

EMMA SCHOEN,
DECEASED,
ESTATE OF.

IN THE PROBATE COURT OF
BALDWIN COUNTY, ALABAMA

DECREE ALLOWING CLAIM


This being the day heretofore set and appointed to hear and pass upon the claim of Erna Schoen for necessities furnished to Emma Schoen, Deceased, during her lifetime, the same being contested by the Executor Otto Schoen, who is represented in Court by his Attorney; and said attorney being present in Court, the Court proceeds to hear said claim.

And it appearing to the Court by the oral sworn testimony of the claimant and the oral sworn testimony of three impartial witnesses that the said Emma Schoen, Deceased was mentally and physically disabled to the extent that she could not exercise any control over her mental or physical functions for a period of six and one half years immediately prior to her decease; that the said deceased was a bed patient for the stated period of time and required almost constant attention the same as if a two monthold child; and it further appearing to the satisfaction of the Court that the claimant Erna Schoen furnished the necessities with the expectation of remuneration, to the deceased during said period by performing the necessary personal services of feeding, washing and changing the clothing of the deceased, and the furnishing of food, lodging and laundry for the deceased.

And it further appearing to the satisfaction of the Court, that Five Thousand Dollars is a reasonable amount to be allowed to the claimant for the necessities furnished to the Deceased during her lifetime.

It is therefore, ORDERED, ADJUDGED AND DECREED, that said claim is allowed in the amount of Five Thousand Dollars out of the Estate of Emma Schoen, Deceased and that said Executor pay said sum to Erna Schoen, out of the Estate of the said Emma Schoen, Deceased, forewith.

This the 28th day of March, 1957.


JUDGE OF PROBATE.

STATE OF ALABAMA
BALDWIN COUNTY

IN THE PROBATE COURT
NO. 3678

ESTATE OF EMMA SCHOEN, DECEASED:

Comes ERNA SCHOEN and claims of the estate of EMMA SCHOEN, Deceased, the sum to-wit, \$11,900.00 due for lodging, board, nursing and laundry furnished to the said EMMA SCHOEN, Deceased by the undersigned ERNA SCHOEN, for a period of six and one-half years; that there is now due to the said Erna Schoen and unpaid the said sum of money for the said lodging, board, nursing and laundry and tha the same is a reasonable and just claim for the same.

Erna Schoen

STATE OF ALABAMA
BALDWIN COUNTY

The undersigned Erna Schoen, being first duly sworn, on oath sates that the above stated claim is due and unpaid; that the same is just and reasonable claim and correct.

Erna Schoen
AFFIANT

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS THE
24th day of OCTOBER, 1956.

Arthur C. Epperson
NOTARY PUBLIC

STATE OF ALABAMA, BALDWIN COUNTY
Filed Nov. 1, 1956
Recorded Claim book 2 page 70
W. R. Stuart
Judge of Probate

ESTATE OF EMMA SCHOEN,) IN THE PROBATE COURT OF
Deceased.) BALDWIN COUNTY, ALABAMA
) NO. 3678.

CONTEST OF CLAIM

Now comes Otto Schoen, Executor of and under the Last Will and Testament of the said decedent, Emma Schoen, and contests in its entirety, the claim for \$11,900.00 which was filed in the Probate Court of Baldwin County, Alabama, on to-wit, November 1, 1956, by Erna Schoen. The said Otto Schoen, as said Executor, also files this his written application that the Probate Court of Baldwin County, Alabama, the Court where the administration of the said estate is pending, hear and pass, after giving notice as required by Title 61, Section 216 of the 1940 Code of Alabama as Amended.

Dated this 9th day of November, 1956.

Otto Schoen, as Executor of and
under the Last Will and Testament
of Emma Schoen, Deceased.

By: 
As his Attorney.

ERNA SCHOEN,) IN THE CIRCUIT COURT OF
Plaintiff,) BALDWIN COUNTY, ALABAMA
vs.) LAW SIDE.
OTTO SCHOEN, as Executor of)
the Estate of Emma Schoen,)
Deceased.)
Defendant.)

