Now let's get it straight then. From September 1, 1923, to December 31, 1923, how much money was put in the checking account and how much was taken out?

A. \$575 deposited, withdrawals, \$666.16.

30 Q. And what was the balance at the end of the year?

A. \$101.56.

Q. Now give us the same information for 1924, checking account, deposits, withdrawals and balance at the end of the year.

A. 1924, deposits \$1,540; withdrawals, \$1,603.27.

Q. And what was the balance?

A. \$38.29.

Q. Now, 1925.

A. Deposits, \$1,747; withdrawals, \$1,487.63. That left a balance of \$297.66 for 1925.

Q. Now for 1926.

A. Deposits, \$1,467.48; withdrawals, \$1,691.26.

Q. Now for 1927.

A. Deposits, \$1,382.58; withdrawals, \$1,306.63.

Q. Now for 1928.

A. Deposits, \$1,290.09; withdrawals \$1,361.73. 10

Q. Now the period from January 1, 1929, until the account was closed out by the appointment of the guardian in June, 1929.

A. There were no checks drawn.

Q. Now will you turn to the savings account?

A. Yes, sir.

Q. Give us the amount of the deposits and withdrawals for the period from September 1, 1923, to December 31, 1923.

20

Mr. Cooper: The same objection to this account as to the other.

The Court: Yes, so understood.

A. 1923, deposits, \$3,022.79; withdrawals, \$2,300; That left a balance of \$1,039.05.

The Court: Go right along.

30

1924, deposits, \$1,791.65; withdrawals, \$200; leaving a balance of \$2,678.69.

1925, deposits, \$700; no withdrawals; leaving a balance of \$3,485.90.

1926, deposits, \$1,600; withdrawals, \$1,275; leaving a balance of \$3,950.

1927, deposits, \$3,500; withdrawals, \$1,575; leaving a balance of \$6,011.17.

1928, deposits, \$6,356.43; withdrawals, \$650; leaving a balance of \$12,055.30.

Interest credited in 1929, \$448.69; total withdrawals, \$12,503.98.

The Court: That was the transfer to the Trust Company as guardian.

10

Mr. Carroll: All right. Cross-examine.

Cross-examination.

By Mr. Cooper:

Q. Have you anything with you that shows the checks made by the Market Street Title & Trust Company since its appointment as guardian?

20

A. Since the appointment?

Q. Yes.

A. I believe it is handled through the Trust Company department.

Q. Have you any information in regard to it?

A. I don't believe so. Mr. Weldy has that.

Q. Mr. Weldy is in possession of the information?

A. Yes, sir.

Q. You know nothing about that yourself?

30

A. No, sir. What is it you want to know?

Q. I want to know how much the company paid to Dr. Steinhober for coming down and examining Bradley Wood. Do you know?

A. No, sir.

Q. Do you know how much they paid to Dr. Higbee?

A. No, sir.

Mr. Carroll: I object.

The Court: It is a circumstance for the jury.

Mr. Cooper: Merely as a matter of decreasing the account.

The Court: You may state what you have paid since then.

Mr. Carroll: He sent the doctor down one day, but Miss Eckman would not let him in. He had to go back. 10

The Court: Ascertain what he was paid.

By Mr. Carroll:

Q. Do you know what he was paid?

A. No, sir. 20

The Court: They are going to tell you in a moment. I imagine he charged about \$50.

Q. How much did he pay?

A. \$100.

Q. How much did you pay Dr. Higbee?

A. The same time, the same amount; and that was the time he came down and Miss Eckman wouldn't let him in. 30

By Mr. Cooper:

Q. How many times did he come down?

A. I don't know.

Q. How much was he paid by the Market Street Title & Trust Company since the appointment?

A. I don't know.

The Court: Mr. Weldy may tell. How much have you paid, Mr. Weldy?

Mr. Weldy: Altogether, in expense?

The Court: Yes, give the information. There isn't any reason in concealing. Tell them all about it. Go ahead.

10 Mr. Weldy: I will figure that up.

Mr. Cooper: No further questions of this witness.

H. EARL FARRY, sworn for defendant.

Direct examination.

20 By Mr. Carroll:

Q. Mr. Farry, where do you reside?

A. Asbury Park.

Q. And are you connected with some banking institution there?

A. Connected with the Asbury Park & Ocean Grove Bank.

Q. Has there recently been any consolidation between that bank and another bank?

30 A. There has; the Merchants National Bank of Asbury Park was taken over by our bank in April, 1929.

Q. Has that also absorbed the Merchants Trust Company?

A. That also absorbed the Merchants Trust Company.

Q. So that the Merchants Trust Company and Merchants National Bank and—what is it, the Asbury Park Trust Company?

A. Asbury Park and Ocean Grove Bank.

Q. Are all now what?

A. Asbury Park & Ocean Grove Bank now.

Q. Will you look at your records that you have with you there and tell us whether Bradley Wood had any account at any time in the Asbury Park & Ocean Grove Bank?

10

Mr. Cooper: Objected to as immaterial, this entire line.

The Court: The same ruling.

(Objection noted for plaintiff as ground of appeal.)

A. Bradley Wood had an account with the Asbury Park & Ocean Grove Bank from August 3, 1927, until September 6, 1927.

Q. And what were the deposits and withdrawals in that account?

A. There were two deposits totaling \$298.73; withdrawals amounted to \$108. That account shows a balance of seventy-three cents.

Q. That was the individual account of Bradley Wood?

A. It was.

30

Q. Now go on to the next bank and give us the same information.

A. The same bank, there was an account opened on September 7, 1928; the account was closed December 1, 1928; it was in the name of Bradley Wood by Effie Eckman.

Q. You mean by Effie Eckman as attorney?

A. By Effie Eckman, yes. I believe Effie Eckman signed, I believe, all the checks, at least some of them.

Mr. Carroll: Now, Mr. Cooper, notice was given to produce the canceled checks of those accounts. Do you have them?

10 Mr. Cooper: I will say the total deposits on that account, \$1,669.43, and withdrawals the same amount, as the account was closed December 31, 1928.

Q. Have you got the same information with respect to the third bank mentioned in this combination?

20 A. January 9, 1929, the account was opened in the Merchants National Bank. That account was opened with \$194.33. That was afterwards transferred to the Merchants Trust Company and in turn was closed out on April 23, 1929. The total deposits in that account were \$569.07. That was in the name of Effie Eckman.

Q. Now were there any joint accounts in the names of Effie Eckman and Bradley Wood in any of those banks?

30 A. Merchants National Bank, a joint account in the name of Bradley Wood or Effie Eckman, account No. 7880, was opened on January 7, 1929. That account was closed April 22, 1929.

Q. And what were the total deposits and total withdrawals?

A. The deposits in the joint account were \$483.67; the withdrawals, including the check which closed the account, of course, were the same.

On the same bank Effie Eckman opened an account 7953 on March 14, 1929, with a deposit of \$1,213.58. That same amount was withdrawn on April 22, 1929, the same date the Bradley Wood account was closed.

Q. Now, did you personally ever see Bradley Wood?

A. I never did.

Q. And who brought his signature card to the bank, so far as you know? 10

A. Miss Eckman.

Q. You afterwards met her or knew her in connection with the affairs of Bradley Wood so far as they pertained to the financial end?

A. I believe one of our boys did go down to the house once or twice at Miss Eckman's invitation and saw Mr. Wood. I think he had a check or two signed.

Q. Now there were quite a number of checks that were signed by Bradley Wood in the name of Effie Eckman? 20

Mr. Cooper: What do you mean by in the name of, to her order?

Mr. Carroll: No Bradley Wood, by Effie Eckman.

Q. I will show you some that Mr. Cooper has produced, Bradley Wood on the one line and Effie Eckman on the other. 30

A. Yes, that is against this account, Bradley Wood by Effie Eckman.

Q. Now I show you a check here that Mr. Cooper has produced drawn to the order of Effie Eckman for \$711.43, on the Asbury Park & Ocean Grove Bank. Would that be a check on that account which was duly paid?

A. That would be. This is apparently signed by Bradley Wood and cashed for Miss Eckman.

Q. I show you one to the order of Effie Eckman, dated September 6, 1927, for \$108. Would that be a check on that account?

A. That is right, that check was signed by Bradley Wood and drawn on the Bradley Wood account in 1927. The first check you showed me was on the same account; both cashed by Miss Eckman.

10

Mr. Cooper: I assume, may it please your Honor, that these are going to be connected up?

Mr. Carroll: Cross-examine.

Cross-examination.

By Mr. Cooper:

20 Q. You don't know what this \$711.43 was expended for, do you?

A. I do not; it is cashed in our paying teller's cage for Miss Eckman.

Q. And you don't know what this \$108 was expended for, do you?

A. I only know it was cashed for Miss Eckman in our ladies' paying cage.

Mr. Cooper: All right. That is all.

30

D. LEROY SHUTTS, sworn for defendant.

Direct examination.

By Mr. Carroll:

Q. Now, Mr. Shutts, where do you reside?

A. Asbury Park.

Q. And are you connected with any bank there? 10

A. Connected with the Seacoast Trust Company
as teller in the interest department.

Q. Do you personally know Bradley Wood?

A. No, sir.

Q. You never saw him?

A. No, sir.

Q. Ever heard of him?

A. Yes, sir.

Q. And do you know Miss Eckman? 20

A. Yes, sir.

Q. Have you met her in connection with the
affairs of Bradley Wood?

A. I have received deposits and cashed checks for
Miss Eckman.

Q. Did Bradley Wood have an account with your
bank?

A. Yes, joint account.

Q. Have you got the original records there?

A. Yes.

Q. Will you look at them and tell us when that 30
account was opened?

A. The joint account with Bradley Wood or Effie
Eckman was opened April 20, 1929.

Q. When was it closed out, if it has been closed?

A. The 19th of September of the same year.

Q. And by a joint account does that mean that

either Miss Eckman or Bradley Wood could sign checks on it?

