

GROUNDS OF APPEAL

BOARD OF CHOSEN FREEHOLD-
ERS OF THE COUNTY OF
BURLINGTON,

Plaintiff and Appellee.

vs.

J. HARRY WHITE, Adminis-
trator of Sallie A. White,
Deceased,

Defendant and Appellant.

10

NEW JERSEY

SUPREME COURT

ASSIGNMENTS AND

GROUNDS FOR APPEAL

The defendant, who is the appellant, presents the following assignments of error and grounds for sustaining the appeal taken by him in this case.

First—Because Sallie A. White, the decedent, was not committed to the Burlington County Hospital for the Insane (hereinafter called the institution) and was not proceeded against as an insane person, while in confinement therein, in the manner required by Chapter 250 of the Session Laws of 1913 (hereinafter called the Act), so as to bind her estate or her heirs and next of kin for her support and maintenance in said institution, and that neither in pleading nor in proof has the plaintiff made out a case against this defendant and appellant, which supports the judgment. 20

Second—Because the judicial officer, who is alleged to have committed decedent to said institution, failed to obtain jurisdiction of her so as to commit her as a non-indigent insane person. 30

Third—That no proceedings were taken in advance of or upon which to found the alleged commitment, which gave to the decedent, in her lifetime, or to her heirs and next of kin upon her social and political demise, their day in Court, and as to them, said heirs and next of kin the proceedings in this case were void for want of due process

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of law.

Fourth—The initial proceedings were for an indigent person and the proof arising and the facts occurring during her confinement fairly imply that the decedent was an indigent insane person, and the plaintiff committed itself to that view, according to the practice directed by and provided for in the Act and followed by the plaintiff.

10 Fifth—Because if such commitment be upheld, the plaintiff has fatally failed to comply with and follow the directions thereof, which were that the decedent should be confined in said institution, with proper arrangements to be made for her support and maintenance therein, according to the Act.

Sixth—Because the mandate of the Act (section 16) as to proper arrangements of the plaintiff with non-indigent insane, as to support and maintenance have not been complied with.

20 Seventh—Because it appears that the decedent was never treated by the plaintiff, nor by the officers in charge of the institution, so as to justify the learned Judge of the Circuit Court in implying that any necessaries were supplied to the decedent with the intention on the part of the plaintiff to be paid for them or to look to her estate for payment therefor.

30 Eighth—Because there was no contract of the plaintiff with the decedent, by guardian in lunacy or otherwise, and no contractual relationship between the plaintiff and the decedent, or any representative of her, in her lifetime, and hence any saving clauses of the statute to cure such defect, oversight or negligence on the part of the plaintiff and impose liability by the Act, whether or no, are and have been without due process of law.

Ninth—Because the pleadings and bill of particulars are radically defective and afford no basis or support to uphold the judgment and the bill of particulars exhibit the defect of the case by being made against the defendant and appellant, instead of against the guardian in lunacy of the decedent, as it would have been if the proceedings had been

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valid and the judgment legal.

Tenth—Because even if the plaintiff had avoided all the errors above pointed out, and had in strictness complied with the statute in every respect, nevertheless, plaintiff would have been entitled to damages for only one-half the amount for which the judgment has been entered, namely, for Three Dollars per week instead of Six Dollars per week.

Eleventh—Because the case of the plaintiff has failed, both by pleading and by proof to show any personal liability of the decedent under section 16 or any other portion of the Act, or of her estate thereunder, for her support and maintenance in said institution in the manner required in said Act, and to such an amount as a proper judicial officer had, or should have directed. 10

T. J. MIDDLETON,

H. A. DRAKE,

Attorneys for Defendant and Appellant.

NOTICE OF APPEAL 20

Filed April 2, 1917

The defendant hereby appeals from the judgment entered in this case and from the whole and every part thereof, the same being erroneous, to the New Jersey Supreme Court.

Dated March 29, 1917.

T. J. MIDDLETON,

Attorney and Counsel for Defendant.

I conceive there is good cause for appeal in the above stated cause.

Dated March 30, 1917. 30

H. A. DRAKE,

Of Counsel.

SUMMONS AND COMPLAINT

Filed June 15, 1916.

The State of New Jersey
to J. Harry White, administrator of the estate of Sallie A. White, deceased.

You are hereby summoned to answer the annexed com-

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plaint of the Board of Chosen Freeholders of the County of Burlington and State of New Jersey in an action at law in the Circuit Court of Burlington County. And take notice, that unless you file your answer to said complaint with the Clerk of said Circuit Court, at Mount Holly, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

10 Witness: Hon. Howard Carrow, Judge of said Court, at Mount Holly, this tenth day of June, nineteen hundred and sixteen.

JAMES MERCER DAVIS,
Attorney.

HARRY L. KNIGHT,
Clerk.

COMPLAINT

20 The plaintiff, a municipal corporation of the State of New Jersey, by James Mercer Davis, its solicitor, complains and says:

1. That on or about June 26, 1914, one Sallie A. White was duly committed by the Common Pleas Court of the County of Burlington to the Burlington County Hospital for the Insane as an insane person and as a private patient.

2. That the said Sallie A. White died on or about July 19, 1915, and the said J. Harry White was appointed administrator of her estate by the Surrogate of Burlington County and duly qualified as such; that more than six
30 months have elapsed since the death of the said Sallie A. White.

3. That the sum of \$6.00 per week is a fair and reasonable sum to be paid for the board and keep and medical attention of the said Sallie A. White, and that her board from June 26, 1914, to July 19, 1915, amounts to the sum of \$332.57.

4. That the said defendant has paid on account of the board of the said Sallie A. White the sum of \$35.84 on September 11, 1915, and that there is now due the plaintiff

SUMMONS AND COMPLAINT

the sum of \$296.73, as shown by the statement attached hereto.

Judgment will be demanded for the sum of \$296.73, besides costs of suit to be taxed.

JAMES MERCER DAVIS,
Attorney for Plaintiff.

Burlington County
Hospital for the Insane,

C. Clarence Deacon, Supt.

New Lisbon, New Jersey, May 17, 1916

Mr. J. Harry White—Administrator

For Sallie A. White,

To Burlington Hospital for the Insane, C. C. Deacon, Supt.

For board of Sallie A. White for

June 26, 1914 to June 26, 1915,

52 weeks at \$6.00 per week

312.00

June 26, 1915 to July 19, 1915

3 weeks and 3 days at \$6.00 per week

20.57

10

20

332.57

By cash—September 11th 1915

35.84

296.73

ANSWER

Filed June 30, 1916

Defendant is a resident of the City and County of Camden, and State of New Jersey, says that:

Defendant admits that on the 26th day of June, 1914, 30 the said Sallie A. White in her lifetime was committed to the Burlington County Hospital for the Insane as an insane person, but denies the said Sallie A. White, now deceased, was so committed as a private patient and on the contrary allege that:

First—Sallie A. White was so committed to the said Hospital on the application of James K. Naylor, Chairman of Township Committee, who resides at or near Vincen-town, Burlington County, New Jersey.

ANSWER

Second—Sallie A. White, so committed to said Hospital on the said application as an indigent patient, without notice or knowledge or consent of her next of kin.

Second—Defendant admits that the said Sallie A. White died on or about the 19th day of July, 1915, and that the said J. Harry White was duly appointed administrator of her estate by the Surrogate of Burlington County and duly qualified as such, and more than six months has elapsed since the death of the said Sallie A. White deceased.

10 Third—Defendant denies that the sum of \$6.00 per week is a fair and reasonable sum to be paid for the board and keep and medical attention of the said Sallie A. White, now deceased, that her board from June 26, 1914, to July 19, 1915, amounts to the sum of \$332.57, or any other sum.

20 Fourth—Defendant admits that the sum of \$35.84 was paid to C. Clarence Deacon, Superintendent of said Hospital, by the Burlington County Safe Deposit and Trust Company who were at one time Guardians of the said Sallie A. White in her lifetime, but denies that said payment was made by any authority, either of this defendant as Administrator or of any Court having jurisdiction thereof, this defendant therefore alleges that the said payment was illegal and does not bind this defendant to the balance of said claim. Defendant denies there is now due the plaintiff the sum of two hundred and ninety-six dollars and seventy-three cents (\$296.73) or any other sum.

30 Fifth—Defendant will object that that plaintiff discloses no cause of action against defendant for the following reasons:

First—It does not allege under what statute or law it claims a right of action.

Second—It does not allege the complete facts as to the commitment of the said patient to said institution.

Third—It does not allege that any proper arrangements was ever made by any one in authority for the support of the said Sallie A. White in said institution.

Fourth—It does not allege the length of time, or any itemized account of charges against the deceased.

ANSWER

Fifth—It does not allege that the deceased was not indigent, but was capable of paying for her support in said institution.

Sixth—It does not allege that any charges for the necessary maintenance for the deceased was ever made by the said institution against said deceased.

Sixth—Defendant denies that the said Sallie A. White (being insane) can be made liable for her support and maintenance in a public institution supported and maintained by the public taxpayers of which she is one, for the benefit and care of all the people of the whole County whether she be indigent or able to pay. 10

Seventh—Defendant alleges that said Sallie A. White was committed as an indigent to the said Hospital by the authorities of the township where she resided, whereby said County of Burlington assumed entire responsibility for her maintenance.

Eighth—That the said Burlington County Hospital for the Insane is maintained by general appropriations by the State of New Jersey and by appropriations made by the Board of Chosen Freeholders of the County of Burlington, raised by and out of the taxes assessed annually against all its people in the said County in proportion to their respective value of the real estate holdings which assessment of taxes and appropriations are provided by law, and there is no legislation imposing an obligation on said insane person to the County for any part of the money thus appropriated. 20

Ninth—There is no liability of the estate of this deceased lunatic to the County of Burlington for the money claimed. 30

T. J. MIDDLETON,
Attorney for Defendant.

TESTIMONY

Transcript of testimony in the above entitled cause taken at Camden, New Jersey, on Saturday, December 9, 1916, before Hon. Howard Carrow.

Appearances: James Mercer Davis, Esq., for the plain-

TESTIMONY

tiff; Herbert A. Drake, Esq., for the defendant.

MR. DRAKE: I want to ask Mr. Davis a question. Do I understand that this motion you made to file an amended complaint has been withdrawn?

MR. DAVIS: I will hold it in abeyance for the time. If necessary to amend I will ask your Honor to do it after hearing the testimony.

MR. DRAKE: I am here to resist that motion.