DEMAND FOR JURY TRIAL

Now comes the Defendant in the above styled cause
and demands a trial by jury of said cause.

Filed Apr. 13, 1957
Alice J. Duck
Clark

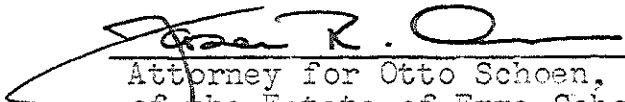
Wm. R. O.
Attorney for Defendant.

ESTATE OF
EMMA SCHOEN,
Deceased.

I IN THE PROBATE COURT OF
I BALDWIN COUNTY, ALABAMA
I NO. 3678.

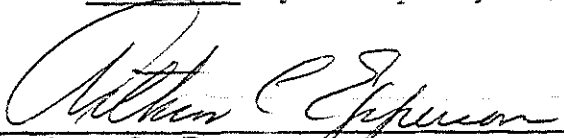
Now comes Otto Schoen, Executor of the Estate of Emma Schoen, Deceased, against which estate Joe Schoen has heretofore filed a claim, which said claim was contested by Otto Schoen as Executor of the said Estate, upon the hearing of which contest this court rendered a decree on March 28, 1957, allowing the claim in the amount of \$702.00, and herewith files this his appeal from the said verdict and judgment of the court granting this claim, and does hereby appeal to the Circuit Court of Baldwin County, Alabama on said judgment.

WHEREFORE, Otto Schoen, as Executor of the Estate of Emma Schoen, Deceased, prays that your Honor will forward the records of this cause insomuch as the same may be required by law, to the Circuit Court of Baldwin County, Alabama.


Attorney for Otto Schoen, Executor
of the Estate of Emma Schoen,
Deceased.

I, Arthur C. Epperson, as Attorney for Joe Schoen, claimant in the above styled matter, do hereby accept service of notice of the filing of the above appeal.

WITNESS my hand this the 11th day of April, 1957.


Arthur C. Epperson

STATE OF ALABAMA, BALDWIN COUNTY
Filed April 4, 1957 M
Recorded Pro & Min book 12 page 17
W. R. Stuart
Judge of Probate AS

ERNA SCHOEN,

Plaintiff,

vs.

OTTO SCHOEN, as Executor
of the Estate of Emma
Schoen, Deceased.

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW. NO. _____

SECURITY FOR COSTS

The undersigned, James R. Owen, as Principal, and Fidelity & Casualty Company of New York, a Corporation, as Surety, does hereby acknowledge themselves as security for costs in the appeal of this matter from the Probate Court of Baldwin County, Alabama, to the Circuit Court of Baldwin County, Alabama, at Law.

Dated this 12th day of April, 1957.

James R. Owen SEAL.
As Principal.

FIDELITY & CASUALTY COMPANY OF NEW YORK,
A CORPORATION, SEAL.
As Surety.

By: Walter L. Lindsey
As its Attorney in Fact.

Filed

April 13, 1957

ERNA SCHOEN,

Plaintiff,

vs.

OTTO SCHOEN, Executor of
the Estate of Emma Schoen,
Deceased,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW.

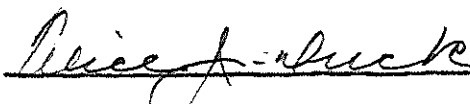
NO. 3189.

CERTIFICATE OF APPEAL:

I, Alice J. Duck, as Clerk of the Circuit Court of Baldwin County, Alabama, do hereby certify that the Defendant, Otto Schoen, Executor of the Estate of Emma Schoen, Deceased, did, on the 11th day of August, 1958, take an appeal to the Supreme Court of Alabama, from the judgment rendered in and by this Court for the Plaintiff, Erna Schoen, on, to-wit, March 11, 1958, which judgment was amended on June 27, 1958, in which cause the Defendant's motion for a new trial was overruled on June 27, 1958.

The Defendant (appellant), has requested oral argument of this case on appeal.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Circuit Court of Baldwin County, Alabama, on this the 11th day of August, 1958.