A. Yes, sir.

Q. What moneys were deposited in that account during the period and what moneys were withdrawn?

10 A. The total deposits were \$1,145.82 and the interest was \$4.28, and the entire amount was withdrawn.

Q. There was only the joint account there; there was no separate account in the name of Bradley Wood?

A. No, there was no separate account.

Mr. Carroll: Cross-examine.

Cross-examination.

20 By Mr. Cooper:

Q. Do you know what was done with the money that was withdrawn?

A. No, sir.

30 GEORGE W. WELDY, recalled for defendant.
By the Court:

Q. You may give the information as to what disbursement have been made by the Trust Company as guardian since its appointment in June, 1929.

A. \$853.83.

Q. Made up of what, two physicians \$100 each?

A. \$513.05 represents the expenses at the time of the appointment of our company as guardian, including counsel fee; \$340.78 represents expenditures in the matter of this suit.

By Mr. Cooper:

Q. Now what are those expenditures, if you know? 10

A. \$140.78 for depositions, \$200 are the fees of Dr. Higbee and Dr. Steinhober.

Q. Dr. Steinhober was paid how much?

A. \$100.

Q And Higbee was paid \$100?

A. \$100.

Q. And the cost of taking those depositions was \$140.78?

A. That is correct.

20

Mr. Cooper: That is all.

The Court: That is all.

Mr. Carroll: Mr. Cooper, in order to shorten this matter up and save the time of reading all these depositions, will you admit that the Market Street Title & Trust Company has at all times been willing and has requested Miss Eckman, both through your- 30 self and through her other attorney, Mr. Reinheimer, of Philadelphia, to join with that company in an application to the court for allowance of Bradley Wood for his support and maintenance?

Mr. Cooper: I will admit —

The Court: All he wants is to ask whether you concede that they did convey such information to Miss Eckman.

Mr. Cooper: I will concede that they said they did.

10 The Court: What does Miss Eckman say? Did she ever receive any such information?

Miss Eckman: No, sir.

Mr. Cooper: They have never made any definite terms, may it please the Court. They simply have indicated a willingness to treat, but not for payment of anything to her but for payment of something to Mr. Wood.

20 Mr. Carroll: We do not claim an offer was made to her; she was represented by two attorneys, the first one Melvin H. Reinheimer and then Mr. Cooper himself.

Mr. Cooper: I am willing to admit anything I did, but not anything that Mr. Reinheimer did.

30 The Court: Did they ever ask you to cooperate in applying to the Common Pleas Court of Pennsylvania?

Mr. Cooper: Yes, and I refused to do it on the ground that the Common Pleas Court of Pennsylvania had no jurisdiction, in my opinion.

The Court: Bradley Wood has been a resident of Asbury Park?

Mr. Cooper: Absolutely.

The Court: But, of course, they say that his estate was all over in Philadelphia.

Mr. Cooper: Yes, and for that reason, and that reason only, we refused to consent to jurisdiction of the Pennsylvania court. I am willing to stipulate that.

Mr. Carroll: Well, then, will you stipulate that the Market Street Title & Trust Company was willing to cooperate with Miss Eckman in an application to the court of Pennsylvania for the payment of an allowance for the support of Bradley Wood?

The Court: He said he will not, because he denies jurisdiction of the court of Pennsylvania. That is the reason.

Mr. Carroll: But all I want is to have it understood here.

The Court: He admits that you did so communicate to him and that he refused it.

Mr. Carroll: I offer the depositions.

Mr. Cooper: Objected to as incompetent, irrelevant and immaterial.

The Court: Do you state there that any direct communication was made to Miss Eckman?

Mr. Carroll: No, they were all through her attorneys, Mr. Cooper and Mr. Reinheimer.

The Court: You don't have to file the depositions then.

DEFENDANT RESTS.

10 Mr. Cooper: Several objections, may it please your Honor, were made to questions that were asked in the taking of these depositions. I presume in order that the jury may know which they were to regard and which to disregard —

The Court: The depositions are not in. They were withdrawn.

Mr. Carroll: In relying on the statement Mr. Cooper made the depositions were withdrawn.

20 The Court: He is relying on the statement made by you.

PLAINTIFF'S TESTIMONY IN REBUTTAL.

D. EFFIE ECKMAN, recalled for plaintiff.

30 Direct examination.

By Mr. Cooper:

Q. Miss Eckman, I show you this check dated September 6, 1927, drawn on the Asbury Park & Ocean Grove Bank, in the amount of \$108, being a

check to your order. Can you tell me what that was used for? Tell the jury what it was used for, the proceeds of it, if you know.

A. It was a withdrawal.

Q. What was done with the money after it was withdrawn?

A. I took him back to Philadelphia.

Q. You took him back to Philadelphia?

A. Yes.

Q. And was any part of that check which is made 10
to your order used for your salary or compensation?

A. No, sir.

Q. Why was the check made to you?

A. Mr. Wood—this is just after Mr. Wood had been so very sick and he couldn't go to the bank, his hand had been paralyzed; his whole right side was paralyzed for a week after that. I am not sure, but paralysis anyway.

Q. I show you a check dated December 31, 1928, 20
drawn to your order, for \$711.43. Will you tell the jury what the proceeds of that check were used for?

A. That was when the Prudential Insurance Company sent an inspector down there and Mr. Watson refused then to pay any more in the account after he had made that joint account; but the agent told him that he would have to pay it to the insurance company if he did.

Q. What we want to know is what the proceeds of that check were used for.

A. It was used then to open an account in other 30
banks.

Q. And was that check deposited either to Mr. Wood's account or to your account as an account in another bank?

A. To his account, not my account.

Q. In another bank?

A. Yes.

Q. And why was it deposited on the joint account?

A. Because they were not willing to wait for him to sign checks, that it would take him maybe an hour or two hours or three hours to sign a check.

Q. And it was deposited then for convenience in handling any funds?

A. Yes, they did it themselves.

10 Q. Was any part of this check used for your salary or compensation?

A. No, sir; all used for Mr. Wood's care.

Q. I show you this bunch of checks which has been produced by Mr. Carroll and ask you to look them over. Pick out any that have been used for payment of your compensation or salary, and hand them back to me so I can ask you about them.

20 The Court: Do I understand, Mr. Carroll, that the Trust Company in Philadelphia was appointed the guardian of the person —

Mr. Carroll: No, the estate, merely the estate.

Mr. Cooper: No, we wish they would take the burden.

30 The Court: That is what I have been thinking of, that all you did was to have the Trust Company appointed guardian of the estate, not the person of Mr. Wood.

Mr. Carroll: Yes, sir.

A. These checks were used to pay for the expense of his room and board and my room and board at the Kentucky Hotel, \$65 a week.

By the Court:

Q. Any checks payable to you for services?

A. These are all—no, sir.

By Mr. Cooper:

Q. That is what I want to know, a very simple question. You are endeavoring to find checks that are not there. You say you have never been paid 10
a cent by this man

A. Not compensation, no; these are all expenses.

Q. That is what I want to know.

A. These are all expenses.

By the Court:

Q. Of course, that hotel or board was paid out of Mr. Wood's funds?

A. Certainly, your Honor.

20

By Mr. Cooper:

Q. And that is the custom, is it not, for the man who employs the nurse to pay her board and keep a roof over her?

A. Certainly.

The Court: That depends on the kind of contract 30
they have made.

Mr. Cooper: Your Honor wouldn't let me prove a contract.

The Court: No, I wouldn't. It is incompetent.

Q. Look at those checks and tell me if any of those were used for your compensation or salary or some other purpose, if any of those were used for some other purpose; if any of those were used for your salary, tell me.

The Court: She has said she never was paid anything at all.

10 Mr. Cooper: Mr. Carroll has put in all those checks.

A. Not any.

The Court: All right. That is your answer.

Mr. Cooper: That is all, Miss Eckman.

BOTH SIDES REST.

20

30

CHARGE OF THE COURT.

Ladies and gentlemen of the jury:

This case in certain aspects may fairly be said, I think, to be unusual. The plaintiff is seeking to recover compensation of the defendant, who admittedly is now incompetent and cannot be produced in court to testify as to the origin of the relation between them and how it came that this plaintiff for a number of years, apparently, has been an inmate of his home, as she alleges, rendering a service professional in its nature as well as domestic, and during the entire period no compensation, admittedly, having been paid her by Mr. Wood for the services that she alleges she has rendered. 10

Now I may say ordinarily that such a relation would invite inquiry as to the reason for it; and if the plaintiff under the evidence after all was really a member of the household of Mr. Wood and spent all these years with no thought of compensation, then she cannot recover; because if that be the state of the evidence or the inference of facts, the case comes within one of what we regard as the leading cases in this State, in which the Court of Appeals said this: 20

“Ordinarily where services are rendered and voluntarily accepted the law will imply a promise upon the part of the recipient to pay for them. But where the services are rendered by members of a family living as one household with each other, there will be no such implication from the mere rendition and acceptance of the services. In order to recover for the services the plaintiff must affirmatively show either that an express contract for a remuneration existed or that the circumstances un- 30

der which the services were rendered were such as to exhibit a reasonable and proper expectation that there should be compensation." The Court then adds: "The familiar relation contemplated in this exception to the ordinary rule is not limited merely by relationship or kindred. Where there is a household relation it will embrace not only remote kindred but also those who stand in the place of kindred."