10 MR. DAVIS: We are not making it now.

MR. DRAKE: Because when it is made I can show your Honor that it does not disclose any legal cause of action. There was another motion to strike out the answer. Is that withdrawn?

MR. DAVIS: I don't think his Honor will pay any attention to the answer.

MR. DRAKE: Do you withdraw your motion?

MR. DAVIS: At the present time, yes. (After colloquy.)

20 MR. DRAKE: If your Honor finally does get to the proof in the case and decided a legal cause against me, I ask, in the absence of my attorney, to have permission to produce such testimony as may be necessary to be put in a reply to that.

MR. DAVIS: I object to that. Mr. Drake is flimflaming the Court when he says he did not have an idea the testimony was to be heard in this case. Four or five days this Court has set this case down.

30 THE COURT: I am going to deal with the law of the case after the testimony of these witnesses is put in, in order to save time and keep them from coming here again.

MR. DAVIS: I offer the official record of the commitment of this woman.

MR. DRAKE: Objected to. I want to show that under the Act I have quoted, your Honor, he has not any case whatever.

THE COURT: I will consider that all. Paper above referred to received in evidence and marked Exhibit P-1.

TESTIMONY OF C. CLARENCE DEACON

C. CLARENCE DEACON, a witness, being duly sworn on behalf of the plaintiff, testified as follows:

Direct Examination

By MR. DAVIS:

Q. Mr. Deacon, you are Superintendent of the Burlington County Hospital for the Insane?

A. Yes.

Q. How long have you been Superintendent?

A. Eleven years.

Q. That hospital is under the control of the Board of Freeholders of Burlington County? 10

A. Yes.

Q. You are appointed by the Board of Freeholders, are you not?

A. Yes, sir.

Q. Was Sally A. White committed to the asylum of which you are Superintendent?

MR. DRAKE: Object to the question. He can't prove that she was committed, he can only prove that she came there. 20

MR. DAVIS: That is what I refer to.

Q. Was she admitted pursuant to an order of the Court?

A. Yes.

Q. Do you have an account with her with respect to her admission and maintenance there?

MR. DRAKE: Objected to. The rate of her maintenance must be fixed under an order which they produced here, by a court of law. I object to that. 30

THE COURT: Overruled.

MR. DRAKE: Exception?

Exception allowed.

Q. Do you have an account?

A. Yes.

Q. Do you have it with you?

A. Yes.

Q. Produce it, please?

MR. DRAKE: Objected to, because it is not in accord-

TESTIMONY C. CLARENCE DEACON

ance with the statute.

THE COURT: If I find this testimony is improperly admitted I will rule it out. There is no jury to be affected by it.

MR. DAVIS: The order of commitment provided that a day must be fixed by a court of competent jurisdiction.

THE COURT: I will hear that.

10 Q. When does your record show she was admitted to the hospital?

A. June 26, 1914.

Q. Did she stay there until the time of her death?

A. Yes.

Q. Continuously?

A. Yes.

Q. She died when?

A. Died July 19, 1915.

20 Q. Was there any action taken to fix the compensation that this woman should pay?

MR. DRAKE: Objected to unless he shows it was taken by a court.

THE COURT: Objection overruled.

MR. DRAKE: Exception?

(Exception allowed.)

THE COURT: Action by whom?

Q. By yourself or the Board of Freeholders?

30 A. We sent her guardian a bill for six dollars a week. At that time the Burlington County Safe Deposit and Trust Company, of Moorestown, was her guardian. I believe they were appointed several months after she came to the institution.

Q. That bill was at the rate of six dollars per week, you say?

MR. DRAKE: The same general objection and the same general exception.

THE COURT: Same ruling.

(Exception allowed.)

A. Yes.

Q. What was done with respect to the guardian or by

TESTIMONY C. CLARENCE DEACON

the guardian with respect to the payment of this bill?

MR. DRAKE: Objected to. How can he tell what the guardian did?

THE COURT: Who knows what the guardian did with respect.

THE WITNESS: We only received one payment from the guardian.

THE COURT: On account of the bill?

THE WITNESS: On account of the bill.

10

Q. How much was the bill at the time it was sent?

MR. DRAKE: Objected to.

THE COURT: Same ruling.

MR. DRAKE: Exception?

(Exception allowed.)

A. It was at the rate of six dollars per week.

THE COURT: How much was the whole bill?

MR. DAVIS: You mean at the time it was sent?

THE COURT: Yes.

20

THE WITNESS: At the time the amount of the bill for the year was \$312. That was June 26, 1914, to June 26, 1915, the amount was \$312.

THE COURT: You say the guardian paid something on account of it?

THE WITNESS: The guardian paid \$35.84. They wrote us at the time that was all the funds they had in hand.

Q. Who fixed the rate of six dollars per week?

A. The committee and myself.

Q. You say the committee; what committee do you refer to?

30

A. The committee on insane at that time.

Q. You mean the committee of the Board of Freeholders?

A. Yes.

Q. Does this committee of the Board of Freeholders on the insane have full charge of the conduct of the hospital and the charges to be made for the support of patients therein?

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MR. DRAKE: If counsel will divide that question I won't object to the first part of it, but I object to the last part of it.

(Question repeated.)

THE COURT: Objection overruled.

MR. DRAKE: Exception.

(Exception allowed.)

A. Yes.

10 Q. Was this six dollars charged?

MR. DRAKE: May I put in a general exception to this without going through the necessity of repeating this, or will I lose my rights if I don't do that?

MR. DAVIS: You don't mean to say you are going to except to everything I ask?

MR. DRAKE: Not everything. We will proceed then, if that is not satisfactory.

THE COURT: You say "except" and I will say "same ruling."

20 Q. Was this \$6.00 per week charge made against the estate of or rather against Sally A. White, made by the committee of the Board of Freeholders on the asylum?

MR. DRAKE: Objected to.

THE COURT: Same ruling.

MR. DRAKE: Exception.

(Exception allowed.)

A. Yes.

By THE COURT:

30 Q. This is what you call the almshouse committee of the Board of Freeholders?

A. The committee on insane.

Q. I mean the insane asylum?

A. Yes.

Q. In these county institutions there are two departments, the almshouse department and the insane department?

A. Yes.

Q. And there are two committees, one that looks after the almshouse department and the other one that looks after

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the insane department, is that it?

A. Yes, sir.

Q. How many members were on this committee?

A. Three.

Q. That is what you call——

A. The committee on insane.

Q. When we speak of the committee, we mean the committee of the Board of Freeholders of the County?

A. Yes; and the directors of the Board. 10

Q. Was there any minute fixing this board at six dollars a week made? Who is the clerk of the board?

A. It was just discussed in their regular meeting held at the institution every month, or as often as is necessary.

Q. Was it decided by the committee there?

A. Yes, sir.

Q. The committee keeps no minutes, does it?

A. No.

By MR. DAVIS:

Q. You were present at the time, were you not, Mr. Deacon? 20

A. Yes.

Q. And was the sum of \$6.00 per week a reasonable or unreasonable charge for the keep, support and maintenance of Sally A. White, during her lifetime?

MR. DRAKE: Objected to because it is not a question of reasonable board but of necessities.

THE COURT: Reasonable necessary.

A. It was a very reasonable charge when you take into consideration the great care she had there. 30

THE COURT: Was she young or old?

THE WITNESS: She was an elderly woman, very violent and destructive and required the attention of three nurses every time she was bathed.

THE COURT: What did she get for this \$6.00 per week, her board, attention and medical services?

THE WITNESS: Yes.

THE COURT: Everything?

THE WITNESS: Everything, with the exception of a

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few clothing found by her relatives.

Q. You have received on account of this claim for board the sum of \$35.84; is this the original account with the asylum?

A. Yes.

Q. With Miss White?

A. Yes.

10

Q. You have the system of loose leaf ledger?

A. Yes.

Q. And this is the loose leaf?

A. Yes.

MR. DAVIS: I offer it in evidence.

MR. DRAKE: Objected to.

Paper above referred to received in evidence and marked Exhibit P-2.

MR. DRAKE: My cross-examination is subject to the objection that this evidence should not have been received
20 until the record was dealt with, and also subject to the general objection that they are not proceeding under the statute of 1913 in force at the time and under which this woman was committed.

Cross-examination

By MR. DRAKE:

Q. Can you tell from your own recollection or by reference to Exhibit P-2 the date on which the \$30.57 was paid?

A. \$35.84—that was received September 11th, 1915.

30

Q. That was received after the death of Sally A. White?

A. Yes.

Q. Then I understand that you did not receive any money from Sally A. White or her estate or relatives during her lifetime?

A. What we received is entered there in the ledger page at that date.

Q. All you did receive was received after death?

A. On that date, September 11, 1915.

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Q. That was after her death, wasn't it?

A. Yes.

Q. Didn't you have some correspondence with the comptroller about this woman?

MR. DAVIS: I object to it.

THE COURT: What is the object? (After colloquy.)

THE COURT: I am going to postpone this case until a further day, when we can examine the legal aspects of the matter. I want to hear Mr. Drake's theory, but I think it wise to get rid of these witnesses. 10

Q. Who was Joseph P. Byers? What does he have to do with your institution?

MR. DAVIS: Objected to.

THE COURT: Overruled.

A. He used to be Commissioner of Charities and Corrections for the State of New Jersey.

Q. Do you know anything about a letter which he wrote to the comptroller in which he said that when the monthly report was made they didn't know whether Sally A. White and John Farnam would be indigent or paid patients, but before making out the report received word that they would be paid patients? 20

MR. DAVIS: Objected to as incompetent, irrelevant and immaterial.

THE COURT: Do you know anything about it?

THE WITNESS: I might have had some knowledge at the time.

THE COURT: Objection overruled. 30

THE WITNES: I might say—

Q. Didn't you receive Sally A. White to begin with as an indigent patient?

MR. DAVIS: Objected to as incompetent, irrelevant and immaterial.

THE COURT: I think you are right, but I will allow the question to be answered for the time being.

A. As a matter of fact, when we receive a patient we don't know whether they are going to be indigent or private

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CHARLES E. JOYCE

patients. That has to be determined by the Court and the witnesses. I have her commitment here.

THE COURT: Who committed her?

THE WITNESS: Judge Lippincott.

THE COURT: How was she committed?

THE WITNESS: Private patient.

MR. DAVIS: That means a pay patient, does it not?

10 THE WITNESS: Yes.

THE COURT: The commitment says she is a private patient. Do you have private and public patients up there?