Clerk of the Circuit Court of Baldwin
County, Alabama.

1. Claim of Erna Schoen filed 11/1/56

2. Contest of Claims Dated 11/9/56

3. Decree of Probate Court 3/20/57

4. Appeal to Circuit Court filed 4/4/57

5. Security for Costs " 4/13/57

6. Demand for Jury Trial " 4/13/57

7. Complaint " 3/10/58

8. Pleas " 3/10/58

9. Charges

✓ 10. Judgment

✓ 11. Motion for New Trial

12. Motion to amend judgment

13. Amended Judgment

Amended Judgment

6/23/58

On motion of the defendant the judgment heretofore rendered on March 11, 1958, is amended, so that as amended the said judgment will read as follows:

"3/11/58. Came the parties by their attorneys, came also a jury of good and lawful men, to-wit, Floyd Racine, and 11 others, who being duly empaneled and duly sworn according to law on their oaths, we the jury find the issue in favor of the plaintiff and assess the damages at the sum of \$8,000.00 and the same being considered by the court:

It is ORDERED AND ADJUDGED by the court that the Plaintiff have a claim against the Estate of Emma Schoen in the amount of \$8,000.00, together with the costs in this behalf expended".

ERNA SCHOEN,

Plaintiff,

vs.

OTTO SCHOEN, as Executor
of the Estate of Emma Schoen,
Deceased,

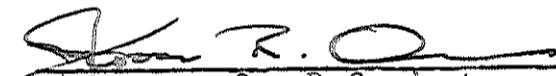
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW.

PLEAS:

Now comes the Defendant in the above styled cause and for pleas to the complaint heretofore filed in this cause and to each count thereof, separately and severally, assigns the following, separately and severally:

1. Not guilty.
2. The allegations of the complaint are untrue.
3. The allegations of the claim heretofore filed in this cause by the Plaintiff in the Probate Court of Baldwin County, Alabama, are untrue.


Attorney for Defendant.

Filed 3-18-58
Receiv. Clerk

ERNA SCHOEN

PLAINTIFF

VS

OTTO SCHOEN, as Executor
of the Estate of Emma Schoen,
Deceased,

DEFENDANT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

Comes now the Plaintiff in the above styled cause and amends her Bill of Complaint heretofore filed in the Probate Court as follows:

1.

Comes Erna Schoen and claims of the estate of Emma Schoen, Deceased, the sum to-wit, \$11,900.00 due for lodging, board, nursing and laundry furnished to the said Emma Schoen, deceased, by the undersigned Erna Schoen, for a period of six and one-half years; that there is now due to the said Erna Schoen and unpaid the said sum of money for the said lodging, board, nursing and laundry and that the same is a reasonable and just claim for the same.

2.

The Plaintiff claims of the Defendant the sum of to-wit: \$11,900.00 due for lodging, board, nursing and laundry furnished to Emma Schoen, Deceased, under an implied contract. ^{Entered into by & between the Plaintiff & Emma Schoen, deceased on date: June 1, 1949} The said Emma Schoen being so mentally and physically infirm and aged that from to-wit, June 1, of 1949 until her death on May 9, 1956, she was so mentally incompetent and physically infirm as to require constant care and attention as if an infant of a few months of age and was incapable of making a contract for herself. The Plaintiff performed personal services to the said Emma Schoen, deceased, by personally nursing, dressing, bathing and hand feeding her from the period from to-wit: June 1, of 1949 until the death of Emma Schoen. The Plaintiff also did the laundry and provided food for and to the said Emma Schoen, deceased, during the period of time stated; that said defendant is the duly appointed administrator of the estate of Emma Schoen, deceased; that there is now due and unpaid to the Plaintiff above named sum of money for such board, lodging, nursing and laundry performed and furnished said

deceased covering a period of time from June, of 1949 to May 9, 1956; for which services, board, lodging, nursing and laundry the Plaintiff reasonably expected to be compensated; Plaintiff avers that the sum of \$150.00 is a reasonable charge per month for such board, lodging, nursing and laundry; that said claim is a reasonable and just charge against the estate of said deceased; that Plaintiff has filed her claim in the office of the Judge of Probate of Baldwin County, Alabama, on to-wit, November 1, 1956, wherein said administration is now pending and that said administrator has refused to allow or pay said claim; that said estate is solvent, and that said sum of, to-wit: \$11,900.00, with interest thereon from to-wit, May 9, 1956, is due and unpaid.

