

take the estate, save some small legacies. Whatever intentions the testator may have had towards the plaintiff, he has failed to express them by any testamentary instrument.

After the testator's death, the plaintiff claimed to be entitled to receive a balance of several months' wages due to her and this has been paid. The claim to the ownership of the property was not put forward until some time later.

I have no doubt that at different times the testator has expressed his intention to devise the farm to the plaintiff; but I have a great deal of doubt as to there ever being a contract to do so.

There are many circumstances of suspicion attending the plaintiff's claim. She remained in the testator's employment, nominally as his housekeeper, and undoubtedly in receipt of a stipulated monthly wage. In the letters produced there is no suggestion of giving the farm. The plaintiff says that there was another letter, in which this was set forth, but that she has destroyed it. The corroborative evidence given by Mr. Owens (the Detroit attorney) I accept to the fullest extent, but it falls far short of establishing a contract. It shews only an intention at that time to make a will. The evidence of Haines Elmer, the nephew, requires to be accepted with great caution; and, outside of this, there is no corroboration of the plaintiff's own story. It is so easy to turn a statement of an intention to devise into a contract to devise that the evidence here, lacking in precision and convincing force, falls very short of the standard set by the judgment of a Divisional Court in *Cross v. Cleary* (1898), 29 O.L.R. 842, where it is said that such an agreement as that set up by the plaintiff "must be supported by evidence leaving upon the mind of the Court as little doubt as if a properly executed will had been produced and proved before it" (p. 545).

Not only does the evidence, even if accepted, fail to establish and corroborate a bargain, but I have the greatest difficulty in giving it credence.

I think this case is, in this aspect, quite like *Maddison v. Alderson* (1883), 8 App. Cas. 467, and that there was not in truth a contract.

Other difficulties also confront the plaintiff. The contract is not in writing, and the Statute of Frauds would afford a complete answer to a claim for specific performance. She would then be entitled to recover upon a quantum meruit for the value of the services rendered by her; but she did not render these