- 10 Now I may say that there is no evidence in this case as to how this relation, which invites criticism on the part of counsel for the defendant, began. Miss Eckman testifies that at all times, from the very beginning, the relation was that of a creditor and debtor, a person herself rendering services to Mr. Wood for which compensation was expected by her. But there is no evidence as to what Wood's attitude toward Miss Eckman has been all these years, for the obvious reason that he cannot now
- 20 testify. But she states that at no time during the continuance of the relationship did she render any bill to Mr. Wood or ask him for any compensation, nor did she leave because she was not being paid, but continued until eventually, through the progress of his disease, he became utterly incompetent, especially in recent months, and notwithstanding she continued to serve him in the manner claimed. There would seem to be no manner of doubt that her loyalty in respect to her service to Mr. Wood ex-
- 30 cites a natural curiosity by its continuance without any compensation whatever if her relationship to him was that of a creditor. And when she was asked upon the witness stand why she had never rendered any bill or asked for compensation, her reply was that her loyalty to Mr. Wood prevented her. But there must have been some such—I may say in comment only—relationship, since it began, accord-

ing to this plaintiff, on September 1, 1923, when Mr. Wood himself could have done something, when some circumstance could be produced in evidence which would indicate an intent on his part to compensate Miss Eckman for the service that she was rendering to him and in his household.

It is very natural, therefore, that the inquiry should arise as to whether, after all, Miss Eckman was not a member of his family or his household, with no thought of compensation. That remark of the Court is rather induced, I say, by her testimony here: that even in June, 1929, when Wood's handling of his own affairs, his own money, was taken from him through the proceedings in Philadelphia and the appointment of the trust company as guardian, that even then Miss Eckman made no communication to the trust company as to her claim, but continued to use her own funds for the maintenance and support of Mr. Wood. Therefore, I say there is a very natural inquiry why the unusual attitude of Miss Eckman toward Mr. Wood if the simple relation was that of a trained nurse or a housekeeper rendering the usual and customary services to him. 10 20

In the circumstances the burden is on Miss Eckman to prove under a fair preponderance of the evidence that she was in the household of Wood in a twofold relation, namely, as housekeeper and trained nurse, for which she was to receive compensation. If she has established that to your satisfaction under the evidence in this case, then there would be an implied undertaking on the part of Wood to compensate her, in the absence of an express contract, for what her services were reasonably worth, and even though, after the accumulation of compensation for what the services were reasonably worth, it might now result in denuding 30

his estate and leaving nothing. If she has proven an implied contract on his part to compensate her and you find what those services were reasonably worth, then a verdict would go in her favor for the amount that you find under the rule of reasonableness, and you will not be concerned as to what may be the ultimate effect upon Mr. Wood or his estate.

10 So that the primary question here is, has she proven an implied contract or undertaking on the part of Mr. Wood to pay her during the period set down in her complaint. The burden is on her to do so. If she has failed, then you should not hesitate to render a verdict of no cause of action. Her own moneys expended, as she alleges, in the care and maintenance of Mr. Wood, I say to you now as a matter of law, can be recovered, unless you find that she, after all, was a member of the household in her relation that developed in 1923, say, or at some other time, and that she was there with no thought
20 of compensation and that her acts in using her own money when Wood's income was shut off was a voluntary act on her part; of course, that would present a different legal situation.

So that I reiterate, the law is that ordinarily, where services are rendered and voluntarily accepted, the law will imply a promise upon the part of the recipient to pay for them. But where the services are rendered by members of a family to each other there is no such implied contract, but
30 such services are presumed in law to be voluntarily rendered, without thought of payment, unless an express contract be proven. In this case no express contract has been proven, but the plaintiff, through her counsel, is relying upon the implied undertaking on the part of Wood to compensate Miss Eckman, upon the theory that she was a mere trained

nurse or a housekeeper and bore no relation to him or his household other than in that respect.

Now it does not have to be that Miss Eckman was related in any way to Mr. Wood; if she became a member of his household in the ordinary sense, with no thought of compensation, and as time went on this disease of his that he had continued to make him less able to care for himself, and she rendered the services arising out of the original relation, whereby she apparently became a member of his household with no thought of compensation, and she continued to stay when she could have left, then you may say that these services that she insists on were rendered without any idea of compensation at all, but as a result of the past original relation which continued down to the present time. So that before you can spell out of the evidence in this case a contract, an implied contract on the part of Wood to pay, you will have to be satisfied that Miss Eckman intended, when she became an inmate of his home or began rendering the service as alleged in her complaint, that the intent was that she was to be the creditor and Wood the debtor, and there was an implied contract on his part to pay her what the services were reasonably worth. Now if she has failed to establish any such contract as that, then, of course, she cannot recover. If she has, under the fair preponderance of the proof, then I charge you she can recover what those services were reasonably worth. The case is left with you for your consideration.

I apprehend that a certain amount of sympathy would be aroused not only for Miss Eckman, but for Mr. Wood, in the physical and mental condition in which he evidently is as disclosed by the physicians who have testified here. The disease of which he has suffered was not of sudden origin, that is to say,

it apparently has been a progressive one for a considerable period of time; and during the entire period of time Miss Eckman undoubtedly could have left his household if she was not being paid under a verbal contract on his part to so compensate her. She has not done so, and therefore it invites the inquiry of the jury as to what the relation was, which does not appear. But whether or not in such circumstances as are here shown she has satisfied
10 you that there was an implied contract on the part of Wood to pay her, if there was, give her a verdict in accordance with the rule and the reasonableness of the charge for the service rendered in the neighborhood where it was so rendered. If there was no such undertaking on the part of Wood, a verdict of no cause of action would necessarily go. In any event, I express no opinion as to what the verdict should be in this case. That is your function; but bear in mind the rules of law that I have
20 endeavored to give you and be guided by them.

I ought to say to the jury in a supplemental way that as to the evidence with regard to the services of a trained nurse and housekeeper, they are not necessarily bound by the maximum testimony given here. Under the evidence they should find what the services, in view of the peculiar situation existing here, were reasonably worth, if they find that the relation of the plaintiff to Mr. Wood was that of creditor and debtor; in other words, that an implied
30 contract had been made by him with her for her compensation for the services rendered.

EXHIBIT D1.

EXEMPLIFICATION

PHILADELPHIA COUNTY }
STATE OF PENNSYLVANIA } **Sct.**

10

Among the Records and Proceedings of the Court of Common Pleas, No. 5. for the County of Philadelphia, State of Pennsylvania, the following may be found as matter of File and of Record, at No. 16162 MARCH Term, 1929, to wit:

DOCKET ENTRIES

Rambo, Rambo & Mair	In Re: The Estate of BRADLEY WOOD	May 23, 1929. Petition of Market Street Title & Trust Co. filed.	20
16162	July 25, 1929. Sten. notes filed.	Ex Die. Court fixes June 10, 1929, 10 A. M., for hearing.	
	Feb. 17, 1930. Inventory of the personal property of Bradley Wood, a per- son weak of mind, value \$17,878.17 filed.	June 10, 1929. Upon hearing, Bradley Wood is Adjudged so weak of mind as to be unable to take care for his prop- erty, and Market Street Title & Trust Co. is ap- pointed Guardian. Se- curity to be entered in sum of \$50,000.00 and bond of Company is hereby approved. See Decree made and filed.	30
		July 3, 1929. Bond en- tered.	

IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY.

In the matter of
Estate of
BRADLEY WOOD.

} March Term, 1929.
No. 16162.

10

PETITION FOR THE APPOINTMENT
OF A GUARDIAN.

TO THE HONORABLE, THE JUDGES OF THE
COURT OF C. P. #5.

20 The Petition of Market Street Title and Trust
Company

RESPECTFULLY REPRESENTS:

30 1. THAT your Petitioner is a Corporation,
organized under the laws of the Commonwealth of
Pennsylvania, for the purpose of conducting a Title
Insurance and Trust Company business and with
power to conduct a Deposit and Saving Fund bus-
iness, with its principal place of business at Fifty-
second and Market Streets, Philadelphia.

2. THAT the above named Bradley Wood opened
a Deposit Account with Petitioner in 1908, while
residing at 513 North 55th Street and opened a
Savings Fund Account on or about September 15th,
1915, numbered 9163, while residing at 625 North

Frazier Street, Philadelphia, while a resident and citizen of Pennsylvania.

3. THAT the balance in said deposit Account is at present about \$72.00 and in the Saving Fund Account, about \$12,298.95.

4. THAT the said Bradley Wood resided at 513 North 55th Street, afterwards at 625 North Frazier Street, then at 4924 Hazel Avenue and afterwards at 23 south 50th Street., Philadelphia, until about the summer of 1928, when your Petitioner is informed, that upon the advice of his physician, he went to Asbury Park, New Jersey, where he is temporarily residing in a bungalow rented by him at 207 First Avenue, and has a nurse named Eckman to care for him. 10

5. THAT the said Bradley Wood is about Sixty-two years of age, is now an invalid, paralyzed in body, has practically lost his power of speech and is unable to express himself in an intelligent way. He is of weak mind, incapable of transacting any business, and by reason of his infirmity is so mentally deficient and physically incapacitated, that he is now and has for some time past, been unable to care for his property, and is liable to dissipate or lose the same, and to become the victim of designing persons. 20

6. THAT your Petitioner is informed, believes and avers that the said Bradley Wood has a half sister, one, Annie Heywood residing at 5526 Cambridge Street, Philadelphia, a half brother, one, Bentley Singleton of Fern Lea, Ley Moor Road, Golcar, Huddersford County, Yorkshire, England, and a full brother, John William Singleton, 256 Town End Road, Golcar, aforesaid. 30

THE said nurse, Effie Eckman, who has been caring for and waiting upon the said Bradley Wood, during his illness, informs your Petitioner, that the said Bradley Wood had a wife living in England about Eighteen years ago, but between whom and the said Wood, during that period, there has been no communication. Both the name and address of such person is unknown to your Petitioner, and whether there is or was such a person, or whether
10 living or dead, your Petitioner has no means of ascertaining.