Filed 3-10-58

Arthur Epperson
Attorney for the Plaintiff

ERNA SCHOEN,

Plaintiff,

vs.

OTTO SCHOEN, Executor of
the Estate of Emma Schoen,
Deceased,

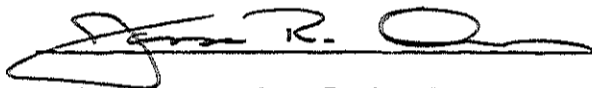
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW. NO. 3189.

APPEAL BY DEFENDANT:

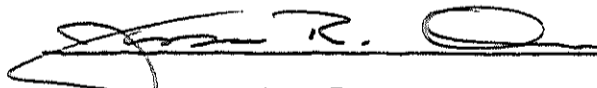
Now comes the Defendant and appeals to the Supreme Court of the State of Alabama, from the final judgment rendered in this cause in and by the Circuit Court of Baldwin County, Alabama, Law Side, on to-wit, March 11, 1958, which said judgment was amended on June 23, 1958, and in which cause Defendant's motion for a new trial was overruled by the trial court on to-wit, June 23, 1958.



Attorney for Defendant.

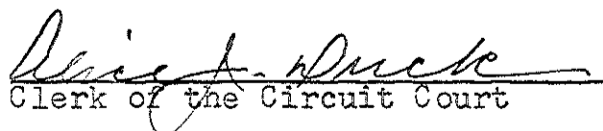
SECURITY FOR COSTS:

I, the undersigned, do hereby acknowledge myself as security for the costs of the appeal taken by the Defendant in this cause.



Attorney for Defendant.

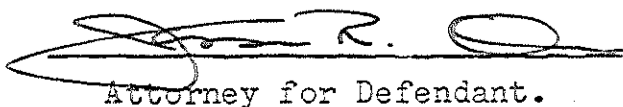
Taken and approved on this
the 11 day of August,
1958.



Clerk of the Circuit Court

REQUEST FOR ORAL ARGUMENT:

The Defendant (appellant) desires to argue this case orally on appeal.



Attorney for Defendant.

THE STATE OF ALABAMA }
Baldwin County - Circuit Court }

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the

March 11, 1958 Monday in 1958, in a cer-

tain cause in said Court wherein ERNA SCHOEN

Plaintiff, and OTTO SCHOEN, Executor of the Estate
of Emma Schoen, Deceased Defendant, a judgement was rendered against said

OTTO SCHOEN, EXECUTOR OF THE ESTATE OF EMMA SCHOEN, Deceased

to reverse which Judgment, the said Otto Schoen, Executor of the
Estate of Emma Schoen, Deceased

applied for and obtained from this office an APPEAL, returnable to the next

Term of our Supreme Court of the State of Alabama, to be held at Montgomery,

on the day of , 1958 next, and the necessary bond

having been given by the said James R. Owens

with , sureties,

Now, You Are Hereby Commanded, without delay, to cite the said

ERNA SCHOEN or Arthur C. Epperson

, attorney, to appear at the next Term of our

said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 13

day of August, A. D., 1958

Attest:

Alice J. Duck, Clerk.

EMMA SCHOEN, DECEASED,
ESTATE OF,

IN THE PROBATE COURT OF
BALDWIN COUNTY, ALABAMA

DECREE ALLOWING CLAIM

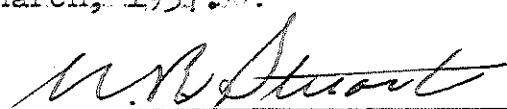
This being the day heretofore set and appointed to hear and pass on the claim of Joe Schoen for the funeral expenses of Emma Schoen, Deceased, the same being contested by the Executor, Otto Schoen, who is represented in Court by his attorney; and said attorney being present in Court, the Court proceeds to hear said claim.

