

CLUTE, J.

MAY 1st, 1919.

*SHEEHAN v. MERCANTILE TRUST CO. LIMITED.

Contract—Services Rendered to Master—Promise to Remunerate at Death of Master—Instrument in Writing Signed by Promisor Sued upon as Promissory Note—Bills of Exchange Act, sec. 176—Evidence of Promise—Statute of Frauds—Death of Promisor—Will Admitted to Probate Containing no Bequest to Servant—Action against Executors of Promisor—Corroboration—Evidence Act, sec. 12—Amendment of Pleadings—Plaintiff Entitled to Recover for Breach of Contract or upon Quantum Meruit—Costs.

Action by Lottie Maida Sheehan against the executors of Edman Brown, deceased, to recover \$10,000 upon an instrument, called by the plaintiff a promissory note, signed by the testator, and said to have been dated on or about the 13th March, 1913. The instrument, when produced at the trial, appeared to have been mutilated—the date was not upon it, though the signature was.

The action was tried without a jury at Hamilton.

W. M. McClemont, for the plaintiff.

A. J. Russell Snow, K.C., for the defendants.

CLUTE, J., in a written judgment, said that Edman Brown was a money-lender, and was, at the time the instrument was said to have been signed, about 80 years old. The plaintiff had since before the year 1901 been his bookkeeper, and she remained in his employment down to the time of his death on the 17th November, 1915. The testator's wife died about the 9th September, 1910. The plaintiff was for many years not only the bookkeeper of the deceased, but his secretary and the manager of his business; she nursed his wife for a long time, and was housekeeper after the wife's death, and nursed the plaintiff during his illness. The plaintiff alleged that while his wife was alive the deceased promised to marry the plaintiff on his wife's death and to make provision for her in his will if she would nurse the wife until her death, which the plaintiff did. After his wife's death he did not marry the plaintiff; but, before the wife's death, he made a will, dated the 2nd June, 1910, in which he bequeathed the plaintiff the income of \$10,000, "the said income to start one month after my death and my wife's death." This bequest the deceased purported to cancel by crossing it out in ink and by a memorandum, probably made early in 1913. About this time, while the plaintiff continued in charge of the deceased's business, he took in another