7. THAT for some time past the said Bradley Wood has been unable to transact any business or draw checks or orders for his maintenance and support, and your Petitioner is advised by competent physicians who have waited upon and examined him, that he is of weak mind, and is gradually and permanently growing worse, and Petitioner avers, that
20 he is in need of a Guardian to care for his estate.

8. THAT your Petitioner who has in its hands in his Deposit and Savings Fund Accounts the moneys aforesaid, submits that the necessary sums for his support and maintenance, should be paid out by a Guardian appointed by and under the supervision of your Honorable Court.

WHEREFORE your Petitioner prays your Hon-
30 orable Court to adjudge the said Bradley Wood, to be so mentally deficient as to be unable to take care of his own property, and to appoint a Guardian for the said Bradley Wood.

AND your Petitioner will ever pray.

MARKET STREET TITLE
AND TRUST COMPANY,
By; W. S. TASH, Treas.

AFFIDAVIT.

City and County of Philadelphia: SS

WILLIAM S. TASH, being duly sworn according to law, deposes and says that he is Secretary and Treasurer of the Market Street Title and Trust company, the above named Petitioner, and that he is acquainted with the facts set forth in the foregoing Petition, and that he makes this Affidavit for and on behalf of the said Petitioner, and that the facts set forth of which he has knowledge, are true and correct, and of which he has received information, he believes to be true and correct, and so avers. 10

WILLIAM S. TASH.

Sworn to and subscribed before me this 23rd day of May, Anno Domini, 1929. 20

Rae W. Dawson,
Notary Public

Seal
Comm. exp. 3/5/33.

ORDER.

AND NOW to wit, May 23rd, 1929, upon presentation of the foregoing Petition, and on motion of Rambo, Rambo and Mair, Attorneys for Petitioner, the Court fixes Monday June 10th, 1929, at Ten o'clock for a hearing in the foregoing Application, to determine whether the said Bradley Wood is so mentally deficient as to be unable to take care of his own property, and for the appointment of a Guardian; and 30

The Court further directs that Ten Days (10) written notice thereof be given to the said Bradley Wood, and to any other members of his family, residing within the jurisdiction of the Court, by service of a copy of this Petition, and Order of Court on each of them. Returnable Room 654.

E. V. A.

Judge.

10

DECREE.

AND NOW to wit, June 10th, 1929, upon consideration of the foregoing Petition, and after due hearing in open Court, and after due notice to Bradley Wood and to all other known persons having any interest therein, and it appearing to the satisfaction of the said Court, that the said Bradley Wood is unable to take care of his own property, it is ordered and decreed, that Bradley Wood is a person unable to take care of his own property, owing to sickness and weakness of mind in consequence thereof, and the Court hereby appoints MARKET STREET TITLE AND TRUST COMPANY, Guardian of the Estate of Bradley Wood, security to be entered in the sum of Fifty Thousand Dollars (\$50,000.00) and the Bond of the Company is hereby approved.

ALESSANDRONI, J.

By the Court.

July 3, 1929—Bond entered.

(Endorsed.)

No. 16162

March Term 1929

C. P. No. 5.

In the Matter of
the Estate of

BRADLEY WOOD

PETITION FOR GUARDIAN

Filed May 23, 1929

Geasey

10

Pro prothy

Rambo, Rambo & Mair

Attys.

THE COMMONWEALTH OF PENNSYLVANIA
COUNTY OF PHILADELPHIA, ss.

20

I, JOHN M. SCOTT, Esquire, Prothonotary of the Courts of Common Pleas of the County of Philadelphia, acting by my Principal Deputy, Meredith Hanna, or my Second Deputy, John J. Hoerr, DO CERTIFY that the foregoing is a true copy of the Docket Entries, Petition and Decree In Re: The Estate of Bradley Wood of March Term, 1929 Number 16162 as full, entire and complete as the same remains on file in Court of Common Pleas No. 5. of the County of Philadelphia aforesaid, in the case above stated. 30

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court,

this Sixth day of March in the year of our Lord
one thousand nine hundred thirty (1930)

(Seal)

JOHN M. SCOTT, Prothonotary.

By JOHN J. HOERR

Second Deputy Prothonotary

Durante Absentia, Secundum Legem.

10 COUNTY OF PHILADELPHIA, ss.

I, J. WILLIS MARTIN, Presiding Judge of the
Court of Common Pleas No. 5., for the County of
Philadelphia, DO CERTIFY that the foregoing Rec-
ord, Certificate and Attestation made by JOHN J.
HOERR, Second Deputy Prothonotary of the said
Court, whose name is thereunto subscribed, and the
seal of the said Court affixed, are in due form and
made by the proper officers.

20 IN TESTIMONY WHEREOF, I have hereunto
set my hand this Sixth day of March, in the year
of our Lord one thousand nine hundred thirty
(1930)

J. Willis Martin

President Judge, Court of Common Pleas No. 5

COUNTY OF PHILADELPHIA, ss.

30

I, JOHN M. SCOTT, Esquire, Prothonotary of
the Courts of Common Pleas of the County of Phila-
delphia, acting by my Principal Deputy, Meredith
Hanna, or my Second Deputy, John J. Hoerr, DO
CERTIFY that the honorable J. WILLIS MARTIN
by whom the foregoing Certificate and Attestation
were made and whose name is thereto subscribed,

was at the time of making thereof and still is, Presiding Judge of the Court of Common Pleas No. 5. of the County of Philadelphia duly commissioned and sworn; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Courts, this Sixth day of March in the year of our Lord one thousand nine hundred thirty (1930)

10

(Seal)

JOHN M. SCOTT, Prothonotary.

By JOHN J. HOERR

Second Deputy Prothonotary

Durante Absentia, Secundum Legem.

EXHIBIT D2.

NEW JERSEY SUPREME COURT.

20

MONMOUTH COUNTY.

I. Effie Eckman,

Plaintiff,

vs

Bradley Wood,

Defendant.

} ACTION AT LAW.
} STIPULATION.

30

It is on this 23rd day of April A. D. 1930, stipulated and agreed by and between Harry R. Cooper, attorney for the plaintiff, and Carr & Carroll, attorneys for the defendant as follows:—

1. That the defendant, Bradley Wood is suffering and has been suffering for some years from a highly infectious and loathsome disease and by reason thereof has since February 17th 1926 required the constant care and attention of a trained nurse. That prior to the first day of September 1923 said Bradley Wood was of sound mind, but that since about the first of March 1926 by reason of his said disease his mind has become so weak that he is at
10 the present time unable to take care of his own affairs or to testify in his own behalf, and is unfit for the government of himself as well as of his property.

2. That the said Bradley Wood since his residence in Asbury Park has been examined and treated by Dr. Joseph Ackerman of Asbury Park, New Jersey, as his attending physician. That a short time prior to May 23rd 1929 said Bradley
20 Wood was examined by Dr. William S. Higbee of Philadelphia, Pa. That on January 16, 1930 said Bradley Wood was examined by Dr. Edward A. Steinhilber of Philadelphia, Pa. That both Dr. Higbee and Dr. Steinhilber at the time of their respective examinations of said Bradley Wood found him so physically and mentally disabled by protracted illness as to be unable to testify on the trial in this action, on his own behalf.

30 3. The purpose of this stipulation is for use on the trial in the above entitled action and said stipulation is not to be used for any other purpose.

Harry R. Cooper

Attorney for Plaintiff.

Carr & Carroll

Attorneys for Defendant.

(Endorsed)

NEW JERSEY SUPREME COURT.
MONMOUTH COUNTY.

I. Effie Eckman,
Plaintiff,

vs

Bradley Wood,
Defendant.

ACTION AT LAW.

10

STIPULATION.

HARRY R. COOPER
Attorney for Plaintiff,
Belmar, New Jersey

20

30

POSTEA.

(Filed May 16, 1930.)

NEW JERSEY SUPREME COURT.

MONMOUTH COUNTY.

10

I. EFFIE ECKMAN,

Plaintiff,

v.

BRADLEY WOOD,

Defendant.

Postea.

20 This case was tried before Judge Rulif V. Lawrence, with a jury, at the Monmouth Circuit, on May 9th and 12th, 1930.

The jury rendered a general verdict against the defendant and in favor of the plaintiff for twelve thousand (\$12,000) dollars.

RULIF V. LAWRENCE,
Judge.

A true copy.

FRED L. BLOODGOOD,
Clerk.

30

[ENDORSED]

Damages	\$12,000.00
Costs	78.20
	\$12,078.20

RULE FOR JUDGMENT.

(Filed May 16, 1930.)

NEW JERSEY SUPREME COURT.

	10
I. EFFIE ECKMAN,	
<i>Plaintiff,</i>	} Action at Law. On Postea.
v.	
BRADLEY WOOD,	
<i>Defendant.</i>	
\$12,000.00	
78.20	
\$12,078.20	20

It is ordered that judgment be and hereby is entered in favor of plaintiff and against the defendant for the sum of twelve thousand dollars, besides costs to be taxed nisi.

Entered May 16, 1930.

On motion of

HARRY R. COOPER, *Atty.*

30

A true copy.

FRED L. BLOODGOOD,

Clerk.

JUDGMENT.

(Entered May 16, 1930.)

NEW JERSEY SUPREME COURT.

10

I. EFFIE ECKMAN,

Plaintiff,

V.

BRADLEY WOOD,

Defendant.

Action at Law. On
Postea.

Harry R. Cooper,
Attorney.

\$12,000.00

78.20

20 \$12,078.20

Judgment entered this sixteenth day of May, A. D. nineteen hundred and thirty, in favor of plaintiff and against the defendant for the sum of twelve thousand dollars damages and seventy-eight dollars and twenty cents costs.

W_M. S. GUMMERE,
C. J.

30

A true copy.

FRED L. BLOODGOOD,

Clerk.

