

was due to others in the way of prompt payment. No express bargain or suggestion of an express bargain was made with the plaintiff; Mrs. Walters never promised to reward him for his services, either by ante mortem payment or by legacy. The plaintiff performed the services in the hope of a legacy, in the expectation that the widow would do the right thing by him in her will. He got his board and lodging, but, as I now think and find, his services were worth at least \$2 a week (my estimate at the trial was too low) in excess of the value of the board and lodging. Mrs. Walters died, leaving an estate of about \$3,000 to be divided amongst her nephews and nieces; the plaintiff was not, as he expected to be, remembered in her will, and now he brings this action for the value of his services, against the executor of Mrs. Walters.

The case came on for trial at Stratford before me without a jury. I reserved judgment and now proceed to dispose of the matter.

The facts of this case differentiate it from the case of a mere volunteer officiously performing services with no expectation of reward and no intention of obtaining or seeking reward, and also from the case of a member of the family performing in the house of another member of the family services to that other without express contract. In neither of these cases, of course, can the person performing such services recover. And again, the case is not one in which there was an express contract to reward for the services by a provision in the will, in which case it is equally clear that the services, or at least such of them as were rendered within 6 years of the teste of the writ, must be paid for by the estate.

I have read the cases cited by counsel and those mentioned in Walker v. Boughner, 20 O. R. 448, at p. 457, 15 Am. and Eng. Encyc. of Law, 2nd ed., p. 1079, and many others, and I nowhere else find the law more accurately stated than by the former Chief Justice of the Queen's Bench, Armour, C.J., in Walker v. Boughner, 20 O. R. at p. 457, thus: "Where a party renders services to another in the expectation of a legacy and in sole reliance on the testator's generosity, without any contract, express or implied, that compensation shall be provided for him by will, and the party for whom such services are rendered dies without making such provision, no action lies: but where from the circumstances of the case it is manifest that it was understood by