DAMAGES—REVOCABLE CONTRACT—*Chevrolet Motor Co v. McCullough Motor Co.*, 6 Fed. (2d) 212 (C. C. A., 9th Cir., 1925).

Plaintiff had a contract as defendant's exclusive agent for automobiles in a certain territory. The contract, by its terms, was terminable at will upon 5 days' notice. Defendant made a similar contract with a third person for the same territory, without giving plaintiff any prior notice. Defendant claimed that this contract operated as notice of its intention to terminate its contract with plaintiff, in accordance with the terms of the latter contract, hence was no breach. The trial court took the view that the defendant had committed a total breach and had forfeited all its rights under the contract, including its right to terminate on 5 days' notice; hence substantial damages were allowed. The appellate court held that defendant's action constituted a beach of the contract, but only nominal damages should have been awarded.

None of the cases cited by the court to sustain its decision really supports the proposition that for the breach of a contract revocable at will upon short notice only nominal damages may be recovered. *Ellis v. Dodge Bros.* (D. C.) 237 F. 860, and *Oakland Motor Car Co. v. Indiana Automobile Co.*, 121 C. C. A. 319, 201 F. 499, hold that contracts of agency for automobiles, terminable upon 15 and 30 days' notice, respectively, are really not contracts at all, insofar as they are executory, for want of mutuality of obligation. Both these cases were also decided on other points, and the court in *Wilson v. Studebaker Corp. of America* (D. C.) 240 F. 801 (also cited) said, in commenting on *Ellis v. Dodge Bros.*: "The case is authority for the proposition that where a defendant has not agreed to deliver he cannot be held answerable in damages for not having delivered, but it is not an authoritative ruling for the proposition that a defendant who has agreed to deliver need not comply with his contract because he had the right to end it at will." The case quoted from held that where a party to a contract has defaulted he may be held answerable, though he had the right to relieve himself of the obligation by revocation. The following cases, in addition to those cited, are authority for the statement that a revocable contract, insofar as it is executory, lacks mutuality: *U. S. v. White Oak Coal Co.*, 5 F. (2d) 439; *Miami Coca-Cola Bottling Co. v. Orange Crush Co.*, 296 F. 693; *Louisville Tobacco Warehouse Co. v. Zeigler*, 196 Ky. 414, 244 S. W. 899; *McCaffrey v. B. B. & R. Knight, Inc.*, 282 F. 334; *Gurfein v. Werbel-*

ovsky (Conn.) 118 A. 32; *Radetsky v. Palmer et al.,* 70 Colo. 146, 199 P. 490; *National Surety Co. v. City of Atlanta,* 151 Ga. 123, 106 S. E. 179; *Bernstein et al. v. W. B. Mfg. Co.* (Mass.) 131 N. E. 200; *City of Pocatello v. Fidelity & Deposit Co. of Maryland,* 267 F. 181; *Owensboro Wagon Co. v. Benton Mercantile Co.,* 204 Ala. 415, 85 So. 723; *Rodgers v. Larrimore & Perkins,* 188 Ky. 468, 222 S. W. 512; *Daniel Boone Coal Co. v. Miller et ux.,* 186 Ky. 561, 217 S. W. 666; *Steinwender-Stoffregen Coffee Co. v. F. T. Guenther Grocery Co.* (Ky.) 80 S. W. 1170; *American Agricultural Chemical Co. v. Kennedy & Crawford,* 103 Va. 171, 48 S. E. 868; *Thomas v. Western Indemnity Co.* (Tex.) 206 S. W. 944; *Eclipse Oil Co. v. South Penn Oil Co.,* 47 W. Va. 84, 34 S. E. 923; *Hinton Foundry, Machine & Plumbing Co. v. Lilly Lumber Co.,* 73 W. Va. 477, 80 S. E. 773. But none of these cases allows even nominal damages for a breach of a revocable contract.