And it appearing to the satisfaction of the Court from the testimony of the witnesses that the claimant Joe Schoen paid for the funeral expenses of the said Emma Schoen, Deceased, with expectation of remuneration, the sum of Seven Hundred and Two Dollars (\$702.00).

It is therefore ORDERED, ADJUDGED AND DECREED, that said claim is allowed in the amount of Seven Hundred and Two Dollars (\$702.00).

It is further ORDERED, DECREED and ADJUDGED, that said Executor, Otto Schoen, pay the sum of Seven Hundred and Two Dollars out of the Estate of Emma Schoen, Deceased, to the claimant forewith.

This the 28th day of March, 1957.


Judge of Probate

EMMA SCHOEN,
Deceased,

ESTATE OF.

IN THE PROBATE COURT OF

BALDWIN COUNTY, ALABAMA.

ORDER SETTING DAY

And now comes Otto Schoen, as Executor of the Estate of Emma Schoen, Deceased, and files in this Court a contest of the claim of Erna Schoen and Joe Choen, as filed in the premises;

It is, Therefore, ORDERED, ADJUDGED AND DECREED by the Court that the 13th day of December, 1956, at 2:30 P.M., be, and the same hereby is appointed as the day and time for hearing such contest.

Witness my hand this the 26th day of November, 1956.



Judge of Probate.

ESTATE OF EMMA SCHOEN,) IN THE PROBATE COURT OF
Deceased,) BALDWIN COUNTY, ALABAMA
) NO. 3678.

CONTEST OF CLAIM

Now comes Otto Schoen, Executor of and under the Last Will and Testament of the said Decedent, Emma Schoen, and contest in its entirety, the claim for \$702.00 which was filed in the Probate Court of Baldwin County, Alabama, on to-wit, November 1, 1956, by Joe Schoen. The said Otto Schoen, as said Executor, also files this his written application that the Probate Court of Baldwin County, Alabama, the Court where the administration of the said estate is pending, hear and pass, after giving notice as required by Title 61, Section 216 of the 1940 Code of Alabama as Amended.

Dated this 9th day of November, 1956.

Otto Schoen, as Executor of and
under the Last Will and Testament
of Emma Schoen, Deceased,

By: John R. O.

As his Attorney.

STATE OF ALABAMA
BALDWIN COUNTY

IN THE PROBATE COURT
NO. 3678

ESTATE OF EMMA SCHOEN, DECEASED:

Comes Joe Schoen and claims of the estate of EMMA SCHOEN, Deceased, the sum to-wit, \$702.00 due for funeral expenses for the deceased Emma Schoen paid for by the undersigned Joe Schoen and that there is now due to the said Joe Schoen and unpaid the said sum of money for the funeral expenses and that the same are a reasonable, just and correct claim for the said funeral expenses.

Joe Schoen

STATE OF ALABAMA
BALDWIN COUNTY

The undersigned JOE SCHOEN, being first duly sworn, on oath states that the above stated claim is due and unpaid; that the same is a just and reasonable claim and correct.

AFFIANT

Joe Schoen

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS THE
24th day of OCTOBER, 1956.

NOTARY PUBLIC

Arthur C. Epperson

STATE OF ALABAMA, BALDWIN COUNTY

Filed Nov. 1, 1956 M

Recorded Claim book 2 page 70

W. A. Stuart

Judge of Probate

No

SEP 8 - 1960

THE STATE OF ALABAMA - - - - JUDICIAL DEPARTMENT

SUPREME COURT OF ALABAMA

SPECIAL TERM 1960

1 Div. 786

Otto Schoen,
As Executor, etc.

v.

Erna Schoen

Appeal from Baldwin Circuit Court

LIVINGSTON, CHIEF JUSTICE.