THE WITNESS: Yes.

THE COURT: What is the difference, as you understand, between a private and public patient?

THE WITNESS: A private patient has sufficient funds to pay her board.

20 Q. This woman, when she came in, you didn't know whether or not she was indigent?

A. No.

MR. DAVIS: I will offer this original order of commitment by which she was committed. Paper referred to received in evidence and marked Exhibit P-3.

CHARLES E. JOYCE, a witness, being duly sworn on behalf of the plaintiff, testified as follows:

Direct Examination

By MR. DAVIS:

Q. Mr. Joyce, you are a member of the Burlington Board of Freeholders?

30 A. Yes, sir.

Q. Were you a member of the committee on the insane from 1914 to 1915?

A. I was; yes, sir.

Q. Were you a member of the committee on the insane during the time Sally A. White was confined in the hospital?

A. Yes, sir.

Q. You live at Vincentown?

A. Yes.

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CLARENCE DEACON

Q. Did Sally A. White come from Vincenttown?

A. Yes, sir.

Q. How long have you known her?

A. Ever since I was a small boy.

Q. Ever since she was a small girl?

A. Yes; a young girl.

Q. Did you visit the hospital after she was committed?

A. Yes. every meeting of the committee. **10**

Q. And they were often?

A. We met once a month.

Q. Sometimes oftener?

A. Sometimes have a special meeting.

Q. Did you see her while she was there?

A. I did.

Q. What was her condition with reference to violence and trouble to the officials?

A. Very bad, bad condition. **20**

MR. DRAKE: Objected to.

THE COURT: I don't see that that has anything to do with it. ..

Q. Were you present at the meeting of the committee that fixed the compensation she was to pay to the County?

MR. DRAKE: Objected to.

THE COURT: Overruled.

MR. DRAKE: Exception.

(Exception allowed.)

A. I was.

Q. What compensation was fixed, what was the price fixed by the committee that she should pay for her keep and maintenance? **30**

MR. DRAKE: Objected to.

THE COURT: Overruled.

MR. DRAKE: Exception.

(Exception allowed.)

A. Six dollars a week.

Q. When your committee fixed that rate did you then consider it a fair and reasonable charge for her keep and

TESTIMONY CHARLES E. JOYCE AND C.
CLARENCE DEACON

maintenance?

MR. DRAKE: Objected to.

THE COURT: Same ruling.

MR. DRAKE: Exception.

(Exception allowed.)

A. We did, yes.

10

Cross-examination

By MR. DRAKE:

Q. Mr. Naylor, who made the application for her commitment, was on the township committee?

MR. DAVIS: Objected to as not cross-examination.

A. He was on the township committee at that time.

Q. And he did it to save the township from the expense of her keep?

MR. DAVIS: Objected to.

THE COURT: It is not cross-examination.

20

An adjournment was thereupon taken until December 26, 1916, at Mt. Holly.

Mt. Holly, N. J., December 26, 1916.

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

C. CLARENCE DEACON, recalled.

Cross-examination

By MR. DRAKE:

Q. You were Superintendent of the Hospital for the Insane of Burlington County between June 26, 1914, and June 19, 1915?

30

A. Yes.

Q. During that period Sally A. White was confined there?

A. Yes.

Q. What reports did you make as to the number of inmates and the names of the inmates to the Board of Free-

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EXAMINATION

holders during that period?

Objected to.

THE COURT: Upon what ground?

MR. DAVIS: Upon the ground that that has nothing to do with the liability of this woman to pay for her board.

MR. DRAKE: It is not a question of board, your Honor, it is a question of support and maintenance, a question of what it cost the county. They cannot sue for board, the statute does not make any provision for board, it makes a provision for support and maintenance. What it cost the county is what they can recover and not what would be the reasonable board between the parties. There is no arrangement for that. 10

THE COURT: I am inclined to receive it if he has the information.

A. I couldn't just say. The reports are filed in the collector's office. 20

Q. You got notice to produce those, didn't you?

A. Yes.

MR. DAVIS: But he doesn't have them.

A. I don't have them. They are over in the collector's office. Our bill for the population for the year was about one hundred and seventy-four patients, I think, or one hundred and seventy-six.

Q. For the years that I have mentioned?

A. Yes; one hundred and seventy-four for the year 1914 and 1915.

Q. Now what is the average daily cost of that maintenance? 30

MR. DAVIS: That is what I object to. Your Honor can see that some patients might cost nothing. Now there are a lot of patients there that do work around the place, and of course the cost of supporting those patients would be reimbursed by the fact that they have contributed some labor to it. Other patients are violent, cost a great deal more than the average to maintain them, and I claim that the county here is entitled to recover—

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timony must relate exclusively to the circumstances surrounding this patient.

MR. DRAKE: I want to amend the question, the average weekly cost. (Objected to.)

THE COURT: I suppose he wants the testimony in on the theory that the county has overcharged. Is that the idea?

10 MR. DRAKE: No; I do not say that the county had charged anything. It seeks to charge a certain sum, \$6 a week.

THE COURT: Now what do you say about that?

MR. DRAKE: The average weekly charge of a patient will be what this woman ought to pay, unless they have some special account against this woman to show that her maintenance and support was higher than the ordinary patient.

20 THE COURT: I am not inclined to cut out any testimony that can possibly be of any value (question repeated).

Q. From July, 1914, to July, 1915.

THE COURT: I am inclined to receive it. It may be of no consequence.

A. In 1914 it was \$2.98 and in 1915 it was \$3.05 per capita weekly costs.

By THE COURT:

Q. You mean to say that was the per capita cost?

A. Yes.

30 Q. Average?

A. The average per capita weekly cost.

Q. Now in reaching that average would the cost be greater in individual cases?

A. Much greater.

Q. What was the cost in this particular case?

A. Why, it was much more than the county charged.

Q. More than \$6?

A. Yes; this patient had extra attention. It took from two to three nurses at times to wait upon her.

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EXAMINATION

Q. You mean to say the actual outlay?

A. The actual outlay was greater than the county charged them.

By MR. DRAKE:

Q. How do you arrive at that?

A. By the nature of the patient.

Q. Weren't those nurses there anyhow?

A. Yes.

10

Q. In the employ of the county asylum?

A. Yes.

Q. Did it cost any more to the county to give the attention to this woman which they gave than it would have cost if she had been quiet?

A. Yes.

Q. How do you prove that?

A. Well, they could devote their time to some other business connected with the institution.

20

Q. They were there in the employ of the institution and had to be paid?

A. Yes.

Q. They were not paid any more because they gave extra attention to this woman, were they?

A. I don't know that they were.

C. CLARENCE DEACON—RE-DIRECT

By MR. DAVIS:

Q. Now, Mr. Deacon, some patients that you have there do some service for the asylum, do they not?

30

A. Yes.

Q. That is, the patients that are not violent or need to be incarcerated?

A. Yes.

Q. And that is taken into consideration in fixing the per capita cost?

A. Yes.

Q. In other words, their labor is contributed; they are

C. CLARENCE DEACON—RE-DIRECT

not credited with that, are they?

A. No.

Q. But it simply reduced the cost of the maintenance of the hospital.

A. Yes.

By THE COURT:

Q. Mr. Deacon, do you consider that a fair charge, \$6 a week?

10 A. Very reasonable.

Q. Have you been in the habit of making charges for that sort of service and attention?

A. Yes.

Q. In other cases, I mean?

A. Yes.

Q. And you then feel qualified to say whether it was a fair and reasonable charge, do you?

A. Yes.

20 Q. I don't know whether you understood what I was trying to get at. It is this: In the course of your business have you been making charges against these inmates, I mean these private inmates, and have you collected money from them or their guardians?

A. Yes; we have.

Q. And is \$6 a week the minimum or the maximum charge?

30 A. Well, we get more and we get less from certain classes of patients. We have patients there that we get ten dollars a week for and we have others that pay \$30 a month. We have some that pay \$4.50 a week. And I always thought it was in justice to the county for it to be paid for what expense was incurred by each patient.

By MR. DAVIS:

Q. Is that the way that this \$6 was fixed, Mr. Deacon?

A. Yes.

By THE COURT:

Q. With reference to the actual outlay?

A. Yes.

C. CLARENCE DEACON—RE-CROSS
EXAMINATION

Q. You are not expected to make any profit out of the business?

A. No.

Q. Nor does the county make any profit out of any of these patients?

A. No.

Q. The institution is not run for that purpose?

A. No, sir.

10

Recross-examination

By MR. DRAKE:

Q. During all the period this woman was confined there, from the time that she was committed and entered the institution until her death, no money was paid on account of her support or maintenance, was there?

A. There was no money paid while she was living, I don't think.

Q. When you get, you say, sometimes more and sometimes less than \$6.00 a week, what sort of items do you put on your bill when you get \$10 a week to show that the cost is up to that sum? 20

A. Well, that depends largely on the class of patient it is. Some patients require a great deal more care and attention than others, consequently the county ought to be paid more for that patient than one that could wait on herself and devote some labor towards her support.

Q. Aren't those charges paid quarterly in advance when they are above the usual, the average charge?

A. Some quarterly and some monthly, some weekly. 30

Q. In advance?

A. Not always.

Q. But you don't let them go longer than quarterly, do you?

MR. DAVIS: I object. I don't think it has got anything to do with this case.

THE COURT: I can't see that it has anything to do with it.

MR. DRAKE: (Objection noted for defendant as ground

C. CLARENCE DEACON—RE-CROSS
EXAMINATION

of appeal.)

Q. Did you make any demand on anybody during the period of this woman's commitment to this institution for the payment of any sum of money whatever?

A. We made several inquiries and it was quite a while before a guardian was appointed, and I think the guardian was appointed a few months before the patient's death.

10 By THE COURT:

Q. Did the guardian pay something on account of this bill, did you say?

A. Yes.

Q. How much?

A. I think it was some \$30, \$35.84.

Q. When was that paid, before or after the death of the patient?

A. After the death. It was paid September 11, 1915.

20

Q. Did the guardian know anything about this bill?

A. Yes.

Q. During the lifetime of the patient?

A. Yes.

Q. What did he say about it?

A. Well, he just sent us some money that he had on account.

By MR. DAVIS:

Q. Was there a statement, Mr. Deacon, at that time that that was all the funds that came to his hands?

A. Yes.

30

Q. That is, the sum that he paid over to you?

A. Yes.

By THE COURT:

Q. Do you say it was paid before her death?

A. No; it was paid after her death, paid September 11, 1915, and the patient died July 19, 1915.

THE COURT: Now is this suit against the guardian?