The next group of cases cited (*Fisher v. Monroe,* 2 Misc. Rep. 326, 21 N. Y. S. 995, and *Derry v. Board of Education,* 102 Mich. 631, 61 N. W. 61) hold simply that where a servant is discharged without the notice stipulated by the contract of employment, the damages are the amount of his wages for the period of notice. This proposition is well established by such decisions as *Shea v. Kerr,* 1 Pa. 530, 43 A. 843; *Gates v. Stead,* 54 App. Div. 448, 66 N. Y. S. 829; *McGregor v. Gilmore,* 25 Misc. Rep. 312, 54 N. Y. S. 589; *DeVere v. Gilmore,* 25 Misc. Rep. 306, 54 N. Y. S. 587; *Johnson v. Pacific Bank & Store Fixture Co.,* 59 Wash. 58, 109 P. 205. This principle seems to have been applied to the instant case on the assumption that the amount of profit plaintiff could have made under the contract as an automobile agent during the 5 days' period was negligible.

The remaining case cited, *Cronemillar v. Duluth-Superior Milling Co.,* 134 Wis. 248, 114 N. W. 432, is hardly in point. It holds that the refusal to permit an employee to begin work under a contract terminable at will entitles the employee to at least nominal damages. Several cases are more nearly in line with the decision in the instant case than any of those cited; the following allowed a recovery, but limited it to nominal damages, under circumstances remotely resembling those of the instant case: *Atkins v. Van Buren School Township,* 77 Ind. 447 (for refusing to let plaintiff begin work under a contract whose term was not specified); *Kelly v. Fahrney,* 38 C. C. A. 103, 97 F. 176 (for breach of an executory agreement to loan money, where no definite time for the continuance of the loan was agreed on, the law implying an agreement to repay on demand); *Noble v. Hand*

et al., 163 Mass 289, 39 N. E. 1020 (for breach of an agreement to send samples to plaintiff, defendant's salesman, to use in securing orders for defendants' goods, defendants having reserved the right to reject any orders the plaintiff might have received).

F. W. F., '27.

DAMAGES—PERSONAL INJURIES—GRATUITOUS NURSING.—*Corum v. Davis*, 130 A. 448 (N. J. 1925).

This was an action for personal injuries, brought by a married woman, with her husband joining a claim per quod. The husband remained away from work two weeks to nurse his wife, and claimed, as an item of damages, the amount of his wages during that period. The trial court allowed a recovery of this item. The appellate court held that the lower court did not err in instructing the jury that the husband could recover for his loss of wages while nursing his wife. The propriety of an instruction must be tested by the facts of the particular case (citing *State v. Egan*, 84 N. J. L. 701, 87 A. 455), and the court took judicial notice of the fact that a trained nurse could not have been hired for less than the amount of the husband's wages, remarking that, if the husband had been earning greatly in excess of the salary of a nurse for that period, the trial court probably would not have given the instruction it did.

Without this explanation, the decision would seem to be directly contrary to the weight of authority, being supported only by *Pullman Palace Car Co. v. Smith*, 79 Tex. 468, 14 S. W. 993, 23 A. S. R. 356, 13 L. R. A. 215; while the following cases hold that the damages recoverable for nursing by a member of the injured person's family are the reasonable value of such services as a nurse, and not the amount lost by abstaining from other employment: *Hazard Powder Co. v. Volger*, 7 C. C. A. 130, 58 F. 152, 12 U. S. App. 665; *Town of Salida v. McKinna*, 16 Colo. 523, 27 P. 810; *Dormer v. Alcatraz Paving Co.*, 16 Pa. Super. Ct. 407; *Barnes v. Keene*, 132 N. Y. 13, 29 N. E. 1090; *Ft. Worth & D. C. Ry. Co. v. Kennedy*, 12 Tex. Civ. A. 654, 35 S. W. 335, holds that the time lost by a husband in nursing his wife is an element of damages in an action for her injury, but states no basis of computing the value of the time lost.

If the instant case is regarded as deciding only that a husband may recover for his services in nursing his wife injured by defendant, the reasonable value of such services and no more, it is in accord