both parties that compensation should be made by will, and none is made, an action lies to recover the value of such services."

I do not think it helpful to discuss the cases such as Osborn v. Governors of Guy's Hospital, 2 Str. 728, Baxter v. Gray, 3 M. & Gr. 771, and the like, having in the cases in our own Court the law so happily and accurately expressed.

Considering that Mrs. Walters had no children, the work which the plaintiff continuously did, the necessity for some one doing this work, the value of the work, and all the circumstances of the case, I think it must be held, as I do hold, that Mrs. Walters understood, as undoubtedly the plaintiff did, that compensation should be made by will. This being the case, the plaintiff is entitled to recover as on a quantum meruit.

Were it not for Cross v. Cleary, 29 O. R. 542, I should hold that the whole period could be recovered for. No action could possibly be brought before the death, and it would seem against principle that the Statute of Limitations should be held to begin to run at a time anterior to that at which an action could be brought. But I am bound by Cross v. Cleary, unless and until it should be overruled; and I must hold that payment for services going back to 6 years before the teste of the writ only can be recovered in this action. The writ is issued 8th April, 1909; the services recoverable for then began 8th April, 1903; Mrs. Walters died 26th September, 1908: there are 5 years 24 3-7 weeks= 284 3-7 weeks. This at $2 per week=$568.85.

The plaintiff may amend his pleadings, claiming this sum, and have judgment for this sum and costs.

It may be that the plaintiff, if the defendant is satisfied to abide by this judgment, may accept the $500 claimed in full, in which case no amendment need be made, and the judgment will be for $500 and costs.

The executor will have his costs, solicitor and client, out of the estate.