

ACTION FOR SERVICES RENDERED A DECEDENT--PRESUMPTION OF GRATUITY BY FAMILY MEMBER.¹

The evidence in this case tends to show (*state relationship*). If you find that the plaintiff and the deceased were living in the home together in such a relationship as to indicate a unity of family between them, and that the services performed by plaintiff were of such a nature as are ordinarily rendered by a ("*Child to his father*", or *other relationship*) in obedience to a moral obligation and without expectation or compensation, then there is a presumption that the services were not to be compensated. The unity means more than living in the same house and eating off the same table. It means that exchange of services which might be expected of a typical unbroken family.²

However, the presumption arising out of the family unity and the relation of the members of the family to each other may be rebutted by evidence indicating that the way of living of the family is different from the usual.³

If you find that such family unity existed, the plaintiff cannot recover for *his* services, unless *he* has satisfied you by the greater weight of the evidence that there was an express agreement to pay for them, or that from all the facts and circumstances payment was intended by the deceased and expected by the plaintiff at the time they were rendered.

¹If the family relationship exists which raises this presumption, this instruction should be given in connection with N.C.P.I.--Civil 735.00, rather than N.C.P.I.--Civil 735.10. For cases indicating in what relationships a presumption arises, see Strong, Executors and Administrators, § 26.1.

²Landreth v. Morris, 214 N.C. 619 (1939).

³Francis v. Francis, 223 N.C. 401 (1943).

