

ACTION FOR SERVICES RENDERED A DECEDENT--ISSUE OF RECOVERY--EVIDENCE OF VALUE OF SPECIFIC PROPERTY.<sup>1</sup>

The plaintiff has offered evidence of the value of (*describe specific property*) which *he* contends (*name decedent*) promised to will to *him* in consideration for services to be rendered and which *he* claims *he* has rendered. As I have instructed you earlier, such a promise is not enforceable under our law. However, this evidence of the value of such property may be considered by the jury as tending to show an estimate or admission by the decedent of what the parties contemplated the services would probably be worth. This is only evidence and is not controlling on the question of recovery, but it is for you to determine upon all the evidence, including evidence of the value of the property, what is the reasonable fair market value of the services, if any. You should note that the price which may have been fixed in such a promise was fixed in advance, when the amount of the plaintiff's performance was at the time uncertain or contingent, and it may be that the promised compensation bears no relation to the value of the plaintiff's actual performance.

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<sup>1</sup>Evidence of value of decedent's estate may not be competent where a contract to pay by will is unenforceable. *Doub v. Hauser*, 256 N.C. 331 (1962). However, it has been allowed in certain cases. *Grantham v. Grantham*, 205 N.C. 363 (1933); *Norton v. McLelland*, 208 N.C. 137 (1935). This instruction should be used only if evidence of the value of the property promised is found to be competent.