MR. DAVIS: No; it is against the administrator. His guardianship ceased when she died.

THE COURT: I was wondering how he could pay any-

C. CLARENCE DEACON—RE-CROSS
EXAMINATION

thing on account after her death.

MR. DAVIS: Well, that is for him to answer.

Both sides rest.

MOTION FOR NONSUIT

Filed February 1, 1917

Please take notice of motions to knock out the plaintiff, 10
either in the aspect of striking out its complaint, or that it
discloses no cause of action or of non-suiting the plaintiff
on its opening, which must be confined within the term of
its complaint.

2. AND TAKE FURTHER NOTICE that said motions, in one or more of the above aspects, will be based on the following reasons:

3. Because the complaint has no allegation that any statutory proceedings were taken, or as to what statutory proceedings were taken to make Sallie A. White, in her lifetime, an insane person. 20

4. Because certain statutory proceedings must be taken and set forth in the complaint, to create or produce an insane person, under the statute, against whose estate this suit can be maintained and such proceedings must be pleaded to make a valid complaint.

5. Because such proceedings create an indigent insane person only, and must be pleaded.

6. Because certain additional statutory proceedings must be taken and pleaded to create or produce a non-indigent insane person and sustain a suit against her estate. 30

7. Because these statutory proceedings must be and must appear to be in strict conformity to the statute under which they are taken, and must be so pleaded as to show that they are.

8. Because when these statutory requirements to create a non-indigent insane person have been in strict conformity with the statute it must be ascertained further in strict compliance with the statute and during the lifetime

MOTION FOR NONSUIT

of the non-indigent insane person what rate of maintenance and support is to be paid by the estate of the non-indigent insane person.

9. Because the statute knows no such thing as a reasonable rate per week for a non-indigent insane person in the aspect of a boarding-house charge for a sane person as the complaint in this case sets up.

10. Because it would be a violation of the sanctity of property and property rights, upon which our civilization is founded to allow the plaintiff to proceed one step in the proof of its present complaint, and the full and complete proof of the allegations pleaded, would disclose no cause of action, whereas the defendant is entitled to be informed by the complaint what facts he has to meet with proof.

11. Because the heirs and next of kin who became entitled to the estate of the decedent on her civil or social death (subject to her statutory duties) when that occurred, according to statutory proceedings, have never had their day in court, and cannot be proceeded against unless the complaint sets up proceedings under the statute, showing they have had their day in court.

12. Because the complaint and the cause utterly fail to disclose that due process of law which the XIV Amendment to the Federal Constitution requires.

13. The sixteenth paragraph of the statute entitled, "An Act concerning the commitment of insane persons into institutions for the care and the treatment of the insane, in this State, their confinement therein, and their support while so confined (Revision of 1913), approved April 13, 1913, in effect at the time said Sallie A. White became insane, at pages 472-473, in Chap. 250, of the laws of 1913, provides, among other things:

"Every insane person supported in an institution for the care and treatment of the insane in this State, shall be personally liable for his maintenance therein in such manner and to such an amount as the proper judicial officer shall direct, as hereinbefore provided in this Act."

14. The final order against the said Sallie A. White

MOTION FOR NONSUIT

orders (although not based on antecedent valid statutory proceedings), as follows:

"I hereby adjudge and decree that he is a proper person to be confined in said institution permanently, upon proper arrangements being made for her support therein, according to the form of the statute in such cases made and provided, until restored to his right mind, or until further order of a Court, of competent jurisdiction."

15. Fundamental and constitutional guarantees and statutory requirements are such that a legal cause of action cannot be both pleaded and proved in this case. 10

Respectfully yours,

T. J. MIDDLETON,

Attorney for Plaintiff.

HERBERT A. DRAKE,

Of Counsel.

Dated December 2, 1916.

AMENDED COMPLAINT

Filed March 22, 1917

20

The plaintiff, a municipal corporation of the State of New Jersey, by James Mercer Davis, its Solicitor, complains and says:

1. That on or about June 26, 1914, one Sallie A. White was duly adjudged an insane person by the Common Pleas Court of Burlington County, and on that date was by said Court committed to the Burlington County Hospital for the Insane as an insane person, and as private patient.

2. That the said Sallie A. White was actually committed and confined to the said Burlington County Hospital for the Insane on June 26, 1914, and was there supported and maintained by the Board of Chosen Freeholders of the County of Burlington and State of New Jersey until July 19, 1915. 30

3. That the said Sallie A. White died on or about July 19, 1915, and the said J. Harry White was appointed administrator of her estate by the Surrogate of Burlington County and duly qualified as such; that more than six months elapsed since the death of the said Sallie A. White.

AMENDED COMPLAINT

4. That the said Sallie A. White was charged with the sum of \$6.00 per week for her board, keep and maintenance during the period of time she was maintained in said Burlington County Hospital for the Insane, an itemized statement of which account is attached hereto and made a part hereof.

5. That the sum of \$6.00 (six dollars) per week is a fair and reasonable sum to be paid for the board and keep
10 and maintenance of the said Sallie A. White.

6. That the total amount of board from June 26, 1914, to July 19, 1915, the time during which the said Sallie A. White was maintained as aforesaid in the said Burlington County Hospital for the Insane, amounts to the sum of \$332.57, and that there has been paid on account thereof the sum of \$35.84.

7. That there is now due the plaintiff the sum of \$296.75, as shown by the statement attached hereto and made
20 a part hereof, and there are no offsets or counter claims.

Judgment will be demanded for the \$296.73, besides costs of suit to be taxed.

JAMES MERCER DAVIS,
Attorney for Plaintiff.

Same bill of particulars as in former claim.

ANSWER TO AMENDED COMPLAINT

The defendant, who is the administrator of the estate of Sallie A. White, late of the County of Burlington, in the
30 State of New Jersey, resides in said Burlington County and says that:

1. On or about June 26, 1914, said Sallie A. White (hereinafter called the decedent) may have been adjudged an insane person, but in all other respects this defendant denies Paragraph 1 of said Amended Complaint.

2. Defendant admits that the decedent was confined to said institution, and denies that she was legally committed to said institution or that any support and maintenance furnished her was supplied to her as a non-indigent insane per-

MOTION FOR NONSUIT

son with the expectation of remuneration to the plaintiff.

3. Defendant admits the statements in Paragraph 3 of said Amended Complaint.

4. Defendant denies the statements in Paragraph 4 of the said Amended Complaint.

5. The defendant denies the statements in paragraph 5 of the said Amended Complaint.

6. Defendant denies the statements in Paragraph 6 of the said Amended Complaint.

7. Defendant denies the statements in Paragraph 7 of the said Amended Complaint. 10

FIRST DEFENCE

Defendant objects that the Amended Complaint discloses no cause of action.

SECOND DEFENCE

Defendant says that on or about June 26, 1914, an order was made instituting an inquiry as to the sanity of the decedent, but said proceedings and the proceedings subsequent thereto were not before the Court of Common Pleas of Burlington County, nor the Judge thereof as such, but before a judicial officer clothed with the powers and subject to certain limitations contained in Chapter 250 of the Session Laws of New Jersey for the year of 1913, and said judicial officer acted, not as Judge of the Court of Common Pleas, or with the general powers of that Court, or of a Judge of it, but with, under and subject to such powers and limitations as are in said Act provided and contained of and concerning the same, and said judicial officer failed to require proceedings before him to give him jurisdiction of the case or of the decedent, and therefore failed to commit the decedent to the Burlington County Hospital for the Insane (hereinafter called the Institution) as a private patient or a non-indigent insane person, and that afterwards, by proceedings in the Court of Chancery, the said decedent was declared insane, and a Guardian in lunacy was appointed of and for her estate and effects. 20 30

THIRD DEFENCE

That decedent was not legally committed to said institution as an insane person and her confinement in said institution was as an indigent person, and all support and maintenance furnished her was volunteered and supplied to her as an indigent-insane person as acts of benevolence, without expectation of remuneration to the plaintiff from the estate of the decedent.

FOURTH DEFENCE

10 That the decedent during the time of her confinement in said institution was indigent and unable to pay for her board, and her clothing, which exhausted her income of \$40.00 a year, was furnished to her.

FIFTH DEFENCE

The plaintiff and the principal officer of said institution never charged the decedent or her guardian in lunacy during her lifetime for board in any sum, and never made any contract with her guardian in lunacy in relation to her support and maintenance in said institution.

SIXTH DEFENCE

20 The average costs of the support and maintenance of the inmates of said institution during the year 1914 was less than \$3.00 per week, and during the year 1915 slightly over \$3.00 per week, and no account was kept of any additional costs for the support and maintenance of decedent.

SEVENTH DEFENCE

30 The pretended order, illegally committing the decedent to said institution, and under which she was confined therein, provided, or pretended to provide, that that decedent was a proper person to be confined in said institution permanently, upon proper arrangement being made for her support therein, according to the form of the statute in such case made and provided, and that notwithstanding these directions to the officers of said institution, as agents of the plaintiff, the defendant says no proper arrangement was made for her support therein, either with the decedent or with her said guardian in lunacy, and no action was taken by which to make the decedent, in her lifetime, or estate during her lifetime, or after her death, liable for her support and maintenance in said institution.

EIGHTH DEFENCE

After the decedent's death, socially and politically by insanity, and after her heirs and next of kin had thereby become interested in her estate, no proceedings were taken by the plaintiff, or any one for it, to bind the interest of the said heirs and next of kin in the estate of the decedent for her support and maintenance in said institution, contrary to Article XIV of the Amendments to the Constitution of the United States, and she was not proceeded against, and her heirs and next of kin were not proceeded against, according to law or with due process of law, and the said judicial officer never had jurisdiction of decedent, or her estate, to make an order for her support and maintenance, binding on her heirs or next of kin. 10

NINTH DEFENCE

The statute in question, to the extent of any provision therein, which ignores the right of the heirs and next of kin of the decedent to due process of law, in order to bind them, or the estate of the decedent, is unconstitutional and conflicts with said Article XIV of the Amendments to the Constitution of the United States. 20

TENTH DEFENCE.