A claim for \$11,900 was originally filed in the probate court by the appellee, Erna Schoen, against the appellant, Otto Schoen, as executor of the estate of Emma Schoen, deceased, for necessities furnished to the deceased Emma Schoen for a period of six and one-half years prior to her death by the appellee, Erna Schoen, on an implied contract based on the mental and

2.

physical infirmities of the said Emma Schoen, during the period covered by the claim.

The judge of probate upon hearing found that "the said Emma Schoen, deceased, was mentally and physically disabled to the extent that she could not exercise any control over her mental and physical functions for a period of six and one-half years immediately prior to her decease; that the said deceased was a bed patient for the stated period of time and required almost constant attention the same as if a two month old child," and awarded the appellee the sum of \$5,000.

The appellant appealed to the circuit court and demanded a trial by jury.

The appellee amended the claim as filed in the probate court by adding Count 2, in essence, a count claiming \$11,900 for necessities furnished on an implied contract. Later, she amended the complaint by striking Count 1.

The appellant joined issue by filing pleas of the general issue.

After the appellee rested, the appellant rested and requested the general charge, orally and in writing, both of which were refused.

The jury found in favor of the plaintiff (appellee) for the sum of \$8,000, and the court entered judgment for this amount.

Appellant filed a motion for a new trial, which was denied.

Mrs. Emma Schoen testified that she was a resident of Baldwin County, Alabama; that she filed a claim in the Probate Court of Baldwin County, Alabama, against the estate of Emma

Schoen, deceased. (It was admitted during the testimony of Erna Schoen by the attorneys for the appellant that Otto Schoen was the personal representative of Emma Schoen, deceased.)

Mrs. Erna Schoen also testified that she had to feed Emma Schoen, wash her, and wash her clothes, and had done this previous to and since June of 1949 until the death of Mrs. Emma Schoen (which occurred May 9, 1956); that she cooked and cared for Emma Schoen from June of 1949 with the expectations of being paid, and that she thought her services were worth \$150 per month; that Mrs. Emma Schoen was helpless, she was worse than an infant, "she soiled all over herself and could not take care of herself at all"; that her mind was not there any more; her mind was gone and that Mrs. Emma Schoen was in this condition in June of 1949.

Mrs. Elizabeth Frankhoffer testified that Mrs. Erna Schoen performed personal services such as nursing, cooking, bathing and things of that nature for Mrs. Emma Schoen from June 1949 until her death; that "since 1949, about June, she (Emma Schoen) couldn't do nothing, she was in bed all of the time."

Mr. Joe Schoen testified that he was the son of Emma Schoen, deceased, and husband of Erna Schoen, the appellee; that he and his wife, Erna Schoen, lived in a separate house from the house occupied by Emma Schoen during the last part of the lifetime of Emma Schoen and that he and his wife, Erna Schoen, resided in his house and that Emma Schoen resided in her house; that Erna Schoen took care of Emma Schoen because she was as feeble as a baby, she had to bathe her like a baby and put her in the tub and carry her body around; that it was harder than a

baby -- she had to feed her with a spoon. He also testified that his mother's mind was feeble and that his wife had to care for her from 1948 or 1949 "because she just about set the house on fire several times and my wife went in and she would have burnt up if my wife hadn't gone in there"; that Erna Schoen took care of Emma Schoen until her death from 1948 or 1949.

Mrs. Rudolph Bowman testified that she was acquainted with Mrs. Emma Schoen since 1926; that she knew the condition of Mrs. Emma Schoen prior to her death, and that such condition existed about six years or more before her death; that Mrs. Emma Schoen didn't know us and she couldn't help herself; she had to be washed and cleaned, dressed and fed; and that she couldn't move of her own; that prior to the death of Mrs. Emma Schoen for a period of six years, Erna Schoen cared for her, and that Erna Schoen got some other women in to help her once in awhile.