13 FEB.T.1931

New Jersey Court of Errors and Appeals

I. EFFIE ECKMAN,
Plaintiff-Respondent,

v.

BRADLEY WOOD,
Defendant-Appellant.

Action at Law.
On Appeal from
Supreme Court.

ANSWERING BRIEF OF PLAINTIFF- RESPONDENT.

Preliminary Statement.

The preliminary statement and statement of facts in the brief of the defendant-appellant are correct in most of the particulars, but in the following particulars we submit that the facts do not bear out the statements made in the defendant's brief.

On page 2 of the brief the statement is made:

"It is a safe assertion that the defendant has at no time known that this suit was instituted against him, or that plaintiff was asserting any claim against him."

There is no evidence of this fact in the record, and the contrary of that fact is true. The defendant Wood does know that he has been sued, that a judgment of \$12,000 has been awarded to Miss Eckman and is satisfied to have such judgment stand as compensation for her services. This statement is also outside of the record but an hon-

est inquiry from the defendant's counsel would have elicited that fact from Wood, as he is not so incompetent in all respects as defendant's counsel would have him appear.

On page 3 reference is made to the order appointing Carr & Carroll, attorneys for the defendant. This order was not offered in evidence on the trial. An objection has been made to the state of the case on that ground and notice given to the attorneys for the defendant that a motion to strike this order from the record would be made on the opening day of the term.

Furthermore, the statement on page 3 that

"The mental and physical condition of the defendant has been such that his own counsel have been deprived of any opportunity to converse with him about this litigation, and, as stated above, the defendant is altogether ignorant of the pendency of these proceedings,"

is not borne out by the record, and is not true in point of fact.

On page 7 the following statement is made:

"The curious feature of the situation is that the plaintiff has never at any time received a single penny of compensation for her services; she rendered no bill or bills either to Wood or to the Market Street Title & Trust Company after its appointment as Guardian of his estate; and she seemed entirely satisfied with the existing arrangement until the appointment of the Market Street Title & Trust Company as Guardian of Wood's estate resulted in Wood's monies no longer being available for disposition by her. Then she instituted her suit. To all practical intents and purposes the relation between plaintiff and defendant was at all times that of an elderly married couple where illness had overtaken the husband, but there was sufficient money to maintain the home."

It is not a curious thing that the plaintiff never rendered a bill to the Market Street Title & Trust Company until after the trial of the case, for the reason that, as stated on the trial, both she and Mr. Wood denied the jurisdiction of the Pennsylvania Court to appoint a guardian, Wood not being a resident of Pennsylvania at the time the appointment was made, and no service of process, or notice of any kind, having been made either upon him or Miss Eckman within the State of Pennsylvania, or by substituted service outside of that state (S. C. 128, 129).

On Miss Eckman's cross examination at page 74 of the state of the case it appears that in 1923 and 1926 Wood was able to draw his own checks and attend to his own business. That the plaintiff did make a demand, or demands for payment and that the defendant put her off, and on page 78 under cross examination the plaintiff testified:

"He said he would pay me what I asked, and I told him what the salary was and that settled it."

The facts conclusively show the relation to have been that of patient and nurse (S. C. 17, 27, 37, 62).

POINTS.

I.

The plaintiff was properly permitted to testify on her own behalf over the objection of counsel for the defendant.

Defendant-appellant invoked to sustain his objection that portion of Section 3 of the Evidence Act which provides:

"No party shall be sworn in any case when the opposite party is prohibited by any legal disability from being sworn as a witness."

At the time this objection was made there was nothing before the Court to sustain the defendant's contention. The order made by Mr. Justice BODINE was not offered in evidence on the trial, and if it had been, we submit that the recital therein to the effect that "Bradley Wood is so mentally incompetent as to be unable to understand the nature and effect of the present proceedings" (S. C. 8) would not have precluded the plaintiff from testifying. This order was made in a collateral proceeding and was not an adjudication of the ability or disability of Wood to testify on the trial, but was made as the result of a motion by the attorneys representing the Market Street Title & Trust Company to have service of process upon Wood set aside. This order was not before the Court in any manner when the objection to Miss Eckman's testimony was made and should form no part of the printed record. *Delaware, L. & W. R. Co. v. English*, 82 N. J. L. 113, 81 Atlantic 436. The trial court clearly recognized the force and effect of Section 3 of the Evidence Act, but held that no foundation had been laid by the defendant for invoking its benefit, and stated in response to Mr. Carroll's objection, "You see your difficulty is that this man has not been disqualified" (S. C. 49).

Defendant also argues that the stipulation of counsel (Exhibit D-2) also disclosed a situation whereby the testimony of the plaintiff in her own behalf should have been rejected. But this stipulation of counsel was not in evidence at that time but was offered in evidence for the defense. No motion to strike the testimony of Miss Eckman was made, and the testimony being competent at the time it was offered, we submit did not become incompetent by reason of anything that developed in the defendant's case, where no motion to strike was made. Furthermore, the stipulation in ques-

tion was not made for the purpose of disqualifying the defendant from testifying, but was made for the purpose of saving the expense of bringing experts from Philadelphia to testify as to the defendant's condition (S. C. 50).

We think under these circumstances that the trial court should have permitted Miss Eckman to testify to a direct and express contract between herself and the defendant. The fact that the trial court limited the testimony to an implied contract, did not harm the defendant, and he cannot, therefore, take advantage of a ruling of the trial court more favorable to him than that to which he was entitled.

Willis v. Fernald, 33 N. J. L. 206;

Andrews v. Camden & S. Ry. Co., 74 N. J. L. 596.

The case of *Demarest v. Vandenberg*, 39 N. J. Equity 130, is cited by the defendant-appellant as authority for the fact that the plaintiff should not have been allowed to testify in her own behalf. In that case, however, the defendant was insane and had been so adjudged by a court of this State. The defendant, therefore, in that case was under a legal disability, and testimony of a party in interest was properly excluded. In this case, however, there was no evidence of disability when the plaintiff testified, and the cases are entirely dissimilar in that respect. The defendant-appellant urges that the adjudication of the Pennsylvania Court appointing a guardian of the estate of Bradley Wood was evidence of his disability and plaintiff should therefore not have been permitted to testify. There are two answers to this: one is that this order was not in evidence when the plaintiff testified, and her testimony was, therefore, competent at that time; the other is that the record shows that the order

in question was made without obtaining jurisdiction over the person of Bradley Wood. Due objection was made to the offer of the order on that ground, and it was received in evidence over objection of counsel. We contend that this order should not have been received in evidence.

In the case of *Webb v. Webb*, 96 N. J. E. 1, Chancellor WALKER said:

"A guardian can only be legally appointed on notice to the lunatic defendant, for in the first instance he has a right to defend on the question of lunacy, an adjudication of which must precede, or at least be contemporaneous with the appointment of a guardian."

The excerpt from this case in the brief of the defendant-appellant leaves out an essential part of the Chancellor's statement. The following statement was made by the Chancellor in that case:

"In this State there are no degrees of insanity, a man is either sane or insane, and there is no borderland or twilight zone between these two extremes, in which a person may be incapacitated by a court order and a guardian appointed for him. The Court cannot incapacitate a party, and it may appoint a guardian for him only in case he is himself incapacitated; that is mentally so unsound as to be unfit for the government of himself and his estate."

In the recent case of *Warker v. Warker*, decided July 16, 1930 and reported in 151 Atlantic Reporter 274 (not yet officially reported), Vice-Chancellor BIGELOW said, on page 275:

"There can be no adjudication in this cause that the complainant is incompetent. Such a question can be determined only in a proceeding brought for that purpose. * * * On that inquiry, Mrs. Warker would have the constitutional right of trial by jury."

Assuming for the purpose of argument, but not admitting, that the testimony of Miss Eckman was incompetent in the first instance, it is submitted that counsel for the defendant waived the benefit of the privilege.

A case similar to the one at bar is that of *Messenger v. Paterson Savings Institution*, 91 N. J. L. 655, 103 Atl. 178.

This Court, speaking through Mr. Justice KALISCH, said:

"A further reason for a reversal of the judgment discussed in the appellant's brief is predicated upon the following circumstances: The plaintiff on cross examination testified that he had abandoned a profitable business in order that he could go to work for the intestate to help her care for her sick husband. Counsel for appellant in pursuing such examination asked this question: 'What did you do it for?' The witness answered, 'She made a promise to me that I was to work for her and she would settle.' Counsel for appellant interposed, and said, 'I move to have that stricken out; I object.' The trial judge denied the motion, and an exception was taken. The action of the trial judge was proper. The answer is apparently responsive to the question asked the witness. For the appellant, it is urged that under the fourth section of the Evidence Act such testimony was incompetent.

"There is nothing in the Evidence Act (2 Comp. St. 1910, page 2217) which prevents a person who is being sued in a representative capacity, from waiving the rule of evidence made for his 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 out."

In the case at bar, on cross examination, counsel

for the appellant asked the following questions and received the following answers (S. C. 74) :

"Q. Now, between 1923 and 1926, Mr. Wood was able, you say, to draw his own checks? A. Yes, sir.

"Q. And attend to his own business? A. Yes, sir.

"Q. Well, now, how comes it that you worked all that time from 1923 to 1926 without receiving any compensation? A. Well, I was willing to wait a reasonable time for the compensation.

"Q. Did you ever mention it to him? A. Certainly.

"Q. And he put you off? A. Yes, sir.

"Q. And none the less you continued to work there? A. Certainly.

"Q. For three years or more? A. Certainly."

And on page 78, counsel asked the following questions and received the following answers:

"Q. Well, did you make any inquiries at all to determine whether or not Mr. Wood was able to pay you \$50.00 a week? A. No, I didn't. He said he would pay me what I asked, and I told him what the salary was and that settled it.

"Q. Why didn't you make any inquiry? A. Why should I if I trusted the man himself?