The proceedings for decedent's commitment to said institution were on forms for an indigent patient, and decedent was so regarded, and if she ever became a non-indigent or insane person, she fell back again into the indigent class under said Act, because after her civil and social death from insanity, neither her guardian, or any one in her behalf, paid anything for her support and maintenance in said institution during her confinement therein, and decedent was indigent and had no income or productive estate with which to pay for her support and maintenance, except the \$40.00 a year, above mentioned, which was used to supply her clothing. 30

T. J. MIDDLETON,
Attorney for Defendant.

REQUESTS FOR FINDINGS

First—Defendant will object that the plaintiff has disclosed no cause of action by its complaint for the reasons stated under the fifth paragraph of the defendant's answer, and will ask and request the Court to so find.

Second—The Court is also requested to find that necessary proceedings to make decedent a non-indigent patient were not taken.

10 Third—The defendant will ask the Court to find as follows, viz:

1. That on the application for the commitment of the deceased, she appeared to be an indigent patient, because the application was made by a member of the Township Committee where she had a settlement and residence. Denied—H. C., J.

2. That in the proceedings and order the decedent was made an indigent patient.

20 3. That there is no order or proceeding making the decedent a non-indigent patient.

4. That decedent was an indigent patient and not liable to plaintiff.

5. That no arrangement, agreement or settlement was made between the decedent or any one representing her in her lifetime to change her from an indigent patient to a non-indigent patient.

30 6. That the application for the admission of the decedent to the Burlington County Insane Asylum in the form of an indigent patient and no arrangement having been made during her lifetime to change her to a non-indigent patient, the implication is justified that no obligation ever arose against her estate for the necessaries supplied to her, and that the same were supplied to her as an indigent patient with the intention on the part of the plaintiff of making no claim therefor.

7. In order to justify the Court in implying an obligation on the part of the decedent or her estate to pay the expenses of her maintenance, the necessaries therefor must have been supplied with the intention on the part of the

REQUESTS FOR FINDINGS

Filed October 28, 1916

plaintiff to be paid for them and to look to the decedent's estate for its pay.

Filed February 1, 1917

8. Unless it is shown to the contrary from the provisions of the statute, it will appear that the plaintiff or the County Insane Asylum of Burlington County got a quarterly allowance from the State of \$2.00 per week for the decedent in her lifetime as an indigent patient. 10

9. The complaint does not disclose a legal cause of action, in that it is claimed that the \$6.00 per week is a reasonable and fair sum to be paid for the board and keep and medical attention of the decedent, whereas, the decedent, if liable at all, is liable under the statute for the expense of her maintenance, for which the plaintiff must present a detailed account and plead the same in his complaint. Also, because the liability of the decedent and her estate, if it arose at all, arose under a statute and statutory proceedings in conformity therewith, no hint of which is given in the plaintiff's complaint. 20

10. The proceedings in the case do not conform to or comply with any statute of New Jersey, and are totally void, as against the estate of the decedent, for lack of conformity to statutory provisions. That no order has been made legally making the decedent a non-indigent patient, and that no obligation arose during her lifetime or since to change her to a non-indigent patient. Wherefore, the necessaries supplied to her were as a charity. 30

Respectfully submitted,

H. A. DRAKE, *Of Counsel With Defendant.*T. J. MIDDLETON, *Attorney;*

The foregoing requests are denied.

HOWARD CARROW, *Judge.*

ADDITIONAL REQUESTS FOR FINDINGS

The defendant prays leave to add to the requests for findings already made the following additional requests for findings, viz:

10 That Sallie A. White, deceased (hereinafter called the decedent), was not committed to the Burlington County Hospital for the Insane (hereinafter called the Institution) or proceeded against as an insane person, in the manner required by Chapter 250 of the Sessions Laws of 1913 (hereinafter called the Act), so as to bind her estate and her heirs and next of kin for her support and maintenance in the said institution. "Denied." "H. C., J."

A. That the two days' notice of the inquiry into decedent's sanity required to be served on her next of kin, or the attorney of her or them, and the order directing and providing for said two days' notice required by that portion of Section 3 of the Act, which reads as follows, viz:

20 "In all cases, whether before the confinement of the person alleged to be insane or afterwards, the order instituting the inquiry as to his sanity shall provide for two days' notice of the time, place, where and name of the judicial officer who is to hear and decide the matter, to be given to the person alleged to be insane, to the next of kin of said person or to the person with whom said person resides or resided at the time of his temporary confinement as aforesaid, if said next of kin is not the person with whom said person resided, or to the attorney of any of said parties"

30 were not and neither of them was complied with, and such compliance was neither pleaded nor proved in the case, and the attendance of the decedent and her next of kin at said inquiry, required by the Act, were not had or obtained or pleaded or proved, and that the medical director or other officer of said institution did not perform his duty to assist said decedent so temporarily confined, as appears by the case, in communicating by mail, or otherwise, with any relative, next friend or attorney of the decedent, as she might have requested, and that said such provisions of Section 1 of said Act were not complied with, or pleaded or proved.

ADDITIONAL REQUESTS FOR FINDINGS

"The proceedings do not show that two days, etc., was given. But the same may presume that the Court had possession of all necessary judicial facts." "H. C., J."

B. That the application to the medical director or other head officer of said institution, required by Section 1 of the Act, was not made in the manner required, nor by a person interested in the admission of decedent to said institution, as required by said Section 1, or by a person interested in the admission of decedent by reason of relationship to her, nor by a person having the charge and care of decedent, nor by the Mayor, nor police captain of the municipality where the decedent resided, and that said requirements were not complied with, pleaded nor proved in the case. "Denied." "H. C., J." 10

C. That the decedent was not produced at the inquiry into her insanity, nor to the judicial officer conducting said inquiry, nor was her right to be present at said inquiry waived in writing, by her signature, attested by a subscribing witness, nor did the said judicial officer, as required by Section 3 of the Act (page 454) proceed to the place where decedent was and view her, and that such requirements of the Act were not complied with, pleaded nor proved in the case. 20

"The same ruling as was made in request 2 respecting two days' notice, etc." "H. C., J."

D. That the decedent was not determined to be insane and non-indigent as required by Section 7 of the Act, and that such determination and requirement were neither pleaded nor proved. "Denied." "H. C., J." 30

E. That the heirs and next of kin of the decedent who became entitled to her estate, property and property rights on her civil and social death from insanity, have not come into and have not been brought into Court or into the case and have not had their day in Court, and that a judgment for plaintiff would deprive them of their property and rights, without due process of law, if founded upon the foregoing proceedings or if founded upon the alleged commitment of the decedent; and that the proceedings in this case up to and

ADDITIONAL REQUESTS FOR FINDINGS

including the commitment were null and void and contrary to and in violation of all of the provisions of Article XIV of the Amendments to the Constitution of the United States, so far as creating any liability against the estate, heirs or next of kin of the decedent. "Denied." "H. C., J."

II.

10 That the case of the plaintiff has failed both by pleading and proof to show any personal liability of the decedent under Section 16 of the Act or of her estate thereunder, for her support and maintenance in said institution, in the manner required by said section and to such an amount as a proper judicial officer has or should have directed. "Denied." "H. C., J."

20 A. That under said Section 16, the Superintendent of the institution, or other person acting for the plaintiff, should have applied to the judicial officer in Section 16 referred to, subsequently to any judicial proceedings upon which this case is founded, and upon notice to the guardian in lunacy of the decedent for an order directing the amount to be paid by such guardian for the support and maintenance of the decedent in said institution, and the manner of the payment and the amount thereof, and neither by pleading nor by proof has such judicial officer made any such direction, nor was any application made to such judicial officer therefor. "Denied." "H. C., J."

30 B. That for the care and treatment of the decedent in said institution, under Section 16, the plaintiff is limited to the cost of her maintenance therein, and to all necessary expenses incurred by said institution in her behalf, to be paid in such amount and manner as shall be directed by a judicial officer; and that the plaintiff has not pleaded nor proved the cost of the maintenance of the decedent, or any of her necessary expenses in said institution, nor the amount directed by a judicial officer to be paid therefor, nor the manner of its payment. "Denied." "H. C., J."

C. That the plaintiff has neither pleaded nor proved that it has complied with the condition contained in the concluding portion of the alleged order of commitment in the

ADDITIONAL REQUESTS FOR FINDINGS

case, which condition was that the decedent was at the time of the alleged commitment a proper person to be confined in said institution upon proper arrangement being made for her support therein, according to the Act, and that the plaintiff has not pleaded nor proved that any arrangement, proper or otherwise, was made for decedent's support in said institution. "Denied." "H. C., J."

D. That the plaintiff has pleaded and proved only what would be a fair and reasonable sum for the board, keep and medical attention of the decedent in said institution, which fails to bring the plaintiff within the Act. "Denied." "H. C., J." 10

III.

That if decedent ever became a non-indigent patient or inmate of said institution in spite of or by the denial of the request under Title I hereof (which the defendant denies), she fell back into the indigent class under that portion of Section 17, which follows: 20

"And whenever, after the commitment of any person, as non-indigent, it shall be found that the estate of such person is unable to pay for his board and maintenance, such person shall, upon the certification of the said medical director, or other head officer or business manager of the institution in which said person is confined, or upon the certification of the county solicitor, or of the Attorney General, as the case may be, and the approval of the Judge of the Common Pleas or Circuit Court of the county in which said person had a legal settlement, or in case there be no legal settlement in any county, the Common Pleas Judge, or the Circuit Court Judge in which such institution is located, such person shall at once become an indigent patient chargeable, including arrearages, against the county or state, or both, as the case may be, upon notice to the Clerk of the Board of Chosen Freeholders of the proper county and the State Treasurer," because after her civil and social death from insanity neither her guardian nor any one in her behalf paid anything for her support and maintenance in said institution during more than a year of her confinement therein, while Section 8 pro- 30

ADDITIONAL REQUESTS FOR FINDINGS

vided that payments of this sort must be made quarterly in advance or suit brought to obtain them, and thereupon decedent's support and maintenance became chargeable, including arrearages, under the legislation now quoted against the county or state, or both, as provided by law. "Denied." "H. C., J."

IV.

10 That under Section 8 the decedent was an indigent person, and power is therein given to proceed against such of her relatives as are mentioned in Section 16. The proviso to Section 8 is as follows:

20 "Provided, however, that the officer in charge of the financial affairs or business management of such institution shall not be barred nor limited in the collection by suit at law or any other legal method, or any sum so due by any person or from any funds liable for such support and maintenance, irrespective of the absence or limitations in or directions given in the order of such judicial officer, or omission to make such order."

"Denied." "H. C., J."

