

Nothing But The Truth

by F. Lyman Windolph

What follows is correct in every respect except that, for obvious reasons, the names which I have given to the various characters are fictitious.

About twenty-five years ago I was asked by an old friend and client whether I would be willing to handle the case of a woman who wished to present a claim against an estate then before our Orphans' Court. I answered that I would be glad to do so.

He then gave me the facts giving rise to the claim. The claimant was an old woman of German extraction whose name was Theresa Schwalm. The estate against which the claim was to be presented was that of a man named Irving Steinfeld. Mrs. Schwalm had been Irving's nurse when he was a baby and had become greatly attached to him. (I believe, though I am not sure, that Mrs. Schwalm never had any children of her own.) Irving was an only child, and when his parents died he inherited a substantial estate. He never married and lived alone in an apartment. According to my friend, Mrs. Schwalm went to the apartment for many years on two or three days a week, kept the apartment clean, mended Irving's clothes and did other pieces of work. For these services he had agreed to pay her two dollars a week. However, he never paid her anything and it was for this money that she wanted to present a claim.

My friend felt strongly that Irving had behaved badly. I told my friend that while I was willing to represent Mrs. Schwalm, the chances of her recovering anything seemed to me to be poor — under the law she would be incompetent to testify under the so-called "Dead Man's Rule" and in addition the court would disallow her claim unless she could prove by affirmative evidence not only that her services had been rendered under a contract but also that the wages she was to receive had not been paid. I added that in any event she could not recover wages for more than six years.

I knew Irving slightly. After the death of his parents he lived alone in the apartment which Mrs. Schwalm cleaned. In Lancaster County parlance he was a "catbird." A "catbird," as we understand the term—and as it is perhaps understood elsewhere—is a man who eats too much, drinks too much, and does not believe in celibacy.

When I interviewed Mrs. Schwalm, she impressed me favorably and I felt sure that she was telling the truth. I then asked her to give me the names of friends of Irving who had frequently visited the apartment and who were likely to know the work that she had done. She complied with my request, though I thought a little reluctantly, and gave me the names of two men. I knew both of them. One of them was a client of mine and, as I expected, both of them were "catbirds."

I sent for my client first. He was an intelligent man named Henry Schreck and I had been on friendly terms with him for many years. When I explained to him what I would be required to prove in order to make out Mrs. Schwalm's claim he answered as I had expected. "Lyman," he said, "I'm afraid I can't help you. I could testify that I believe her to be trustworthy and that I would accept as true anything she said, but I know nothing whatever about the terms of her employment or about whether Irving paid her or not." I told him that his evidence would be of no value to Mrs. Schwalm and that he need not appear in court.

I then sent for the second "catbird," whose name was Charles Chambers. I had known him for a long time but he was not a client. I repeated to him the substance of what I had told my client. He said at once: "She is a good woman and Irving should have been ashamed of himself." Then there was a little pause. "Tell me," he said, "exactly what you have to prove." I told him and he listened carefully. There was another pause. Finally he said, speaking rapidly: "I know all about this case. Call me as your first witness."

I did not ask him any further questions.

On the day set for hearing Mrs. Schwalm's claim I was in court early but my witness was ahead of me. The auditing judge asked me to state the basis of my client's claim and I did so. The attorney representing Irving's estate said that the claim was objected to. The judge then said: "Mr. Windolph, can we agree about the law? As I understand it, you must prove a contract and also that the promised wages were not paid. You assume a heavy burden." I replied that he had stated the law correctly. "Call your first witness," he said.

I called Charles Chambers and he stepped jauntily into the jury box. "Tell the court," I said, "what you know about this claim." Then I held my breath. The witness answered rapidly. "I know all about the claim," he said. "This man promised to pay Mrs. Schwalm two dollars a week to clean his apartment and mend his clothes, but he broke his promise. He never paid her anything for six years."

The attorney for the estate rose to his feet. "Wait a minute," he said. "How do you know all this?" "How do I know it?" said the witness triumphantly. "*He told me so.* I was on a fishing trip with him about three weeks before he died. You know that old German woman named Schwalm who works for me," he said. "I