"Q. Well, now when he didn't pay you why didn't you leave? A. I wouldn't leave a dog if he was sick to die without any attention. Why should I leave the man?"

It would therefore seem that even if the plaintiff was disqualified from testifying in the present case, counsel for the defendant on cross examination of the plaintiff opened the door, thus waiving the privilege, if any existed, and made the testimony of the plaintiff competent and binding upon defendant.

II.

The trial court properly denied defendant's motion to nonsuit the plaintiff.

When the motion for the nonsuit was made a situation was disclosed by the evidence which showed not only by the testimony of the plaintiff, but by the testimony of Dr. Ferguson, Dr. Ackerman and Mr. Ottenberg that the plaintiff had rendered services to the defendant under circumstances where the law would imply a promise to pay.

The case of *Disbrow v. Durand*, 54 N. J. L. 343, is clearly distinguishable. In that case the proofs disclosed the family relationship of brother and sister that had existed for a quarter of a century. The Court there recognized the general rule that ordinarily where services are rendered and voluntarily accepted, the law will imply a promise upon the part of the recipient to pay for them, but held that the proofs in that case brought it within the exception to the general rule.

The proofs in the case at bar clearly show not a family relationship, but the relationship of patient and nurse. The trial court recognized this fact in passing on the motion to nonsuit and said at page 103:

"I incline to the view that there is a *prima facie* situation developed here involving the alleged services by a trained nurse to a gentleman who evidently required such services, and also that of a housekeeper. I must accept the testimony as I find it, that is to say, so far as this motion goes, that there was no relation whatever either in the nature of a family—the usual family association—or that the relation was meretricious. I am not able to go along, in the absence of proof of any such relation.

We simply have the naked statement here of this plaintiff that she was a trained nurse, the man became ill and she began treating him. Of course, her narrative is rather unusual, but I need not refer to that now. In any event, I incline to the view that there is enough here to justify the Court in denying this motion as a matter of law. I rather think it is one of fact. The motion will be denied. You may have an exception. I may say I am unable to find that the *Force v. Haines* or *Disbrow v. Durand* is controlling here under the state of the testimony as it now appears."

Under the general rule laid down in *Disbrow v. Durand* there was sufficient, had the entire testimony of the plaintiff been disregarded, to show a situation in which the plaintiff for several years had performed services for the defendant under circumstances from which a promise to pay would be inferred, and the question was therefore properly submitted to the jury for determination.

In *Anderson v. Searles*, 93 N. J. L. 227, 107 Atl. 429, suit was brought against the estate of grand-uncle to recover compensation for services rendered for nursing and household work. The trial court ordered a nonsuit. On appeal this Court reversed the judgment, saying:

"The Court, however, erred in ordering a nonsuit in view of the situation, 'that the circumstances under which the services were rendered were such as exhibit a reasonable and proper expectation that there would be compensation.' *Disbrow v. Durand*, 54 N. J. Law 343."

In the case of *West v. Prest*, 98 N. J. L. 209, 119 Atl. 169, in affirming a judgment for services against an estate, after citing *Disbrow v. Durand*, this Court said:

"Since there was testimony in the present case, both oral and written, which tended to

show that there was a mutual expectation that the plaintiff was to be compensated, it became a jury question whether or not such mutual understanding existed between the parties."

On a motion for a nonsuit every presumption of fact must be resolved in favor of the plaintiff, *Thornton v. Cater*, 94 N. J. L. 435; 111 Atl. 158. In the case of *Cattania v. Fleckenstein*, 143 Atl. 315 (not officially reported), this Court said:

"In passing upon a motion to nonsuit or for the direction of a verdict for the defendant, the plaintiff is entitled to every lawful inference that can be deduced from the facts proven."

Defendant-appellant argues that plaintiff's proofs disclosed a very unusual situation, and advances numerous reasons why the jury should have disbelieved her. We apprehend, however, that these reasons cannot be urged as causes for reversal for the refusal of the Court to nonsuit the plaintiff, and that if the matter was properly submitted to the jury, and there was no legal error, the jury being the judges of the facts, the judgment should be affirmed.

The facts in the case of *Force v. Haines*, 17 N. J. L. 385, cited by the appellant on the 19th page of his brief, are not similar to the facts in the case at bar. There, there was not only no implied promise to pay, or a situation in which the jury could have drawn an inference that an implied promise existed, but a positive refusal to pay.

The trial judge clearly recognized the distinction between the two cases (S. C. 104).

*The general rule stated in that case, and which we submit is applicable to the case at bar, is quoted on the 19th page of appellant's brief and nicely sums up the whole situation for the plaintiff as follows:

“Whether or not the circumstances justify the inference that the defendant did, in point of fact, intend to pay, is an admitted question of fact for the jury, not a legal principle to be applied by the Court.”

We therefore submit that there was no error in the ruling of the trial court in admitting Miss Eckman's testimony, or in the refusal to nonsuit, and that the judgment below should be affirmed.

Respectfully submitted,

HARRY R. COOPER,
Attorney for Plaintiff-Respondent.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

I. EFFIE ECKMAN,
Plaintiff-Respondent,
v.

BRADLEY WOOD,
Defendant-Appellant.

ACTION AT LAW.

ON APPEAL FROM SUPREME COURT.

BRIEF FOR DEFENDANT-APPELLANT.

This is an appeal from a judgment for \$12,000 recovered by the plaintiff-respondent against the defendant-appellant in the Supreme Court at the Monmouth Circuit before Judge Lawrence on the verdict of a jury, on May 16, 1930.

There are two grounds of appeal:

(1) The plaintiff was permitted to testify on her own behalf over the objection of counsel for the defendant.

(2) Defendant's motion to non-suit the plaintiff should have been allowed.

The plaintiff's claim was divided into two parts (S. C. 6), and was for services consisting of taking care of defendant's house and household, cooking and preparing meals, sweeping and cleaning house, washing and ironing, mending, and nursing defendant, and general housework, marketing and purchasing of household supplies and provisions (a) at the rate of \$50.00 per week from September 1, 1923, to December 9, 1925, and (b) at the rate of \$100.00 per week from February 17, 1926, to December 14, 1929, which last mentioned date was within three days of the time when suit was instituted.

It was established by the stipulation of counsel, Exhibit D2 (S. C. 149), "*that since about March 1, 1926, by reason of disease, defendant's mind has become so weak that he is at the present time (April 23, 1930), unable to take care of his own affairs or to testify in his own behalf, and is unfit for the government of himself, as well as of his property.*" The trial Judge clearly recognized, the fact being admitted and undisputed, that at the time of the trial, Bradley Wood was at his place of residence in Asbury Park, totally incapacitated both physically and mentally, and it is a safe assertion that the defendant has at no time known that this suit was instituted against him, or that plaintiff was asserting any claim against him.

Throughout the proceedings and for a long time prior thereto, Wood had resided and still resides at No. 207 First Avenue, Asbury Park, New Jersey, in a private residence, the only other inmate of which has been and still is the plaintiff herself.

Service was obtained on the defendant by the

Sheriff of Monmouth County, but plaintiff's attorney, no doubt having regard for the mental and physical condition of the defendant, mailed a copy of the summons and complaint to the Market Street Title and Trust Company of Philadelphia, Pennsylvania, which had previously been appointed guardian of the estate of Bradley Wood by the Court of Common Pleas of Philadelphia County, in the State of Pennsylvania.

The Market Street Title and Trust Company, as guardian of the estate of Bradley Wood, in order to assure the protection of the rights of the defendant, presented a petition to Mr. Justice Bodine, and such proceedings were had thereon that an order was made on February 7, 1930, appointing Carr & Carroll attorneys for the defendant, on the authority of *Van Horn v. Hann*, 39 N. J. L. 207 (S. C. 7).

The mental and physical condition of the defendant has been such that his own counsel have been deprived of any opportunity to converse with him about this litigation, and, as stated above, the defendant is altogether ignorant of the pendency of these proceedings.

STATEMENT OF FACTS.

So far as is known, Wood is an unmarried man. He is about sixty-five years of age. He has no children or near relatives. There are some distant relatives, but none of them have at any time, in any way, interfered with the relationship and situation existing between the plaintiff and defendant. The plaintiff herself is unmarried and well advanced in

years. She is, by profession, a trained nurse. She has known Wood since 1899, but what their relations were, prior to September, 1923, is not disclosed.

Up until December, 1925, Wood, for many years, had been an employe of The Prudential Insurance Company, connected with one of their offices in West Philadelphia, Pennsylvania. He boarded or lodged at different addresses in the neighborhood of his office, and the plaintiff seems always to have lived somewhere in the same neighborhood. In December 1925, Wood was placed on the permanent disability list of The Prudential Insurance Company, and thereafter became entitled to retirement allowances aggregating about \$211.00 per month. He also had substantial sums of money on deposit with the Market Street Title and Trust Company.

It will be recalled that the first part of plaintiff's claim covers the period from September 1, 1923, to December 9, 1925. During this period Wood, save for occasional casual illnesses, was constantly discharging the duties of his employment, although his health during this period was progressively in a failing state. Between December, 1925, when Wood was retired from active duties, on account of ill health, until February, 1926, he appears to have been in a nursing home, known as the Dunwoodie Home, in Philadelphia, Pennsylvania.

During the period between September 1, 1923, and December 9, 1925, for which the plaintiff claims \$50.00 per week, her testimony is that they occupied separate apartments in different houses; but she would go to the defendant's apartment about 7:30 A. M. every day and remain there until 10:30 P. M. each evening (S. C., p. 53, *et seq.*). During this period she gave him enemas and massages. Wood

frequently came home for lunch. She ate all her meals at his apartment under this arrangement, and, in fact, discharged all household duties, cooking the meals, keeping the apartment clean, mending and darning Wood's clothes, etc. All of the expenses of this establishment were defrayed by Wood.