That the action here given is to the officer in charge of the financial affairs or business management of the institution and not to the plaintiff in this case, and this officer is not barred nor limited in the collection by suit at law of any sum due by an inmate or from any funds liable for such support and maintenance, and the answer to that is there is no fund due to him and there are no funds liable for such support and maintenance in this case. "Denied." "H. C., J."

30 A. The proviso proceeds to give to this officer, who is not the plaintiff, a right of action, irrespective of the absence of a limitation in or directions given in the order of the judicial officer, relative to proper arrangements for support and maintenance, or in case of his omission to make such order and this portion is unconstitutional in this respect; which is not by taxation or by eminent domain or by contract, and is therefore void, and in violation of Article XIV of the Amendments to the Constitution of the United States.

That the application for the admission of the decedent

ADDITIONAL REQUESTS FOR FINDINGS

to said institution was on a request and certificate for an indigent person, and that the forms upon which said application was made were not competent to make the estate of a decedent liable for support and maintenance in said institution. "Denied." "H. C., J."

VI.

That under Sections 8 and 17, the failure of the decedent or of any one representing her to pay anything on account of her board and maintenance during the entire time of her confinement in said institution, made her an indigent person, and if any judgment could be obtained against her it would be for support and maintenance such as is allowed by the State of New Jersey to the county, namely, two dollars (\$2) per week; and the defendant denies that any such sum is recoverable in this action, and requests a finding that it was up to the State of New Jersey to pay those two dollars (\$2) per week to the business manager of said institution. 10

Respectfully submitted, 20

T. J. MIDDLETON,

Attorney for Plaintiff.

HERBERT A. DRAKE,

Of Counsel.

OPINION FILED MARCH 22D, 1917

For plaintiff: J. Mercer Davis.

For defendant: T. J. Middleton and H. A. Drake.

CARROW, J.

Decedent, a single woman of full age, was a private insane patient in the Burlington County Hospital for the Insane between June 26th, 1914, and July 19th, 1915, she having been committed to said institution by the Court of Common Pleas of Burlington County. Decedent died July 19th, 1915, and defendant took upon himself the administration of her estate. Plaintiff charged decedent \$6 per week for her support and maintenance, which was less than it cost the county to take care of her. Plaintiff's claim would have amounted altogether to \$332.57, but \$35.84 was paid on 30

OPINION FILED MARCH 22D, 1917

account by the guardian of decedent after her death.

10 Payment is resisted by defendant upon technical grounds, which are all aimed at the proceedings in court which made the adjudication involving decedent's commitment; but regardless of whether said proceedings can be thus collaterally attacked, I do not see how such a defense can be allowed anyway in the present circumstances; for this is not an effort to recover from outside parties, it is an effort simply to charge decedent's estate with a debt for necessities. I hold that there is liability either within or without the law of 1913, page 449, Van Horn vs. Nann, 39 N. J. L. 207: Freeholders of Camden vs. Ritson, 68 N. J. L. 666.

Plaintiff may take judgment for \$293.73.

RULE FOR JUDGMENT

20 This action having been tried before Judge Howard

Carrow without a jury, in the presence of counsel of the respective parties on December 9th, 1916, and the Court having found in favor of the plaintiff for \$293.73 damages.

It is ordered that judgment final be entered in favor of the plaintiff and against the defendant for the sum of \$293.73 and the plaintiff's costs to be taxed, on motion of J. Mercer Davis, attorney for plaintiff.

Ruled entered March 22d, 1917, Harry L. Knight, Clerk.

JUDGMENT

30

This action was tried before Judge Howard Carrow without a jury, in the presence of counsel of the respective parties, on December 9th, 1916, and the Court having found in favor of the plaintiff for the sum of \$293.73 damages, whereupon it is adjusted that the plaintiff, the Board of Chosen Freeholders of the County of Burlington and State of New Jersey, recover of the defendant, J. Harry White, administrator of the estate of Sallie A. White, deceased, the sum of \$293.73, and its costs, which are taxed at the sum of

JUDGMENT

\$43.58, making in the whole the sum of Three hundred and thirty-seven dollars and thirty cents (\$337.30).

Judgment entered March 22d, 1917. Harry L. Knight,
Clerk.

EXHIBIT

NEW JERSEY, County of Burlington,
Before Wm. D. Lippincott, Esquire,
Judge.

10

In the matter of the inquiry into
the sanity, commitment and
confinement in the New Jersey
State Hospital at Trenton of
Sallie A. White, an insane pa-
tient.

Final Order concluding
Inquiry.
Private patient.

Certified copies of application with physicians' certifi-
cates attached thereto, alleging the insanity of Sallie A.
White, of the County of Burlington and the State of New
Jersey, as provided by law and in accordance with the statute,
having been presented to me by James K. Naylor, Chairman
of Township Committee of Southampton Township, to-
gether with an order or certified copy thereof, as provided by
statute directing the institution of inquiry as to the sanity of
the said Sallie A. White, alleged to be insane, and commit-
ting the said alleged insane person to Burlington County
Hospital for Insane, which application, with certificates
attached thereto as aforesaid, is dated the twenty-fourth day
of June, nineteen hundred and fourteen, wherein it appears
that the said Sallie A. White was temporarily committed to
the Burlington County Hospital for Insane on the 26th day
of June, 1914, within six days after the date of said appli-
cation for admission and commitment, and as it appears
from said application and certificates, six days from the
date of the personal examination by the physicians signing
said certificates prior to the admission and commitment of
such person, the subject of this inquiry, and this inquiry
having been brought on as provided by law, upon at least
two days' notice, as appears by the proofs of service of such

20

30

EXHIBIT

notices produced before me, namely, upon James K. Naylor, chairman of Township committee, the next of kin of said person alleged to be insane, or upon, esquire, attorney of said next of kin, on the fourteenth day of July, nineteen hundred and fourteen, and upon Sallie A. White, the said alleged insane person, or his attorney or in lieu of such next of kin, upon the person with whom said alleged insane person last resided, or upon

10 Esq., the attorney of such person with whom said alleged insane person last resided, and having pursuant to the statute such inquiry and taken proofs as to the sanity or insanity of the said Sallie A. White, and not having deemed it necessary to call a jury, did call before me and examine upon their oaths James K. Naylor and Harry I. Worrell, who are creditable witnesses, and having examined the certificates under the oaths of the said physicians who made the medical examination aforesaid, who
 20 diagnosed the nature of the malady with which said alleged insane person is found to be afflicted in their opinion to be insane and a private patient, and it appearing to me from the certificates aforesaid and from the testimony of the witnesses aforesaid, that the said Sallie A. White is insane, and having examined the said witnesses touching the legal settlement of such person, and having found that such person has a legal settlement in the County of Burlington, in which he resided, and that he is not indigent and has sufficient estate to provide for his support, I hereby adjudge and decree that
 30 he is a proper person to be confined in said institution permanently, upon proper arrangements being made for her support therein, according to the form of the statute in such case made and provided, until restored to his right mind or until further order of a court of competent jurisdiction.

WM. D. LIPPINCOTT.

NEW JERSEY SUPREME COURT.

 No. 21. June, 1917.

 THE BOARD OF CHOSEN FREEHOLDERS OF
 THE COUNTY OF BURLINGTON, 10
vs.

J. HARRY WHITE, ADM.

 OPINION.

 Appeal from Burlington Circuit argued before
 Gummere, Chief Justice, and Justices Parker and Ka-
 lisch. 20

 For appellant, T. J. MIDDLETON and HERBERT A.
 DRAKE.

For respondents, J. MERCER DAVIS.

 30
Per curiam:

This suit was brought to recover from the Estate of Sallie A. White, deceased, compensation for board furnished her, and medical attention received by her, while an inmate in the Burlington County Insane Asylum from June 26th, 1914, to July 19th, 1915, the case was tried before Judge Carrow without a jury. He

found in favor of the plaintiff, determining that the estate of the deceased was liable to make compensation for the board furnished and medical attention received by her, and fixing that compensation at the rate of \$6 per week.

The principal ground of appeal seems to be, that no liability existed, because of the failure of the committing tribunal to make any order with relations to the
10 payment of compensation, but this fact we think is immaterial in determining the question of liability in the present case, for the reason that the proviso of the 8th section of the Revision of the insane laws of the State (P. L. 1913, p. 462) declares that the officer in charge of the financial affairs or business management of any State or County Insane Asylum, shall not be barred nor limited in the collection by suit at law,
20 or any other legal method, of any sum due by any person for his or her support and maintenance or from any fund liable therefore, irrespective of the absence from limitation in or directions given in the order of commitment, or the omission to make such order.

The other matters referred to in the appellants' brief have received consideration from us, and we find them without merit.

The judgment under review will be affirmed.

NEW JERSEY SUPREME COURT.

ON APPEAL. REMITTITUR.

THE BOARD OF CHOSEN FREEHOLDERS OF
THE COUNTY OF BURLINGTON,

Plaintiff-Appellee,

10

vs.

J. HARRY WHITE, Administrator of Sallie White,
Deceased,

*Defendant-Appellant.***JUDGMENT.**

This cause coming on to be heard at the November Term, 1917, and being argued by Herbert A. Drake, Esq., counsel for the appellant, and James Mercer Davis, Esq., counsel for the respondent, and the Court having taken time to consider the same, and being of the opinion that the judgment of the Burlington County Circuit Court should be affirmed in old things: 20

It is now, on this 12th day of December, 1917, ordered, adjudged and decreed, that the judgment of the Burlington County Circuit Court be in all things affirmed with costs; and that the record and proceedings remitted to the Burlington County Circuit Court, to be therein proceeded on according to law and the practice of said Court. 30

Entered December 12, 1917,

On motion of

JAMES MERCER DAVIS,

Attorney for Respondent.

NEW JERSEY SUPREME COURT.

THE BOARD OF CHOSEN FREEHOLDERS OF
THE COUNTY OF BURLINGTON,
Plaintiff and Appellee,

vs.

10

J. HARRY WHITE, Administrator of Sallie A. White,
Deceased,
Defendant and Appellant.

**ACTION AT LAW ON APPEAL AND NOTICE OF
APPEAL.**

20

Filed Dec. 14th, 1917.

The defendant and appellant hereby appeals from the judgment entered in this case confirming the judgment entered in this case in the Burlington County Circuit Court, and from the whole and every part thereof the same being erroneous, to the Court of Errors and Appeals in the last resort in all causes.

30

Dated December 14th, 1917.

T. J. MIDDLETON,
Attorney and Counsel for Defendant.

I conceive there is good cause for appeal in the above stated cause.