In the case of Duncan v. Johnson, 239 Ala. 183, 194 So. 528, a case in which a daughter claimed reimbursement out of the estate of her deceased mother for services and supplies necessarily rendered in caring for her, it was said:

"The general principle is now well settled in this State that when a child furnishes articles and services, including board and attention, to a parent, the prima facie presumption is that they were gratuitous; but this presumption may be overcome by a contract expressed or implied to pay for them. Lowery v. Pritchett, 204 Ala. 328, 85 So. 531; Nelson v. Nelson, 210 Ala. 592, 98 So. 885.

"Such an agreement is implied between near rel-

atives when the circumstances are such that a su-

tual intent to pay and receive compensation for

such services and supplies is a reasonable and just

conclusion. *Coleman v. Adkins*, 232 Ala. 351, 168

So. 184."

It was further said in that case:

"But when a parent becomes insane so as to need

the special care and attention here shown, and one

of the children has the entire burden of supplying

it, the courts have held that those circumstances

are sufficient to support such an implied agreement

upon the idea that they were furnished with a rea-

sonable expectation of reimbursement. 28 R.C.L.

669, note 14; *Reardo v. Mosplay*, 98 Mo. 251, 2 S.W.

405, 59 Am. Rep. 13; *Humble v. Humble*, 152 Ky. 160,

153 S.W. 249; *Dart v. Dart*, Ky., 82 S.W. 581;

Hartley v. Hartley's Estate, 173 Mo. App. 18, 155

S.W. 1099."

Certainly a daughter-in-law does not stand in a more

unfavorable position in this regard than does a daughter who

receives compensation for services to her own mother.

Assignment of error 1 reads as follows:

"1. The court erred in allowing the appellee, *Ema Schoen*, to testify over appellant's objection as follows:

"Q. Do you know of your personal knowledge whether or not Mrs. Schoen had an estate from which the services could have been paid?"

"A. Yes sir.

"MR. BLACKBURN: I object as irrelevant, incompetent and immaterial.

"MR. EPPERSON: I think it is necessary-

"THE COURT: He is asking if she know of her own personal knowledge.

"MR. BLACKBURN: That doesn't matter; it is irrelevant.

"MR. OWEN: It doesn't matter whether the estate has enough money to pay her claim or not.

"MR. EPPERSON: I want to show that the estate is solvent.

"THE COURT: Do you admit that the estate is solvent?

"MR. BLACKBURN: Proving it is something else. We object on the ground that it is irrelevant, incompetent and immaterial.

"THE COURT: Overrule the objection, if she knows from her personal knowledge.

"MR. BLACKBURN: We except.

"A. She had enough land to pay for her services."

From a reading of this assignment of error and the argument made by appellant in support of it, it is uncertain as to whether or not appellant is contending the court erred in overruling the objection to the question, "Do you know of your personal knowledge whether or not Mrs. Schoen had an estate from which the services could have been paid?" or the admission of the answer by the witness that "She had enough land to pay for her services."

We will discuss this assignment as it applies to both the question and answer. The question as asked called for a "yes" or "no" answer, and it is clear that the answer given was not responsive to the question. However, the record indicates

that no objection was made by appellant to the answer, nor did appellant move the court to exclude the answer, and, as a consequence, the court made no ruling as to the answer. Assignments not referring to any ruling of the court presents nothing for review. McLaney v. Turner, 267 Ala. 588, 104 So. 2d 315. It is, therefore, clear that the trial court did not err in admission of this statement.

The assignment is also without merit if it was directed to the overruling of the objection to the question, this, for the reason that the objection was not timely made, as shown by the above-quoted record. Moreover, if the court had erred, such error would be rendered harmless by the later admission of other evidence to the same effect without objection. Harvey England Co. v. Newton, 268 Ala. 192, 105 So. 2d 110, and cases there cited; Blount County v. McPherson, 268 Ala. 133, 105 So. 2d 117; Stewart v. Weaver, 264 Ala. 286, 87 So. 2d 548.

Assignments of error 2, 3, 4 and 5 are predicated on the trial court's refusal to give four written charges requested by appellant. Each of these refused charges are general affirmative charges with or without hypotheses. The argument made in support of these assignments is that the evidence is not sufficient to prove a contract between the deceased and appellee. These assignments of error are without merit because the scintilla evidence rule is in effect in Alabama and the general affirmative charge should not be given against plaintiff where there is the slightest evidence tending to prove a right of recovery. Birmingham Elec. Co. v. Freeman, 32 Ala. App. 479,

8.