While Wood was in the Dunwoodie Home, between December, 1925, and February, 1926, the plaintiff frequently visited him there. When Wood came out of the Dunwoodie Home, the plaintiff and he appear to have established themselves in the same apartment; they had an apartment at two or three different addresses in Philadelphia. There were two or three temporary sojourns at Asbury Park, New Jersey, where they stayed together at the Kentucky Hotel. Sometime in the late summer or early fall of 1928, the plaintiff took the defendant to the cottage at No. 207 First Avenue, Asbury Park, New Jersey, where they have ever since resided together.

During this entire period Wood's condition, both mentally and physically, has been growing gradually worse.

After the permanent removal to Asbury Park the monies received monthly from The Prudential Insurance Company were deposited in various banks in Asbury Park by the plaintiff to the joint account of Wood and herself, and there is no doubt that the plaintiff had absolute control of the disposition of these monies. In the meantime, Wood continued to have a very substantial sum on deposit in the Market Street Title and Trust Company in Philadelphia. From time to time checks were drawn on this account, and in the early part of 1929 the Market Street Title and Trust Company became suspicious of the signatures upon these checks and sent one of their officials to Asbury Park to investigate. It

was then ascertained that Wood was entirely incompetent mentally, and thereupon, on due notice to Wood, the Market Street Title and Trust Company was appointed guardian of the estate of Bradley Wood by order of the Court of Common Pleas of Philadelphia County, dated May 23, 1929. At this time, the estate of Bradley Wood, in the hands of the Market Street Title and Trust Company, consisted of about \$12,000.00 in cash, and \$5,000 of bonds in the Keystone Mortgage Company, a Philadelphia concern, which were unproductive of income and extremely doubtful in value. Notice of the appointment of the guardian was served upon The Prudential Insurance Company and thereafter that company remitted the monthly payments due Wood to the guardian in Philadelphia. The plaintiff was then requested, through her attorney, to appear before the Court of Common Pleas of Philadelphia County in order that it might be determined what sum of money should be paid monthly for the support of Bradley Wood. The plaintiff refused all co-operation with the guardian in this respect. She apparently did this on the advice of her attorney. The income of the establishment in Asbury Park having thus been cut off, plaintiff instituted her present suit.

For the information of the Court it may be stated that since the plaintiff has recovered her judgment she has, through her attorney, appeared before the Court of Common Pleas of Philadelphia County in co-operation with the guardian and is now receiving the income of Wood's estate and The Prudential Insurance Company monies, under order of that Court, for and toward the support of Wood.

An analysis of the testimony of the defendant's witnesses, George W. Weldy, Franklin Pyfer, H.

Earle Farry and D. Leroy Shutts, employes of the Market Street Title and Trust Company and of various banks in Asbury Park, will show that during the entire period covered by the plaintiff's claim Wood had available for the support of the establishment something in the neighborhood of \$2500.00 a year. The disposition of these monies was directed and collected by the plaintiff herself upon checks which she made out and which Wood signed, although toward the last some of the monies were in a joint account in banks in Asbury Park. The plaintiff herself testified (S. C. 77) that the payment of \$50.00 a week for her services would have come pretty close to exhausting Wood's income.

The curious feature of the situation is that the plaintiff has never at any time received a single penny of compensation for her services; she rendered no bill or bills either to Wood or to the Market Street Title and Trust Company after its appointment as guardian of his estate; and she seemed entirely satisfied with the existing arrangement until the appointment of the Market Street Title and Trust Company as guardian of Wood's estate resulted in Wood's monies no longer being available for disposition by her. Then she instituted her suit. To all practical intents and purposes the relation between plaintiff and defendant was at all times that of an elderly married couple where illness had overtaken the husband, but there was sufficient money to maintain the home. No other person was, at any time, an inmate of the joint establishment.

ARGUMENT UPON FIRST GROUND OF
APPEAL.

When the plaintiff was called on her own behalf (S. C. 49) counsel for the defendant objected to the plaintiff being sworn, on the ground that the defendant was legally disqualified because of his mental condition from being sworn on his own behalf, and that accordingly the plaintiff could not, herself, be sworn on her behalf. This objection was overruled and an exception allowed, although the trial Judge gave some recognition to the situation by ruling that he would not permit the plaintiff to testify to any conversation between her and Wood, and would confine her testimony to what she had done, thus requiring the plaintiff to recover upon an implied promise (S. C. 51).

The defendant now urges that this was error and that the plaintiff should not have been permitted to be sworn or to testify at all. As heretofore stated, the mental incompetency of the defendant and his physical inability to attend the trial were admitted and undisputed facts.

It may be further observed that the defendant has never, at any time, been formally adjudged a lunatic or of unsound mind.

In *Webb v. Webb*, 96 N. J. E. 1, Chancellor Walker said:

“In this State there are no degrees of insanity; a man is either sane or insane and there is no borderland or twilight zone between these two extremes * * *. The test of mental incapacitation is whether the party is mentally so unsound as to be unfit for the government of himself and his estate.”

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When the plaintiff was offered as a witness on her own behalf the stipulation of counsel (Exhibit D-2 S. C. 149) was presented to the trial Judge (although not formally offered in evidence until the close of defendant's case) and Dr. Ferguson (S. C. 14 et seq.) and Dr. Ackerman (S. C. 24 et seq.) witnesses for the plaintiff, had testified as to defendant's mental condition. These proofs must have satisfied Judge Lawrence that the defendant was mentally incompetent because in his charge to the jury (S. C. 135) he referred to the defendant as follows: "who admittedly is now incompetent and cannot be produced in Court to testify".

Section 3 of the Evidence Act, 2 C. S. N. J., p. 2218, provides as follows:

"3. *Interest in event; disqualification of adverse party.*—No person shall be disqualified as a witness in any suit or proceedings at law or in equity by reason of his interest in the event of the same as a party or otherwise, but such interest may be shown for the purpose of affecting his credit; provided, no party shall be sworn in any case when the opposite party is prohibited by any legal disability from being sworn as a witness."

It is not necessary that the person whose mental unsoundness is in question should have been adjudged a lunatic. The protection of the statute is extended because of the party's mental condition, and the fact that he has not been formally adjudged of unsound mind does not disentitle him to the protection of the statute. Such an adjudication serves only to shift the burden of proof. If there has been an adjudication in lunacy the mental unsoundness of the party is *prime facie* established, but if there be no such adjudication the burden of showing mental unsoundness is on the party asserting it. The stipulation of counsel in this case, however, Exhibit D2 (C. S. 149), as well as the testimony of the medical witnesses called on behalf of the plaintiff, clearly establish the mental incapacity of the defendant.

In *Van Horn v. Hann, supra*, it was held that where a cause of action exists against a lunatic or person of unsound mind, the suit must be brought against the lunatic himself and not against his guardian or committee in cases where there has been a guardian or committee appointed.

In *Collings v. Toppin*, 63 N. J. E. 381, it was held that a suit in Chancery might, by special order of the Court, under circumstances properly brought to its attention, be maintained in favor of a lunatic by his or her next friend, where the lunacy has not been so found upon inquisition and a guardian been appointed.

In *Kroehl v. Taylor*, 69 N. J. E. 525, it was held as follows:

“A suit in Chancery may be maintained by a next friend in behalf of a lunatic who has not been so found on inquisition, under an order of the Court supported by affidavits showing the lunatic’s incompetency.”

It follows from these cases, therefore, that if a lunatic who has not been so found upon inquisition and for whom no guardian has been appointed, may sue or be sued at law or in equity, he is entitled to all the protection that the law extends to him, including the disqualification of the adverse party from testifying in his or her own behalf.

This precise question was before the Court in *Demarest v. Vandenberg*, 39 N. J. E. 130, affirmed by the Court of Errors and Appeals, 40 N. J. E. 341. The syllabus is as follows:

“The complainant was, by a decree of this Court, declared to be of unsound mind, and he appears in this suit (to foreclose a mortgage held by him) by guardians of his person and estate duly appointed. The defendant set up usury as a defense, and at the examination offered himself as a witness to prove it. HELD, that complainant (and not his guardians, ‘suing in a representative capacity’) was the real

party to the suit, and being under a 'legal disability,' within the meaning of the statute, the defendant was incompetent as a witness, and that the examiner should, under the two hundred and eighteenth rule, have rejected him."

It was further said:

"The Statute of 1859 (Rev. p. 378, §3) did not wholly remove the disqualification of persons to be witnesses in their own behalf in suits or proceedings, by reason of interest in the event as parties. It excepted two classes of cases: one, where the opposite party was 'prohibited by any legal disability from being sworn as a witness,' and the other, 'where either of the parties in the cause was sued in a representative capacity.' The Act of 1866 (Rev. p. 378, §4) provided that a party to a suit in a representative capacity might be admitted as a witness therein, and if called and admitted as a witness in his own behalf, the opposite party might, in like manner, be admitted as a witness. The Act of 1880 (P. L. of 1880, p. 52), removed the restriction from the opposite party in cases where one of the parties to the suit sues, or is sued, in a representative capacity, so far as to render such opposite party competent to testify in his own behalf, except as to transactions with, or statements by, the testator or intestate represented in the suit. In cases where one of the parties is under legal disability, which prevents him from testifying, the other party is still incompetent as a witness in his own behalf. *Insanity is a legal disability.* In some of the States a party is excluded from testifying in his own behalf, where his adver-

sary in the suit is insane, by statute particularly designating that disability by name. Our statute employs a general term embracing it."