HERBERT A. DRAKE,
Of Counsel.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

BOARD OF CHOSEN FREEHOLDERS OF BUR-
LINGTON COUNTY,

Plaintiff and Appellee,

vs.

10

J. HARRY WHITE, Administrator of Sallie A. White,
Deceased,

Defendant and Appellant.

**ON APPEAL FROM SUPREME COURT—ADDI-
TIONAL GROUNDS FOR APPEAL.**

Filed January 12th, 1918.

20

The defendant, who is the appellant, presents the following assignments of error and grounds for sustaining the appeal taken by him in this case, in addition to those presented to and urged before the Supreme Court, and suggested by the opinion thereof.

1. The proceedings taken by the plaintiff are not in accordance with the statute, Chapter 250 of the Session Laws of 1913, hereinafter called the Act.

30

2. Under the point of failure of the plaintiff and appellee to observe due process of law it is urged that the plaintiff, being an arm of the State, which can do no wrong, is obliged to pursue due process of law irrespective of any default on the part of the decedent or any representative of hers in her lifetime or afterwards.

3. No liability existed because of the failure of the committing tribunal to make any order with respect to the payment of compensation.

4. No order ever was made respecting the compensation the decedent or the decedent's estate should pay to the plaintiff, and no contract was ever made with any one who could make a contract for the decedent or her estate.

5. The eighth section of the Act relied on by the Supreme Court to uphold the judgment provides that the proceedings "by suit at law or any other legal method of any sum due by any person for his or her support and maintenance" is ineffective because there is nowhere in accordance with the provisions of this Act any ascertainment of any sum due by any person for the support and maintenance of the decedent in this case.

6. "Any sum due" has never been ascertained, materialized or arisen under the Act to be availed of under its eighth section, as instanced by the Supreme Court.

7. It was error for the Circuit Judge who tried the case without a jury to fix the compensation defendant is to pay at Six Dollars (\$6) per week. There is no proof to support that finding. The only testimony on the point is that the cost of the maintenance and support of the decedent was from three to four dollars a week. This is not contradicted or varied, except by the unsupported opinion of a witness with no accounts or data on which to found his opinion, and hence incompetent.

8. "Any sum due," quoted into the opinion of the Supreme Court from Section 8 of the Act, relates to a time, a process and a person different from the plaintiff in this suit. The Act requires "any sum due" should have been ascertained and fixed before the death of the insane decedent.

Dated January 11, 1918.

T. J. MIDDLETON,
Attorney and of Counsel with Defendant 10
and Appellant.

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

T. J. Middleton, being duly sworn, says he served the foregoing on January 11th, 1918, by mailing a copy 20 in a letter with the postage prepaid to James Mercer Davis, the attorney of the appellee, directed to his post office address.

T. J. MIDDLETON.

Sworn and subscribed this 11th day of January, 1918, before me.

FRANCIS G. HOMAN,
Atty. at Law of N. J.

30

New Jersey Court of Errors and Appeals

THE BOARD OF CHOSEN
FREEHOLDERS OF THE
COUNTY OF BURLING-
TON,

Plaintiff-Appellee,

vs.

J. HARRY WHITE, Admin-
istrator of Sallie A. White,
Deceased,
Defendant-Appellant.

ACTION AT LAW.

ON APPEAL. 10

BRIEF
OF APPELLEE.

This is an action brought by the Board of Freeholders of Burlington County to recover the sum of \$296.73, 20 with interest from September 11, 1915, as the cost of maintenance and support of one Sallie A. White, she having been an inmate of the Burlington County Hospital for the Insane.

The admitted facts are that certain proceedings were had in the Common Pleas Court of Burlington County whereby the said Sallie A. White was committed to said Hospital on June 26, 1914, and there remained until her death, July 19, 1915, and that the defendant, J. Harry White, was duly appointed administrator of the estate of 30 the said Sallie A. White.

This case was tried at the Burlington County Circuit before the Hon. Howard Carrow without a jury and a verdict rendered in favor of the plaintiff.

From this verdict the defendant appealed to the Supreme Court of New Jersey, and the verdict of the lower court was affirmed by the Supreme Court.

ARGUMENT.

I.

10 THE PLAINTIFF IS ENTITLED TO RECOVER
REGARDLESS OF THE ACT OF 1913.

The principal defense relied upon by the defendant was the provisions of Chapter 250 of the Laws of 1913 (P. L. 1913, page 449), which it is claimed is a general revision of all acts concerning insane persons, the method of commitment to institutions, and the adjustment of the expense of their maintenance therein. This act has since been repealed, but it was in force at the time this controversy arose.

20 There can be no question but what an insane person
is liable for his support and the necessary expenses incident thereto, unless there is some provision contrary in the act of 1913, and an examination of that act discloses that there is not.

This liability existed at the common law and the proposition has been passed on by the Courts of this State and they have uniformly held that the lunatic's estate was responsible for his support and maintenance.

Van Horn vs. Hann, 39 N. J. L., page 207.

Freeholders vs. Ritson, 39 Vroom, page 667.

30 The Legislature of this State by the act of 1880 (C. S. page 3193, par. 74) provided that the Board of Freeholders might in their discretion receive insane patients for pay under such regulations as they might prescribe, and the act of 1894 (C. S. page 3195, par. 83) provided

that every insane person supported in any County Asylum should be personally liable for his maintenance therein and all the necessary expenses incurred by the institution in his behalf.

These acts are not specifically repealed by the act of 1913 and as they do not conflict with the provisions of that act they are still in force.

It is clear, therefore, that regardless of the act of 1913, there can be no question of the right of the plaintiff to recover.

10

II.

THE DEFENSE IS A COLLATERAL ATTACK
UPON THE JUDGMENT OF A COURT OF
GENERAL JURISDICTION.

The defendant raises a question as to the legality of the order of commitment of the said Sallie A. White made by the Court of Common Pleas of Burlington County, which was purported to be made under the act of 1913 above referred to. Any question which the defendant raises as to the formality of the order made by that Court is a collateral attack, particularly so inasmuch as the 1913 act specifically provided for a method of review.

The law is that a judgment and decree of a court of general jurisdiction may not be attacked collaterally, and the question of jurisdiction refers to the Court which had jurisdiction and the power to hear and determine a cause.

Podesta vs. Binna, 60 Atl., page 816.

Plune vs. Howard, 46 N. J. L., page 211

Crawford vs. Lees, 93 Atl., page 201.

30

The Plune vs. Howard case cites with approval the case of White vs. Crow, 110 U. S., page 183.

So that as far as the question of the validity of the order of the Burlington County Court of Common Pleas

is concerned the defendant cannot at this time and in this manner raise that issue.

III.

THERE WAS A SUBSTANTIAL COMPLIANCE WITH THE ACT OF 1913.

An inspection of the terms of the act of 1913 will show that there was a substantial compliance by the Common Pleas Court of the terms of that act.

10 The first section describes who may be committed; that they shall be committed upon a petition made by a relative, a person having charge, the Mayor or Police Captain. It appears from the proceedings before the Common Pleas Court that the whereabouts of the relatives of Sallie A. White were unknown at that time, and that she was living in Vincentown alone. The petition was made by the Chairman of the Township Committee, who ex officio is the Chief of Police of the Township of Southampton, of which Vincentown is the most important
20 village, so that insofar as the petition was concerned there was a compliance with the act.

The order of commitment (S. C. page 41) shows that testimony was taken by the Court and that after hearing the testimony the Court made the order. This Court certainly will not inquire into the sufficiency of what was before the Court of Common Pleas at that time. This is a question which that Court had the right to pass upon, and, if subject to review, must be reviewed in the manner prescribed by the act under which it was acting.

30 Section 7 of this act provides that if the Court finds a person insane and not indigent, it shall order that proper arrangements shall be made for such person's support and maintenance. No other section in this act refers to the non-indigent classes.

Stress is laid upon the question of proper arrangements mentioned in Section 7. Just what is contemplated by the act does not appear. The insane person cannot contract and in the majority of cases it is some time before a guardian is appointed; therefore, the fixing of the amount of board, maintenance or cost of support would constitute a substantial compliance with this requirement, and that is just what occurred with reference to this insane person.

C. Clarence Deacon, the Superintendent of the 10 County Hospital, testified (S. C. 11 and following) that the committee of the plaintiff in charge of the Hospital and the witness considered the condition of the patient and fixed the sum of \$6.00 per week for her support and maintenance. Charles E. Joyce, who was a member of that committee, testified (S. C. 16 et seq.) that he was personally acquainted with Sallie A. White and that at the time of her commitment the committee investigated her case and fixed the sum of \$6.00 per week as the cost of her support and maintenance. 20

Both of these witnesses testified that this rate was fixed after considering the condition of the patient; that she was an elderly woman, a violent case, and one which required a great deal of attention. The Superintendent testified (S. C. 13-32, et seq.) that the actual outlay was more than the County charged her (S. C. page 21-1).

It is suggested that the defense was confused by the two conditions set out in the 1913 act. This act provides that

1. the lunatic himself shall be liable. 30
2. the trustee, father, etc., of every insane person whose estate is not sufficient for his support shall be liable.

The defense makes much of the question of the heirs

of the insane person. This is not an attempt to charge the heirs or next of kin with the cost of the keep of the lunatic, but the collection of a claim against the lunatic's estate.

The rights of the heirs or next of kin in the estate of the lunatic are subject to any obligation which rests upon the lunatic himself.

The act of 1913 in no way repeals, limits or qualifies the common law or the two acts above mentioned, 10 but in effect is a re-statement of the proposition that every insane person shall be liable for his support and maintenance.

It is respectfully insisted that the plaintiff is entitled to recover the amount of its claim and that the appeal should be dismissed with costs.

ROBERT PEACOCK,
Attorney of Plaintiff-Appellee.

COURT OF ERRORS.

March Term, 1918.

10

Case No. 49.

On Appeal from Supreme Court.

The Chief Justice and Justices PARKER and
KALISCH sat below.

20

BOARD OF FREEHOLDERS of Burlington County,
Plaintiff & Appellee,

vs.

J. HARRY WHITE, Administrator of Sallie A. White,
Deceased,
Defendant & Appellant.

30

BRIEF FOR DEFENDANT AND APPELLANT.

T. J. MIDDLETON,
H. A. DRAKE,
Counsel.

INTRODUCTORY.