27 So. 2d 231; Alabama Great Southern R. Co. v. Bishop, 265 Ala. 118, 89 So. 2d 738; Chesser v. Williams, 268 Ala. 57, 104 So. 2d 918.

The sixth assignment of error is that the trial court erred in overruling appellant's motion for a new trial. Appellant argues only those grounds for said motion which are the same as assignments of error 2, 3, 4 and 5. Therefore, this assignment is also without merit for the same reason that assignments of error 2, 3, 4 and 5 are not meritorious. Moreover, where there is evidence which, if believed, justifies the verdict, the overruling of the motion for a new trial strengthens the presumption in favor of the correctness of the verdict.

Smith v. Smith, 254 Ala. 404, 48 So. 2d 546; Jacks v. City of Birmingham, 268 Ala. 138, 105 So. 2d 121.

The judgment of the trial court is due to be, and is, affirmed.

AFFIRMED.

Simpson, Goodwyn and Coleman, JJ., concur.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 786

OTTO SCHOEN, AS EXECUTOR OF THE ESTATE OF EMMA
SCHOEN, DECEASED, Appellant

vs.

ERNA SCHOEN, Appellee,

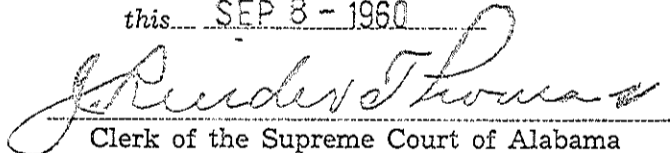
From BALDWIN Circuit Court.

The State of Alabama,
City and County of Montgomery, }

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to EIGHT inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, J. Render Thomas, Clerk of the
Supreme Court of Alabama,

this SEP 8 - 1960


Clerk of the Supreme Court of Alabama

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 786,

OTTO SCHOEN, AS EXECUTOR OF THE ESTATE OF EMMA
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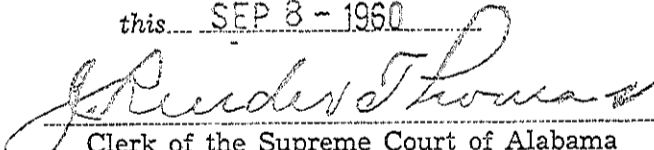
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this SEP 8 - 1960


Clerk of the Supreme Court of Alabama

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

Special
~~October~~ Term, 19 59=60

To the Clerk of the Circuit Court,
Baldwin County—Greeting:

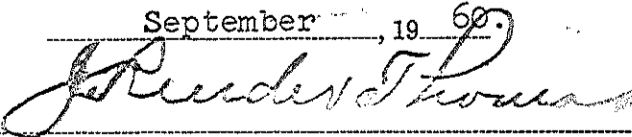
Whereas, the Record and Proceedings of the Circuit Court
of said county, in a certain cause lately pending in said Court between
Otto Schoen, as Executor of The Estate of , Appellant,
Emma Schoen, Deceased,
and
Erna Schoen , Appellee,

wherein by said Court it was considered adversely to said appellant=, were brought before our
Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant=:

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered, ordered, and adjudged by
our Supreme Court, on the 8th day of September , 19 60, that said
Judgment - - - - - of said Circuit Court be in all things

affirmed, and that it was further considered, ordered, and adjudged that the appellant...: ~~and~~ ~~XXX~~
Otto Schoen, as Executor of The Estate of Emma Schoen,
Deceased, and James R. Owen, surety on the appeal bond,
pay

the costs accruing on said appeal in this Court and in the Court below, for which costs let execution
issue.

Witness, J. Render Thomas, Clerk of the Supreme
Court of Alabama, at the Judicial Department
Building, this the 8th day of
September , 19 60.

Clerk of the Supreme Court of Alabama.