In *Jones on Evidence* (Civil Cases—Third Edition), p. 1104, Sec. 723, it is laid down as follows:

"Ordinarily, persons tendered as witnesses are presumed to be sane and competent to testify until the contrary is shown; and the burden rests on the person asserting the contrary to show not only mental weakness, but that it is of such a nature and extent as to render the witness mentally incompetent in respect to relating the facts of the case, or to comprehend the nature and obligations of an oath. Of course, the fact that a person has been recently found of unsound mind by a court of competent jurisdiction and that he is an inmate of an asylum for the insane is *prima facie* evidence that he is of unsound mind, and imposes the burden on the party offering him to show his competency. But if the finding of incompetency is not of recent date, it does not render the person *prima facie* incompetent, nor does it throw on the party offering him the burden of establishing his competency.

"At common law, lunatics were formerly classed with idiots, and excluded from the witness box entirely. But this sweeping rule has been greatly modified, and now the general rule is that those who are of unsound mind at the time of their production for examination are not competent witnesses, and this has been incorporated into the statutes of many of the States. Mental defectives are allowed to testify, if they appear to the Court to have sufficient under-

standing to apprehend the nature and obligation of an oath, and to observe and to remember correctly, and to be capable of giving a correct account of the matter that they have seen or heard, and in reference to which they have been called to testify. The Judge is to determine the competency by examining the witness himself, or upon the testimony of third persons. But those who, by reason of permanent insanity are unable to comprehend the obligation of an oath, are incompetent to testify. One who has been insane is not, however, excluded on this ground, if his testimony is offered during a lucid interval. But the party seeking to introduce such testimony must show that the witness is competent at that time, as insanity is presumed to continue as a mental state, when it has once existed, until the contrary is shown."

And on page 1097, Sec. 719, the same author says:

"It is too clear a proposition to call for any discussion that the liberty or property of the citizen should not depend upon the testimony of those who are so wanting in understanding that they cannot remember or cannot form any conception of right and wrong. Obviously, it would be an idle ceremony to administer an oath to an idiot or to one hopelessly insane. 'It makes no difference from what cause this defect of understanding may have arisen; or whether it be temporary and curable or permanent; whether the party be hopelessly an idiot or maniac, or only occasionally insane as a lunatic, or be intoxicated, or whether the defect arises from mere immaturity of intellect, as in the case of children. While the deficiency of

understanding exists, be the cause of what nature soever, the person is not admissible to be sworn as a witness. But, if the cause be temporary, and a lucid interval should occur, or a cure be effected, the competency also is restored.'

Regardless of the kind of mental disability a person labors under, then, the test of his competency to testify is whether he has sufficient understanding to appreciate the nature and obligation of an oath and sufficient capacity to observe and describe correctly the facts in regard to which he is called to testify.'

This point is well discussed and well considered in the case of *State of Nebraska v. William Meyers*, 46 Neb. 152, 37 L. R. A. 429, and notes. Under the notes it is stated as follows:

"The statutes of many of the States prohibit either party to an action from testifying there-in where the adverse party is an insane person.

Under such statutes where a plaintiff in an action is incompetent to testify by reason of insanity, a decree upon an inquisition establishing the fact of his insanity is not necessary to the exclusion of the defendant's testimony as to transactions concerning which the plaintiff if sane could have contradicted him." *Bailey v. Harvey*, 60 N. H. 152.

"And error in the admission of testimony which is not competent because offered by the plaintiff against an insane defendant is not controverted or corrected by permitting the insane defendant to testify, though apparently without objection." *Huling v. Huling*, 32 Ill. App. 519.

In 40 *Cyc.*, page 2201, the following appears:

“An insane person may be a competent witness where, notwithstanding his affliction, he is capable of observing accurately and stating correctly what he observed and of understanding the nature and obligation of an oath; but if he has not such capacity, he is incompetent.”

And on page 2309, the following appears:

“Many of the statutes extend protection to a party who is insane and under such a statute a guardianship decree establishing the insanity of a party is not necessary in order to exclude the adverse as a witness.”

Demarest v. Vandenberg, *supra*, is cited in support of the text.

In *Handlong v. Barnes*, 30 N. J. L. 69, it was held by the Supreme Court that “neither party can be sworn when the other party is prohibited by any legal disability.”

In *Foley v. Loughran*, 60 N. J. L. 464, Justice Lippincott, speaking for the Court of Errors and Appeals, said, at page 474:

“* * * and the parties were also excluded when the opposite parties were prohibited by any legal disability from being sworn as witnesses * * *.”

ARGUMENT UPON SECOND GROUND OF APPEAL.

The defendant also urges that it was error to refuse his motion to non-suit the plaintiff, made upon

the conclusion of her case. When the plaintiff rested, all that she had proved was the rendering of the services. What the exact relation was between the parties, whether that of debtor and creditor, or some other one of several possible relations did not appear. The origin of the relationship and the exact circumstances under which it was continued likewise remain undisclosed.

The burden of proof was on the plaintiff; and under the rule laid down in *Disbrow v. Durand*, 54 N. J. L. 343, it was incumbent on the plaintiff, in order to recover, affirmatively to show that the circumstances under which the services were rendered were such as exhibited a reasonable and proper expectation mutually indulged in by both parties that there would be compensation.

In the cited case it was also held:

“Ordinarily, where services are rendered and voluntarily accepted, the law will imply a promise upon the part of the recipient to pay for them; but where the services are rendered by members of a family, living as one household, to each other, there will be no such implication from the mere rendition and acceptance of the services. In order to recover for the services, the plaintiff must affirmatively show, either that an express contract for the remuneration existed, or that the circumstances under which the services were rendered were such as exhibit a reasonable and proper expectation that there would be compensation.

The family relation contemplated in this exception to the ordinary rule is not limited merely by propinquity of kindred. Where there is a household relation, it will embrace not only remote kindred, but also those who stand in the place of kindred.”

The relation between the plaintiff and defendant in the instant case was sufficiently "a household relation" to bring it within the rule of *Disbrow v. Durand*.

The plaintiff's proofs showed a very unusual situation, the most significant circumstances of which may be enumerated as follows:

There can be no doubt that Wood's income was adequate for the maintenance of the joint establishment. Although the plaintiff received no compensation, by way of fixed sums at periodic intervals or otherwise, she derived her board, lodging and general maintenance through a period of many years from her relation with Wood.

Although "uncompensated" in the ordinary business meaning of that term, she continued the relation for years, satisfied with the existing arrangement and asserting no claim until the receipt of Wood's income was interrupted by the appointment of a guardian for his estate.

She controlled the disbursing of Wood's monies and for several months prior to the institution of suit had them in joint accounts in various Asbury Park banks.

She rendered no bills to Wood or to the guardian and made no demands on the latter.

She knew that Wood's income was insufficient to admit of paying her what she is now demanding and yet provide for the maintenance of the household of which she was a member.

She and Wood were the only members of the household and she discharged all of the household duties, precisely as a wife would have done under the circumstances of the case.

It is clear that this peculiar and unique relationship may have had its origin and development under any one of several different sets of circumstances.

It may have been meretricious in its origin.

The plaintiff may have perceived in the situation an opportunity to establish a home for herself under an arrangement involving service on her side and support on Wood's side.

The situation may have developed without any understanding, mutually indulged in between the parties, as to compensation to the plaintiff, and it may have been on her part a mere voluntary service.

We submit, therefore, that the plaintiff cannot show a situation which admittedly might have arisen and been continued under any one of several sets of circumstances, all equally possible and all equally probable, but only one of which would have imposed a liability on the defendant, and then ask that the jury be permitted to speculate as to which of the several possible relationships the real one was. On the contrary, we submit that the plaintiff should have shown affirmatively a set of facts and circumstances from which a promise to pay on the part of the defendant could be implied, and should have excluded every other hypothesis, except the one consistent with defendant's liability.

The question in this case on the motion to nonsuit was not and could not have been whether the plaintiff, under the circumstances disclosed by her proofs, was entitled to be paid; but whether there was sufficient in the case to warrant the finding of an implied promise to pay.

It was apparently the theory of the trial Judge that the defendant had voluntarily accepted plain-

tiff's services. Upon this point, it seems pertinent to inquire how a man of unsound mind could be deemed voluntarily to have accepted these services. This is not the case of an isolated service rendered in a moment of emergency, but a relation persisted in by the plaintiff through a long period of years, and she was at liberty at any time to withdraw from the service.

In *Force v. Haines*, 17 N. J. L. 385, at page 397, a case involving an exhaustive review of the circumstances under which a promise to pay will be implied, it was held as follows:

"Whether or not the circumstances will justify the inference that the defendant did, in point of fact, intend to pay is an admitted question of fact for the jury, not a legal principle to be applied by the Court."

It is clear, however, that in order to support the inference of the defendant's intention to pay, something more was required than mere proof of the rendering of the services because those services may well have been rendered under circumstances not legally effective to impose liability on the defendant; and the rendering of the service was no more indicative, under the circumstances of the case, of an intention to pay than it was of an intention not to pay.

We therefore submit that upon both grounds of appeal the judgment below should be reversed.

Respectfully submitted,

CARR & CARROLL,

*Attorneys for Defendant-
Appellant.*

WALTER R. CARROLL,

Of Counsel.

The first of these is the fact that the
 government has been unable to secure
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 the necessary funds to carry out its
 policy of expansion. This has been
 due to a variety of causes, including
 the high cost of borrowing and the
 low level of savings.

The sixth cause is the fact that the
 government has been unable to secure
 the necessary funds to carry out its
 policy of expansion. This has been
 due to a variety of causes, including
 the high cost of borrowing and the
 low level of savings.

The seventh cause is the fact that the
 government has been unable to secure
 the necessary funds to carry out its
 policy of expansion. This has been
 due to a variety of causes, including
 the high cost of borrowing and the
 low level of savings.

The eighth cause is the fact that the
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 policy of expansion. This has been
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 the high cost of borrowing and the
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The ninth cause is the fact that the
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 the high cost of borrowing and the
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The tenth cause is the fact that the
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