1. Ours is a property civilization, upholding and promoting the institution of private property. It is founded on the right of every citizen to own and enjoy his property and, legally, use and obtain rent, interest and profits from it as he will. It has resulted in the
 10 establishment in the United States, of a magazine of 250 billion dollars of wealth in private hands. As current history shows the strength of the nation lies in its private wealth and the unquestionable policy of the body politic is to uphold and promote the getting and retaining of it. Out of the surplus product of this stored up magazine of wealth the war must be financed and the Allies supported. The Bourgeoisie must not only feed and warm themselves but they must also feed and warm
 20 their dependents, the Proletariat. Only the surplus product is left to carry on the war.

2. Mainly for the Bourgeoisie that part of Article XIV to the amendments of the Federal Constitution which reads

30 “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.”

has been adopted. It is the policy of the Courts and the body politic to uphold for the Bourgeoisie this enormously important right of private property and the institution of private property.

3. The result is that in New Jersey there are only four ways by which a law-abiding person can be de-

prived of his property. (a) By eminent domain which does not apply here. (b) By taxation also irrelevant. (c) By judgment at law. (d) By contract.

4. Judgment at law is founded on contract or trespass. But trespass does not now apply. By no agreement with the plaintiff, has this defendant or his decedent contracted to part with her property. 10

5. The decedent was insane and civilly dead. She could not make a contract within the material period. It was the purpose of the now repealed statute, Chapter 250 of the Laws of 1913, (hereinafter called the Act) to enable the plaintiff to make a contract for her with it-self. This could be done only, by the plaintiff observing conformity to and following the directions of the Act. As the plaintiff was empowered to make a contract, both for himself and the decedent, he must conform strictly in order to have "any sums due" mentioned in paragraph 8, to arise under it. 20

6. The plaintiff being an arm of the State, which can do no wrong, is obliged also to pursue due process of law and to follow the Act, not only strictly but irrespective of default on the part of decedent or any representative of hers. (Page 47 lines 30-36.)

STATEMENTS OF FACTS. 30

7. The decedent was admitted to plaintiff's institution June 26, 1914, on an order which provided "that she was a proper person to be confined in said institution permanently, upon proper arrangements being made for her support therein according to the form of the statute in such case made and provided." (P. 42 L 28.) She continued there until July 19, 1915, when

she died. (P. 10 L 10.) She did not pay anything on account of her support or maintenance during the period of her confinement. After her death \$35.84 were paid by her guardian in lunacy, namely, September 11th, 1915. There was a statement at that time that this sum was all the funds that had come to the hands
10 of the guardian. (P. 24 Ls. 10-30.)

8. The provision of the statute is that the judicial officer shall direct in the order of commitment that proper arrangements for such person's support and maintenance shall be made with the proper authority in charge of the business management of the institution to which the insane person may be committed. (P. L. 1913 p. 461.) The decedent could make no proper arrangements. It was the duty of the plaintiff to make
20 them. The guardian was not appointed until several months after decedent came to the institution. (P. 10 L. 30.) The payment of the \$35.84 having been made by the guardian after the death of the decedent was entirely unauthorized and has no legal bearing on the case.

9. What the plaintiff should have done was to have made an application to the Orphans' Court which necessarily appointed the guardian, where the decedent
30 could be represented by attorney (and where the guardian could be present to state the amount and condition of the Estate of decedent) for proper arrangements for her support and maintenance in the institution. Nothing of this sort was ever done and "any sums due" mentioned in paragraph 8 of the Act could not arise. The guardian could not make a contract with the plaintiff. All the guardian could do was to comply with the order of the Court, after a contract had

been made under the supervision of the Court, between the plaintiff and the decedent, in the presence of the Court on the decedent being represented by an attorney. (See Van Horn vs. Nann, 39 N. J. L. 207.)

10. The manner of the administration of and encroachments upon the Estates and business of insane persons by the officers of the insane institutions to which they are committed, is exceedingly lax and indifferent to legal and statutory requirements and it is submitted needs to be animadverted on by the Court with a heavy hand. 10

11. All that the plaintiff in this case did was to talk over this matter of the support and maintenance of the decedent by its Insane Committee of three which kept no minutes, and who thought that \$6. per week would be a fair compensation. (Page 13 Ls. 5-20.) 20

12. The additional action was that a bill was sent to the guardian for \$6. per week (P. 10 Ls. 20-30). It was objected at the trial that any action taken to fix the compensation this woman was to pay was incompetent unless it was taken by a Court. (Under Van Horn vs. Nann, *supra*, this objection would seem to have been valid.) Anything done by the plaintiff was incompetent to bring about a contract with the decedent. 30

DISCUSSION.

13. "Whenever necessaries are supplied to a person, who by reason of disability cannot himself make a contract, the law implies an obligation on the part of such person to pay for such necessaries out of his own property; and the rule applies to a lunatic, whether so found or not, when the necessaries supplied are suit-

able to his position in life. But to justify the Court in implying such obligation, the necessities must be supplied with the intention on the part of the person making the provision to be paid for them and to look to the lunatic's estate for his pay." (See 18 Am. & Eng. Encyc. of Law 626, Bishop on Contracts Sec. 232.)

- 10
14. There is evidence in this case to show, that although the decedent was admitted as a non-indigent inmate, she was treated as an indigent. There were facts which impelled this treatment by the plaintiff. Nothing was paid on account of her support and maintenance from the time of her admission in June, 1914, until her death in July, 1915. The plaintiff contended itself with simply sending bills to the guardian after its appointment, and the guardian never paid anything to
- 20 the plaintiff during all the time of decedent's confinement. IN September, 1915, two months after decedent had died the guardian paid \$34.85 to plaintiff when it was disclosed that this small sum was the total amount of income of the decedent after her confinement in June, 1914. This is the evidence of indigency on which the plaintiff acted. It also concluded to give up the idea of looking to the decedent or her estate for anything in the way of support and maintenance. Not only did the plaintiff fail to clothe itself with a contract with the
- 30 decedent as directed by the order of commitment and statute, in order to lay a foundation for making collections in this case in decedent's lifetime, but it also failed to avail itself of a great number of collection details provided for in Sections 8, 16 and 17 of the Act, and to some extent in Sections 11 and 12. These provisions were there for the pursuit of any estate which the plaintiff might discover the decedent to have or her relatives to have. (P. 24 Ls. 1-10.) It the plaintiff

made no such attempt. The proceedings provided for by the Act, Section 8, which the plaintiff might have taken to obtain support and did not, left it to be inferred that the decedent was regarded as indigent (a result contemplated by Section 7 of the Act) and to be further inferred that to proceed against her was not worth while because of her indigency. Indeed, the plaintiff's superintendent was asked on cross-examination (see top of p. 24) "Did you make any demand on any body during the period of this woman's commitment to this institution for the payment of any sum of money whatever?" and he answered "We made several inquiries and it was quite a while before a guardian was appointed and I think the guardian was appointed a few months before the patient's death." Her maintenance became a benevolence.

10

15. In a case in Delaware County, Pennsylvania, the inmate was admitted as indigent and so treated. After his death it was disclosed that he had some property. An application was made by Pennsylvania, by petition to recover \$629.54 from that Estate, paid by Pennsylvania to the institution at which he was maintained and supported. The petition failed on the ground that the payment made was a benevolence and made without expectation of return. (See C. P. Del. Co. Pa. No. 125 Dec. Term 1912. In re Est. W. C. Arnold, a Lunatic.)

20

30

16. It is submitted in case the Court finds against the defendant that the finding of the learned Circuit Judge, fixing the plaintiff's compensation at \$6. per week and the adoption of that finding by the Supreme Court, are erroneous. There is no competent proof in the case in support of that finding. It was a charge on

- the ledger of the institution directed by the insane committee of the Board (p. 11 Ls. 25-30). The Committee visited the asylum once a month (P. 17 Ls. 9-15) and their knowledge was entirely by information (P. 11 Ls. 25-35). In conformity with this charge the superintendent sent the guardian a bill for \$6. per week (P. 10 Ls. 18-29). Proof of only one bill having been sent was made, viz, after June 26, 1915, for one year for \$312. (P. 11 Ls. 20-23.) To send a woman, whose penury and want must have been a vital factor in bringing about her insanity, and whose income was \$2.39 a month (viz., \$35.84 in 15 months from June, 1914 to and including Sept., 1915) was an incongruity which it is submitted ought not to go unnoticed by the Court, especially when as Mr. Deacon says (P. 23 L. 24) that making of the bills depends on the class of patient it is.
- 20 The attempt of this witness to uphold the \$6. per week charge, utterly breaks down on cross-examination. (See P. 21 Ls. 8-27.)

17. The only competent proof of the cost of the maintenance of the decedent is that for the year from July, 1914, to July, 1915, the average cost of maintenance at this institution was very much less than \$6. per week. It was cost of maintenance, which under the Act, could be recovered, if the plaintiff had otherwise clothed and qualified itself for a recovery. The statute knows nothing about board or reasonable board. It is concerned only with what the actual costs amount to by the average. Any variation of this average by the fanciful opinion of an uninformed committee, or by any other detail mentioned in the proof are not competent. The superintendent says as to the average cost "In 1914 it was \$2.98 and in 1915 it was \$3.05 per capita weekly costs", and that this was the average per capita
- 30

weekly cost (P. 20 Ls. 20-30). It is submitted that if the defendant is held liable at all, it ought to be not over \$3.02 per week, which is the average of the two years, during which the decedent was confined in this institution.

CONCLUSION.

In conclusion the defendant submits that his appeal should be sustained, and that if any liability is found against the defendant it should be for not over \$3.02 per week. 10

And it is urged that a proposed charge during the life of decedent of Six Dollars a week, against an indigent woman with an income of Two Dollars and thirty-nine cents (\$2.39) a month, was an injustice for a benevolent institution that adjusts charges to income; that the situation of decedent's penury which confronted the plaintiff prevented plaintiff from making any serious attempt to collect anything from decedent's estate while she lived and prevented plaintiff from pursuing due process of law to qualify itself to make collections while she lived, and permitted decedent to remain in the institution (without plaintiff ever having acquired any rights against her and without having imposed any liability upon her during her lifetime), as a benevolence, which is fatal to its case; that any liability that exists against the estate of decedent must have arisen in her lifetime and plaintiff was too much impressed by her penury to attempt to establish it; finally, that it is the true policy of the body politic to uphold due process, even for as puny an estate as this appears to be. 20 30

Respectfully submitted,

T. J. MIDDLETON,
Attorney for Defendant and Appellant.

HERBERT A. DRAKE,
Of Counsel.

Dated—March Term 1918.





